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Contents

Federal Register

Vol. 68, No. 108

Thursday, June 5, 2003

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.

Rules and Regulations

Federal Register
Vol. 68, No. 108
Thursday, June 5, 2003

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 72 and 73

RIN 3150–AG90

Event Notification Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its event notification regulations that apply to an Independent Spent Fuel Storage Installation (ISFSI) and to a Monitored Retrievable Storage (MRS) installation. The final rule will also amend safeguards event notification requirements that apply to facilities such as reactor facilities, fuel cycle facilities, ISFSIs, an MRS, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and gaseous diffusion plants. Some changes will reduce licensee burden by consolidating some notifications and lengthening, where appropriate, the reporting period for other notifications. These changes will not impact public health and safety. New requirements will be added to permit the NRC to more effectively carry out its responsibilities during emergencies and in responding to public, media, and other stakeholder inquiries during events or conditions at licensees' facilities. These changes will also align the standards for both the event notification requirements and the safeguards event notification requirements with previous changes made to the power reactor event notification requirements.

EFFECTIVE DATE: This final rule is effective on October 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, [telephone (301) 415–6196, e-mail, *MFH@nrc.gov*].

SUPPLEMENTARY INFORMATION:

Background

An advance notice of proposed rulemaking (ANPR) was published on July 23, 1998, (63 FR 39522), notifying the public that the NRC was considering amending its event notification reporting requirements. Although the ANPR was primarily directed at potential changes to power reactor event notification requirements in 10 CFR 50.72 and 50.73, the notice also requested public comments to identify areas where other event notification reporting requirements could be simplified and/or modified to be less burdensome and more risk informed.

In SECY–99–022, "Rulemaking to Modify Reporting Requirements for Power Reactors" (January 20, 1999), the NRC staff presented recommendations for changes to reporting requirements beyond those to §§ 50.72 and 50.73, including the following:

- 10 CFR 72.75 (Reporting requirements for specific events and conditions) contains the requirement for a 4-hour report and 30-day written follow-up report. Revise this requirement to 8 hours and 60 days similar to changes proposed for §§ 50.72 and 50.73.
- 10 CFR 73.71 (Reporting of safeguards events) and 10 CFR part 73, Appendix G (Reportable safeguards events) contain requirements for 1-hour reports. Amend these requirements to 8 hours and 60 days similar to changes proposed for §§ 50.72 and 50.73.

The Commission subsequently issued a final rule revising the event reporting requirements in §§ 50.72, 50.73, and 72.216 (65 FR 63769; October 25, 2000), and directed the NRC staff to consider, under a separate rulemaking, similar changes to the event notification requirements in 10 CFR parts 72 (Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste) and 10 CFR part 73 (Physical Protection of Plants and Materials).

Proposed Rule

The NRC published the proposed rule, "Event Notification Requirements" in the **Federal Register** on August 22, 2002 (67 FR 54360). The comment period closed on November 5, 2002. The NRC received four comment letters on the proposed rule. These comments and responses are discussed in the "Public Comments on the Proposed Rule" section.

On September 6, 2002, the NRC published a proposed rule (67 FR 57120) and a concurrent direct final rule (67 FR 57084) on "Electronic Maintenance and Submission of Information." This rulemaking would have revised, in part, § 73.71(a)(4). On December 4, 2002 (67 FR 72091), the NRC published a notice withdrawing the direct final rule, because the agency had received significant adverse comments on the proposed rule. However, no comments were received on either the specific changes to § 73.71(a)(4) proposed by 67 FR 57120 or the changes to § 73.71(a)(4) proposed by 67 FR 54360. Accordingly, the NRC is consolidating these proposed rules, with respect to § 73.71(a)(4), in this final rule. The consolidated changes to § 73.71(a)(4) are described in the section-by-section changes below.

Discussion and Regulatory Action

This final rule will amend the NRC's regulations at 10 CFR part 72 to change several event notification requirements that apply to Independent Spent Fuel Storage Installations (ISFSIs) and Monitored Retrievable Storage (MRS) installations. The final rule will also amend safeguards event notification requirements that apply to facilities subject to 10 CFR part 73, such as reactor facilities, fuel cycle facilities, ISFSIs, MRSs, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and the gaseous diffusion plants. The NRC evaluated the issues and concerns of the §§ 50.72 and 50.73 event notification reporting requirements and considered this regulatory framework as a basis for concluding that similar changes to the event notification reporting requirements in 10 CFR parts 72 and 73 are also warranted. The event reporting requirements of 10 CFR parts 72 and 73 affect both material licensees and nuclear power plant licensees. Most of the facilities subject to the event notification reporting requirements in 10 CFR parts 72 and 73 (power reactors and ISFSIs) are either physically co-

located with reactor facilities or are reactor facilities. Most 10 CFR part 72 licensees also hold a 10 CFR part 50 (Domestic Licensing of Production and Utilization Facilities) license. These licensees share the same management structure and share the same emergency preparedness organization. Thus, conforming the reporting requirements of 10 CFR part 72 with the revised requirements of 10 CFR part 50 will reduce regulatory burden and potential confusion, will maintain safety, and will take advantage of the work already performed to relate risk to reporting requirements for these types of facilities.

The NRC is removing § 72.216, "Reports." Section 72.216 does not contain separate requirements, but merely directs a 10 CFR part 72 general licensee to comply with the reporting requirements of §§ 72.74 and 72.75. The addition of § 72.13, "Applicability," to the 10 CFR part 72 regulations in a final rule issued on August 21, 2000 (65 FR 50606), eliminated the need for this section. Section 72.13 contains direction on the 10 CFR part 72 regulations that apply to specific licensees, general licensees, or certificate holders. Section 72.216, paragraphs (a) and (b) were removed and reserved in a previous rulemaking (65 FR 63788; October 25, 2000). Paragraph (c) currently requires a general licensee to comply with §§ 72.74 and 72.75. Therefore, § 72.216 is no longer needed and will be removed and reserved, in its entirety. In addition, § 72.9 is revised as a conforming change because of the removal of § 72.216. Also, the reference to § 72.19 is removed from § 72.9 because there is no § 72.19 in 10 CFR part 72.

With respect to the 10 CFR part 73 event notification requirements, the 30-day period for submitting written follow-up reports for safeguards events will be extended to 60 days to be consistent with § 50.73. Changing the time limit from 30 days to 60 days does not imply that licensees should take longer than they previously did to develop and implement corrective actions. The NRC expects licensees to take timely corrective actions commensurate with the safety significance of the issue. The extension is based on simplicity for reporting, importance to risk, and having the required reporting time be consistent with the need for NRC action. Furthermore, the increased time for follow-up reporting will more likely allow for the completion of required root cause analyses, engineering evaluations, and full identification of corrective actions after event discovery; preparation of more complete and accurate event reports; and fewer event report revisions and supplemental reports. However, the NRC believes the verbal safeguards event notification requirements should remain at 1 hour because the NRC may need to respond expeditiously to licensee safeguards notifications and notify other licensees and Federal agencies of the event, particularly in light of the current threat environment after the terrorist attacks of September 11, 2001.

Revising the 10 CFR parts 72 and 73 event notification reporting requirements to be consistent with those in 10 CFR part 50 will maintain safety and take advantage of the work already performed on the risk impacts of the event notification requirements for 10 CFR part 50 licensees. The revision of 10 CFR parts 72 and 73 will also reduce licensee burden through consolidation of some notifications and lengthening the reporting period for other notifications to correspond to the times required under 10 CFR part 50. The current event notification reporting requirements in 10 CFR part 50 require written notification within 60 days and verbal notification within 1 hour (emergency events), and within 1 hour, 4 hours and 8 hours for some non-emergency events. The need for a 4-hour versus an 8-hour non-emergency notification is based on the urgency of the situation and the NRC's need to take prompt action.

Public Comments on the Proposed Rule

This analysis presents a summary of the comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments.

The NRC received four comment letters on the proposed rule. Two were from the nuclear industry (Strategic Teaming and Resource Sharing (STARS) and the Nuclear Energy Institute (NEI)), one from the Idaho National Engineering and Environmental Laboratory (INEEL), and one from the Florida Department of Environmental Health. Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD.

In general, none of the commenters were opposed to amending the regulations to make the ISFSI and MRS event notification requirements and the safeguards event notification requirements consistent with changes to the power reactor event notification requirements. Several of the commenters provided specific recommendations to improve the final rule. The NRC is also making some clarifications for consistency and editorial changes in the final rule.

Comment 1: Three of the four commenters stated that they support the proposed rule change and the fourth (State of Florida) found that the proposed change is consistent with their existing Florida Coastal Management Program. INEEL, a national laboratory (and an NRC ISFSI licensee), also stated that the proposed changes to 10 CFR parts 72 and 73 are welcomed and as currently described will not be difficult to implement.

Response: The NRC is not making any changes to the final rule that the NRC believes would negate the support for this rulemaking.

Comment 2: The two industry commenters (STARS and NEI) indicated that certain events that require verbal notification under § 50.72 do not require follow-up written notifications under § 50.73. The commenters suggested a similar approach be taken in § 72.75. Specifically, written follow-up notification need not be submitted for an emergency declaration [paragraph (a)], issuance of a press release or notification of another Government agency [paragraph b(2)], or transportation of a radioactively contaminated individual to an offsite medical facility for treatment [paragraph c(3)].

Response: The NRC agrees with the comments. The Commission has previously concluded and affirmed in its 10 CFR part 50 rulemaking (65 FR 63769; October 25, 2000), that written follow-up notifications are not required for reactor licensees who make verbal event notifications relating to the declaration of an emergency, issuance of a press release, notification to another Government agency, or transportation of a radioactively contaminated individual to an offsite medical facility for treatment.

Verbal and written notification requirements serve different purposes. A written follow-up notification provides a detailed analysis by the licensee of a reportable event (*e.g.*, identification of root causes and identification of corrective action to prevent recurrence). The written analysis provides the NRC an opportunity to perform review and analysis as resources are available and to perform reviews for generic issues. In contrast, verbal notifications serve to alert the NRC of an event that may require immediate NRC response and mobilization of NRC and other Government resources. Consequently, written follow-up notification of some types of events do not add any value to the NRC's understanding of the event. For example, the NRC's goal is to be able to promptly respond to public or

media inquires if a licensee issues a press release or transports an injured worker, who is also contaminated, to an offsite facility for treatment. Sixty days after such an event, the NRC is not likely to receive inquires requiring an immediate response.

With respect to emergency declarations, the NRC is already following the event closely and event notifications are sometimes retracted (*i.e.*, the licensee makes an initial conservative judgement, that upon further review is determined to be unnecessary). Therefore, a written follow-up notification would be both unnecessary and burdensome. Additionally, the absence of a written follow-up requirement on the declaration of an emergency does not obviate the licensee's responsibility in submitting a written follow-up event report based upon other § 72.75 criteria (which may have been the initiating cause that led to the emergency declaration).

Accordingly, the first sentence in the introductory paragraph to § 72.75(g) is revised to exempt verbal notifications made under §§ 72.75(a), (b)(2), and (c)(3) from the requirement for follow-up written notifications.

Comment 3: INEEL recommended that §§ 72.75(e)(3)(iv) and 72.75(g)(2)(xii) be modified to add at the end of the sentences in each of these sections the words "affected by the event." The commenter believes that information provided to the NRC should be limited to the quantities and chemical and physical forms of the spent fuel, high-level waste (HLW), or reactor-related greater than Class C (GTCC) waste involved in the event, rather than the licensee's entire inventory.

Response: The NRC agrees with the intent of the commenter. The wording in the proposed rule for § 72.75(e)(3)(iv) and (g)(2)(xii) inadvertently left off the word "involved." This word is used in the existing § 72.75(d)(1)(iv). Accordingly, § 72.75(e)(3)(iv) and (g)(2)(xii) are revised to include the phrase "involved in the event."

Comment 4: INEEL recommended that § 72.75(g)(8) be deleted, because it is a characteristic of the information provided in the written report, and not part of the report's content. The commenter suggested that § 72.75(g)(8) of the proposed rule be moved to the last sentence of § 72.75(g), "Preparation and submission of written reports."

Response: The NRC agrees with the comment. The second to last sentence of the introductory paragraph of § 72.75(g) is revised to incorporate legibility requirements and § 72.75(g)(8) is removed.

Section-by-Section Changes

The following section is provided to assist the reader in understanding the specific changes made to each section or paragraph in 10 CFR parts 72 and 73. For clarity of content in reading a section, much of that particular section may be repeated, although only a minor change is being made. This section should allow the reader to effectively review the specific changes without reviewing existing material that has been included for content, but has not been significantly changed.

In § 72.9, paragraph (b) is revised to remove §§ 72.19 and 72.216 as a conforming change.

Current § 72.75(b) is split into two new paragraphs, § 72.75(b) and (c) for 4-hour and 8-hour notifications, respectively. In new § 72.75(b), the existing 4-hour notification requirement remains unchanged for departing from a certificate condition or technical specification during an emergency (current § 72.75(b)(4)); a new requirement is added to notify the NRC when another Government agency is notified or a news release is planned to permit the NRC to promptly respond to public, media, and other stakeholder inquiries during events; and the current 4-hour notification is removed for events that require immediate action to avoid exposure or unplanned fires or explosions (current § 72.75(b)(1) and (b)(6)) because these notifications are redundant with the requirements in § 72.75(a).

In new § 72.75(c), the existing 4-hour event notifications are changed to an 8-hour notification for (1) a defect in any spent fuel, high-level radioactive waste, or reactor-related GTCC waste storage structure, system, or component important to safety [1] (current paragraph 72.75(b)(2)); (2) a significant reduction in the effectiveness of any spent fuel, high-level radioactive waste, or reactor-related GTCC storage confinement system in use (current § 72.75(b)(3)); and (3) an event that requires the transport of a radioactively contaminated person to an offsite medical facility for treatment (revision of current § 72.75(b)(5)).

Current § 72.75(c) for 24-hour reports is redesignated as § 72.75(d) and revised as follows: The current notification is retained for events in which equipment important to safety fails to function (current § 72.75(c)(2)). The requirement for notification of unplanned contamination events requiring controls restricting worker access for greater than 24 hours is removed, because such an event occurring at an ISFSI or MRS does not rise to a level of significance that would warrant notification. Facilities that store and manipulate spent fuel assemblies are by their very nature subject to identification of contamination outside of posted radiological contamination control areas (*i.e.*, hot particles). The NRC considers the identification, control, and decontamination of these areas a routine radiation protection function, not an event requiring NRC notification—even if it takes the licensee more than 24 hours to clean up the contamination. Furthermore, although these 24-hour verbal reports are due within 24 hours of the discovery of the event, their relative lack of significance allows that this notification requirement be revised to permit these notifications to be delayed to the next working day (*i.e.*, 8 a.m. Eastern time) when the end of the 24-hour period falls outside of normal NRC working hours (7:30 a.m.–5 p.m. Eastern time), a weekend, or a Federal holiday.

Current § 72.75(d) is split into three paragraphs and redesignated as new paragraphs (e), (f), and (g) (*i.e.*, initial notification, follow-up notification, and preparation and submission of written reports) to provide greater clarity and consistency with §§ 50.72 and 50.73 event notification requirements.

In new § 72.75(e), the current requirement is retained to notify the NRC Headquarters Operations Center by telephone of emergency and non-emergency conditions [current § 72.75(d)(1)]. A new requirement is added to identify the Emergency Class declared or the respective paragraph of § 72.75 under which either a 4-hour, 8-hour, or 24-hour notification is being made. This notice will reduce confusion and facilitate NRC response to the emergency. The current requirement remains unchanged to provide supporting information [current § 72.75(d)(1)(i) through (v)]. Additionally, § 72.75(e)(3)(iv) is revised to include the words "involved in the event" to clarify the scope of the affected material that the licensee needs to describe.

[1] 10 CFR 72.3—*Definitions.* Structures, systems, and components important to safety means those features of the ISFSI, MRS, and spent fuel storage cask whose functions are—(1) To maintain the conditions required to store spent fuel, high-level radioactive waste, or reactor-related GTCC waste safely; (2) To prevent damage to the spent fuel, the high-level radioactive waste, or reactor-related GTCC waste container during handling and storage; or (3) To provide reasonable assurance that spent fuel, high-level radioactive waste, or reactor-related GTCC waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

In new § 72.75(f), new requirements are added for licensees to immediately make follow-up notifications to report degrading conditions, declaration of any Emergency Class, change of an Emergency Class, termination of the Emergency Class, the results of evaluations, the effectiveness of responses or protective measures, and information on unexpected ISFSI or MRS behavior. These added requirements will ensure that the information on a degrading condition or termination of the event is promptly communicated to the NRC. Consistent with current policy for reactor licensees, the NRC expects a 10 CFR part 72 licensee to make any follow-up notifications to the NRC as soon as possible, but no later than 1 hour from the time of identification. Additionally, a requirement is added to maintain an open, continuous communication channel with the NRC Headquarters Operations Center upon request by the NRC. This requirement is consistent with the current 10 CFR part 50 event reporting requirements and ensures that during an ongoing emergency, the communications between the licensee and the NRC are not interrupted by the inability to complete a phone call when telephone circuits could be temporarily overloaded.

In new § 72.75(g), the current 30-day requirement is revised to require that written reports be submitted within 60 days [current § 72.75(d)(2)] to reduce the occurrence of supplemental reports and licensee burden. The requirements for human performance events [current § 72.75(d)(2)(i) through (d)(7), except § 72.75(d)(2)(ii)(I)] are revised to be consistent with currently revised § 50.73(b)(2)(ii)(J). The first sentence of the introductory paragraph of § 72.75(g) is revised to exclude events reported under § 72.75(a), (b)(2), and (c)(3) from the written follow-up notification requirements. The second to the last sentence in the introduction of § 72.75(g) is revised to incorporate legibility requirements for the written notifications.

New § 72.75(h) is added to indicate that the Commission may require a licensee to submit supplemental information if this information is necessary for the NRC to obtain a complete understanding of an unusually complex or significant event.

New § 72.75(i) is added to clarify that the requirements of § 72.75 apply (1) after a specific 10 CFR part 72 license has been issued to an applicant; (2) after a 10 CFR part 72 general licensee has first placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the reactor facility's protected area) or when the spent fuel is being transferred outside of the reactor facility's protected area to an ISFSI storage pad (if the ISFSI storage pad is located outside of the reactor facility's protected area); and (3) to non-emergency events that occurred within 3 years of the date of discovery. This paragraph will reduce licensee confusion about when the provisions of this section become applicable. The 3-year limitation will eliminate notifications for events that are no longer significant and will be consistent with the current §§ 50.72 and 50.73.

Section 72.216 (Reports) is removed and reserved because it is no longer needed.

In § 73.71, paragraph (a)(4) is revised to extend the period for submitting written safeguards event notifications from 30 days to 60 days. In addition, the filing location and method are revised to require written safeguards event notifications to be submitted in accordance with § 73.4. A copy of the notification must also be provided to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, in addition to the Director of the NRC program office responsible for the license (as specified in § 73.4).

In § 73.71, paragraph (d) is revised to extend the period for submitting written safeguards event notifications from 30 days to 60 days.

10 CFR part 73, Appendix G, Paragraph I, is revised to extend the period for submitting written safeguards event notifications from 30 days to 60 days.

Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule to amend 10 CFR parts 72 and 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending its regulations to change several event notification requirements for ISFSI and MRS facilities and safeguards event notification requirements to more closely align them with event notifications for reactor facilities. This action does not constitute the establishment of a standard that establishes generally-applicable requirements and the use of a voluntary consensus standard is not applicable.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements contained in 10 CFR parts 72 and 73 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150–0132 and 3150–0002.

The burden to the public for the information collections in 10 CFR part 72 is estimated to average 1 hour per response, and the burden for the information collections in 10 CFR part 73 is estimated to be reduced an average 6 hours per response. There is also an annualized (over three years) implementation burden for 10 CFR part 72 of 700 hours (33.3 hours per licensee) and for 10 CFR part 73 of 2720 hours (13.5 hours per licensee). This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *infocollects@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0132 and –0002), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a final Regulatory Analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, e-mail, *mfh@nrc.gov*.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The majority of companies that own these facilities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that, as in the final rule 10 CFR parts 50 and 72, "Reporting Requirements for Nuclear Power Reactors and Independent Spent Fuel Storage Installations at Power Reactor Sites," the backfit rule (10 CFR 50.109, 10 CFR 70.76, 10 CFR 72.62, and 10 CFR 76.76) does not apply to information collection and reporting requirements such as those reporting requirements contained in this final rule. A backfit analysis is not required because this final rule does not involve any provisions that would impose backfits as defined in the backfit rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistle blowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transport, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 72 and 73.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended; 202, 206, 88 Stat. 1242, as amended; 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142 (b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162 (b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.9, paragraph (b) is revised to read as follows:

§ 72.9 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, and 72.248.

■ 3. Section 72.75 is revised to read as follows:

§ 72.75 Reporting requirements for specific events and conditions.

(a) *Emergency notifications:* Each licensee shall notify the NRC Headquarters Operations Center upon the declaration of an emergency as specified in the licensee's approved emergency plan addressed in § 72.32. The licensee shall notify the NRC immediately after notification of the appropriate State or local agencies, but not later than one hour after the time the licensee declares an emergency.

(b) *Non-emergency notifications:* Four-hour reports. Each licensee shall notify the NRC as soon as possible but not later than four hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor-related GTCC waste:

(1) An action taken in an emergency that departs from a condition or a technical specification contained in a license or certificate of compliance issued under this part when the action is immediately needed to protect the public health and safety, and no action consistent with license or certificate of compliance conditions or technical specifications that can provide adequate or equivalent protection is immediately apparent.

(2) Any event or situation related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other

Government agencies has been or will be made. Such an event may include an onsite fatality or inadvertent release of radioactively contaminated materials.

(c) *Non-emergency notifications:* Eight-hour reports. Each licensee shall notify the NRC as soon as possible but not later than eight hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor-related GTCC waste:

(1) A defect in any spent fuel, HLW, or reactor-related GTCC waste storage structure, system, or component that is important to safety.

(2) A significant reduction in the effectiveness of any spent fuel, HLW, or reactor-related GTCC waste storage confinement system during use.

(3) Any event requiring the transport of a radioactively contaminated person to an offsite medical facility for treatment.

(d) *Non-emergency notifications:* 24-hour reports. Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving spent fuel, HLW, or reactor-related GTCC waste:

(1) An event in which important to safety equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation, license condition, or certificate of compliance to be available and operable to prevent releases that could exceed regulatory limits, to prevent exposures to radiation or radioactive materials that could exceed regulatory limits, or to mitigate the consequences of an accident; and

(ii) No redundant equipment was available and operable to perform the required safety function.

(2) For notifications made under this paragraph, the licensee may delay the notification to the NRC if the end of the 24-hour period occurs outside of the NRC's normal working day (*i.e.*, 7:30 a.m. to 5:00 p.m. Eastern time), on a weekend, or a Federal holiday. In these cases, the licensee shall notify the NRC before 8:00 a.m. Eastern time on the next working day.

(e) Initial notification: Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a), (b), (c), or (d) of this section by telephone to the NRC Headquarters Operations Center.[2]

(2) When making a report under paragraphs (a), (b), (c), or (d) of this section, the licensee shall identify:

(i) The Emergency Class declared; or

(ii) Paragraph (b), "four-hour reports," paragraph (c), "eight-hour reports," or paragraph (d), "24-hour reports," as the paragraph of this section requiring notification of the non-emergency event.

(3) To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste involved in the event; and

(v) Any personnel radiation exposure data.

(f) *Follow-up notification:* With respect to the telephone notifications made under paragraphs (a), (b), (c) or (d) of this section, in addition to making the required initial notification, each licensee shall during the course of the event:

(1) Immediately report any further degradation in the level of safety of the ISFSI or MRS or other worsening conditions, including those that require the declaration of any of the Emergency Classes, if such a declaration has not been previously made; or any change from one Emergency Class to another; or a termination of the Emergency Class.

(2) Immediately report the results of ensuing evaluations or assessments of ISFSI or MRS conditions; the effectiveness of response or protective measures taken; and information related to ISFSI or MRS behavior that is not understood.

(3) Maintain an open, continuous communication channel with the NRC Headquarters Operations Center upon request by the NRC.

(g) *Preparation and submission of written reports.* Each licensee who makes an initial notification required by paragraphs (b)(1), (c)(1), (c)(2), or (d)(1) of this section shall also submit a written follow-up report to the Commission within 60 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made. These written reports must be of sufficient quality to permit legible reproduction and optical scanning and must be submitted to the NRC in accordance with § 72.4. These reports must include the following information:

(1) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence;

(2) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the design of an ISFSI or MRS, but not familiar with the details of a particular facility, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event:

(i) The ISFSI or MRS operating conditions before the event;

(ii) The status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(iii) The dates and approximate times of occurrences;

(iv) The cause of each component or system failure or personnel error, if known;

(v) The failure mode, mechanism, and effect of each failed component, if known;

(vi) A list of systems or secondary functions that were also affected for failures of components with multiple functions;

(vii) For wet spent fuel storage systems only, after the failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(viii) The method of discovery of each component or system failure or procedural error;

(ix) For each human performance related root cause, the licensee shall discuss the cause(s) and circumstances;

(x) For wet spent fuel storage systems only, any automatically and manually initiated safety system responses;

(xi) The manufacturer and model number (or other identification) of each component that failed during the event; and

(xii) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste involved in the event;

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the

[2] The commercial telephone number of the NRC Headquarters Operations Center is (301) 816–5100. Those licensees with an available Emergency Notification System (ENS) shall use the ENS to notify the NRC Headquarters Operations Center.

probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facility's characteristics; and

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(h) *Supplemental information:* The Commission may require the licensee to submit specific additional information beyond that required by paragraph (g) of this section if the Commission finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. These requests for supplemental information will be made in writing, and the licensee shall submit, as specified in § 72.4, the requested information as a supplement to the initial written report.

(i) *Applicability:* The requirements of this section apply to:

(1)(i) Licensees issued a specific license under § 72.40; and

(ii) Licensees issued a general license under § 72.210, after the licensee has placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the collocated protected area, for a reactor licensed under part 50 of this chapter) or after the licensee has transferred spent fuel waste outside the reactor licensee's protected area to the ISFSI storage pad (if the ISFSI is located outside the collocated protected area, for a reactor licensed under part 50 of this chapter).

(2) Those non-emergency events specified in paragraphs (b), (c), and (d) of this section that occurred within 3 years of the date of discovery.

§ 72.216 [Reserved]

■ 4. Section 72.216 is removed and reserved.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 5. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 6. In § 73.71, paragraph (a)(4) and (d) are revised to read as follows:

§ 73.71 Reporting of safeguards events.

(a) * * *

(4) The initial telephonic notification must be followed within a period of 60 days by a written report submitted to the NRC by an appropriate method listed in § 73.4. In addition to the addressees specified in § 73.4, the licensee shall also provide one copy of the written report addressed to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response. The report must include sufficient information for NRC analysis and evaluation.

* * * * *

(d) Each licensee shall submit to the Commission the 60-day written reports required under the provisions of this section that are of a quality that will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report on NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

* * * * *

■ 7. In Appendix G to Part 73, the introductory sentence in paragraph I is revised to read as follows:

Appendix G to Part 73—Reportable Safeguards Events.

* * * * *

I. Events to be reported within one hour of discovery, followed by a written report within 60 days.

* * * * *

Dated at Rockville, Maryland, this 15th day of May, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–14168 Filed 6–4–03; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC05

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published a final rule under part 615 on April 16, 2003 (68 FR 18532). This final rule amends the capital adequacy regulations to add a definition of total liabilities for the net collateral ratio calculation, limit the amount of term preferred stock that may count as total surplus, clarify the circumstances in which we may waive disclosure requirements for an issuance of equities by a Farm Credit System institution, and make several nonsubstantive technical changes. These amendments update, modify, and clarify certain capital requirements. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is June 5, 2003.

EFFECTIVE DATES: The regulation amending 12 CFR part 615 published on April 16, 2003 (68 FR 18532) is effective June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a) (9) and (10))

Dated: June 2, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–14148 Filed 6–4–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–20–AD; Amendment 39–13181; AD 2003–08–53]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N1, AS365–N2, AS 365 N3, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting a superseding Airworthiness Directive (AD) 2003–08–53, sent previously to all known U.S. owners and operators of the specified Eurocopter France (Eurocopter) model helicopters by individual letters. This AD requires, in addition to the checks and tapping test inspections required in the existing AD, adding the Eurocopter Model AS 365 N3 to the applicability and correcting tail rotor blade (blade) part numbers. Also, this AD requires doing tapping tests for bonding separation on blades and removing certain blades at specified intervals. The actions specified by this AD are intended to prevent failure of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective June 20, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–08–53, issued on April 23, 2003, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–20–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.*

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On May 9, 2000, the FAA issued AD 2000–10–08, Amendment No. 39–11732 (65 FR 31256, May 17, 2000), to require inspecting each blade for bonding separation, measuring the clearance between the tip of each blade and the circumference of the air duct, and replacing a blade if necessary. After issuing that AD, based on further analysis, we determined that a pilot should be able to check for a cracked, blistered, or wrinkled blade and that some debonding of the blade is acceptable and issued AD No. 2000–10–08R1 on September 25, 2001 (66 FR 50307, October 3, 2001), which amended AD No. 2000–10–08.

On April 23, 2003, we issued Emergency AD 2003–08–53 for the specified model helicopters, which requires, in addition to the checks and tapping test inspections required in the existing AD, adding the Eurocopter Model AS 365 N3 to the applicability, correcting blade part numbers, additional tapping tests for bonding separation on blades at specified intervals, and removing certain blades at specified intervals. That action was prompted by reports of an incident involving failure of the blade and an in-flight failure of a blade due to a fatigue crack. This condition, if not corrected, could result in failure of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter.

The FAA has reviewed Edition No. 1, Revision No. 0, of Eurocopter Alert Service Bulletin No. 05.09 for Model SA366G1 helicopters and No. 05.00.17 for Model AS 365 N1 and N2 helicopters, both dated April 16, 2003, which describe procedures for blade monitoring and limitations.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on these helicopter models. The DGAC advises that fatigue failure of the Kevlar tie bar of a blade and loss of the anti-torque function led to an accident. The DGAC classified the alert service bulletins as mandatory and issued AD Nos. T2003–155(A) for Eurocopter Model AS 365 N helicopters and T2003–156(A) for Eurocopter Model SA 366 helicopters, both dated April 17, 2003, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since the previously described unsafe condition is likely to exist or develop on other Eurocopter model helicopters of these same type designs, the FAA issued Emergency AD 2003–08–53 to prevent failure of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter. Therefore, in addition to the checks and tapping test inspections required in AD 2000–10–08R1, this AD requires the following:

- Add the Eurocopter Model AS 365 N3 to the applicability.
- Correct blade, P/N 365A12–0020-all dash numbers, to P/N 365A12–0020–00, –01, –02, or –03.
- At intervals not to exceed 25 hours time-in-service (TIS), do tapping tests for bonding separation on blades.
- Within 10 hours TIS, remove blades with 150 or more hours TIS.
- On or before 160 hours TIS, remove blades with less than 150 hours TIS.

This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a 160-hour TIS life limit for blades, P/N 365A12–0020–02 and 365A12–0020–03, with a serial number (S/N) equal to or greater than 32944, except for S/N 32963 through 33091, S/N 33116 through 33187, and S/N 33232 through 33319.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, adding the Eurocopter Model AS 365 N3 to the applicability; correcting the blade part numbers; conducting tapping tests at intervals not to exceed 25 hours TIS; within 10 hours TIS, removing blades with 150 or more hours TIS; and on or before 160 hours TIS, removing blades with less than 150 hours TIS are required, and this AD must be issued immediately.

An owner/operator (pilot) may perform the visual checks for a crack, blister, or wrinkle in the blade. Pilots may perform these checks because they require no tools and can be accomplished by observation and may be performed equally well by a pilot or a mechanic. However, the pilot must enter compliance with those requirements into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD

effective immediately by individual letters issued on April 23, 2003, to all known U.S. owners and operators of the specified Eurocopter model helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect 34 helicopters of U.S. registry and take approximately 4 work hours per helicopter to replace the blades at an average labor rate of $60 per work hour. Required parts will cost approximately $3,527 per blade. At 11 blades per helicopter, the cost per helicopter is $38,797. Based on these figures, we estimate the total cost impact of the AD to be $1,327,258, assuming 11 blades are replaced and assuming no additional cost for the pilot check. Eurocopter has stated in service documents that they are supplying replacement blades at no cost, which would result in a cost to the operator of $240 per helicopter and $8,160 for the fleet.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–20–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–08–53 Eurocopter France: Amendment 39–13181. Docket No. 2003–SW–20–AD. Supersedes AD 2000–10–08, Amendment 39–11732, and 2000–10–08R1, Amendment 39–12452, both Docket No. 99–SW–34–AD.

Applicability: Model SA–365N1, AS365–N2, AS 365 N3, and SA–366G1 helicopters, with a tail rotor blade (blade), part number 365A33–2131-all dash numbers; 365A12–0010-all dash numbers; or 365A12–0020–00, –01, –02, or –03; installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS) and thereafter before the first flight of each day, visually check each blade for a crack, blister, or wrinkling. An owner/operator (pilot), holding at least a private pilot certificate, may perform the visual check and must enter compliance into the aircraft maintenance records in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v)). *See* Figure 1 as follows:

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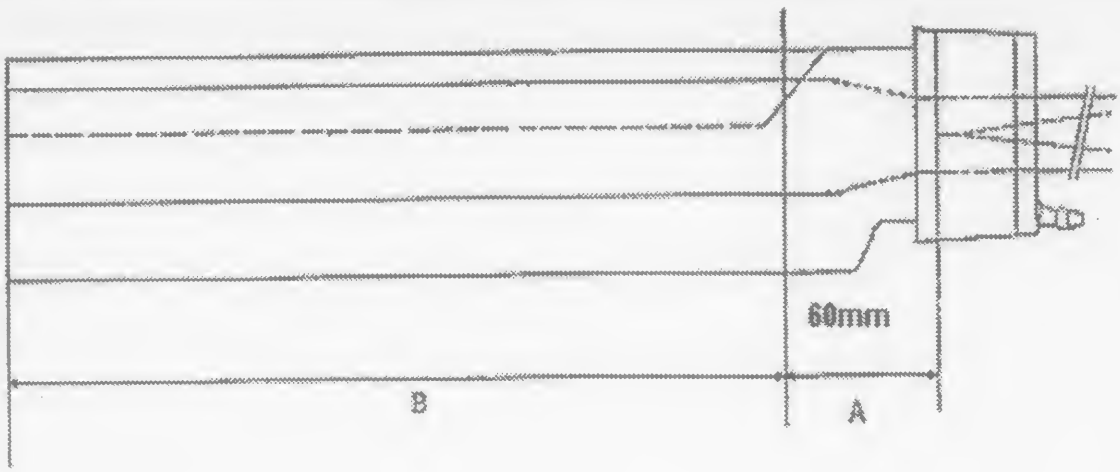


Figure 1

BILLING CODE 4910–13–C

(b) If a crack, blister, or wrinkling is found as a result of the visual check, accomplish the following before further flight (see Figure 1 of this AD):

(1) Zone A: If a blister is detected on the blade suction face, conduct a tapping test inspection on the whole blade for bonding separation.

(i) For blades, P/N 365A33–2131-all dash numbers, 365A12–0010-all dash numbers, and 365A12–0020–00, and –01, if bonding separation or a crack is found, replace the blade with an airworthy blade before further flight.

(ii) For blades, P/N 365A12–0020–02, and –03, if bonding separation exceeds 900 mm^2 in a 30 x 30 mm square or if there is a crack, replace the blade with an airworthy blade before further flight.

(2) Zone B: If a crack, wrinkling, or a blister is found, replace the blade with an airworthy blade before further flight.

(c) Within 10 hours TIS, conduct a tapping test inspection on each blade. If there is bonding separation that exceeds the criteria in paragraphs b(1)(i) and b(1)(ii) of this AD, replace the blade with an airworthy blade before further flight.

Note 1: Edition No. 1, Revision No. 0, of Eurocopter France Service Bulletin Nos. 05.09 and 05.00.17, both dated April 16, 2003, pertain to the subject of this AD.

(1) Thereafter, at intervals not to exceed 25 hours TIS or every 50 cycles (each takeoff and landing equals 1 cycle), whichever occurs first, conduct a tapping test inspection for bonding separation on all blades with a serial number (S/N) less than 18912, and blades, P/N 365A12–0020–00 or 365A12–0020–01, with a S/N equal to or greater than 18912. If bonding separation or a crack is found, replace the blade with an airworthy blade before further flight.

(2) Thereafter, at intervals not to exceed 25 hours TIS, conduct a tapping test inspection for bonding separation on blades, P/N 365A12–0020–02 or 365A12–0020–03, in Zone A as depicted in Figure 1 of this AD.

(i) If bonding separation exceeds the criteria specified in paragraph (b)(1)(ii) of this AD or if a crack is found, replace the blade with an airworthy blade before further flight.

(ii) If bonding separation is present and within tolerance of the criteria specified in paragraph (b)(1)(ii) of this AD, conduct a tapping test before the first flight of the day and as often as necessary during the day ensuring that the TIS between tapping tests does not exceed 10 hours TIS between tapping tests.

(iii) Within 25 hours TIS after the discovery of skin debonding in Zone A, remove and replace the blade with an airworthy blade.

(3) Thereafter, at intervals not to exceed 100 hours TIS or 200 cycles, whichever occurs first, conduct a tapping test inspection for bonding separation on blades, P/N 365A12–0020–02 or 365A12–0020–03, in Zone B as depicted in Figure 1 of this AD. If a crack, wrinkling, or a blister is found, replace the blade with an airworthy blade before further flight.

(d) Within 10 hours TIS, and thereafter at intervals not to exceed 100 hours TIS or 200 cycles, whichever occurs first, measure the blade-to-air duct clearance. If the clearance is less than 3 mm, replace the blade with an airworthy blade before further flight.

(e) For blades, P/N 365A12–0020–02 or 365A12–0020–03, with a S/N equal to or greater than 32944, except for S/N 32963 through 33091, S/N 33116 through 33187, or S/N 33232 through 33319:

(1) Within 10 hours TIS, replace blades with 150 or more hours TIS with an airworthy blade.

(2) On or before 160 hours TIS, replace blades with less than 150 hours TIS with an airworthy blade.

(f) This AD revises the Limitations section of the maintenance manual by establishing a 160-hour TIS life limit for blades, P/N 365A12–0020–02 and 365A12–0020–03, with a S/N equal to or greater than 32944, except for S/N 32963 through 33091, S/N 33116 through 33187, and S/N 33232 through 33319.

(g) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Regulations Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(h) This amendment becomes effective on June 20, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–08–53, issued April 23, 2003, which contained the requirements of this amendment.

Note 2: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. T2003–155(A) and T2003–156(A), both dated April 17, 2003.

Issued in Fort Worth, Texas, on May 28, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–14134 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–21–AD; Amendment 39–13183; AD 2003–11–23]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 turbofan engines. This AD requires initial and repetitive inspections of the master magnetic chip detector (MCD) or the No. 1, 2, 3 bearing chamber MCD. This AD is prompted by reports of No. 3 bearing failures that resulted in in-flight engine shutdowns (IFSDs) and significant smoke in the cockpit and cabin. The actions specified in this AD are intended to prevent failure of the No. 3 bearing, which could result in IFSDs and smoke in the cockpit and cabin.

DATES: Effective June 20, 2003.

We must receive any comments on this AD by August 4, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–21–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may get the service information referenced in this AD from International Aero Engines AG, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–5515; fax: (860) 565–5510.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: This AD applies to IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 turbofan engines with a serial number (SN) from V10600 through V11250 inclusive. This AD requires initial and repetitive inspections of the master MCD or the No. 1, 2, 3 bearing chamber MCD for contamination, and if the contamination is bearing material, replacement of the engine before further flight.

This AD is prompted by 19 failures of the No. 3 bearing attributed to ball spalling and race fracture. Of the 19 failures, seven resulted in IFSDs and 12 resulted in unscheduled engine removals (UERs). Of the seven IFSDs, two were associated with smoke in the cockpit and cabin. The smoke is a result of the failure of the No. 3 bearing. Ball spalling and race fracture of the No. 3 bearing occurs when there is hard particle contamination in the oil system. The contamination is caused by the release of coating particles on HPC stubshafts with low-energy plasma coating. The problem exists on the FAG bearings, part number 2A1165, which are less tolerant to damage from this contamination. The actions specified in this AD are intended to prevent failure of the No. 3 bearing, which could result in IFSDs and smoke in the cockpit and cabin.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 turbofan engines with a SN from V10600 through V11250 inclusive of the same type design. Therefore, we are issuing this AD to prevent failure of the No. 3 bearing, which could result in IFSDs and smoke in the cockpit and cabin. This AD requires:

- Initial inspection of the master MCD or the No. 1, 2, 3 bearing chamber MCD within 125 hours time-in-service (TIS) after the effective date of this AD,
- Repetitive inspections of the master MCD or the No. 1, 2, 3 bearing chamber MCD within 125 hours time-since-last inspection.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for prior public comment are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR Part 39—Effect on the AD

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–21–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the 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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–21–AD" in your request.

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. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–11–23 International Aero Engines AG: Amendment 39–13183. Docket No. 2003–NE–21–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 20, 2003.

Affected ADs

(b) None.

Applicability: (c) This AD is applicable to International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, and V2530–A5 turbofan engines with a serial number (SN) from V10600 through V11250 inclusive. These engines are installed on, but not limited to, Airbus Industries A319, A320, and A321 series airplanes.

Unsafe Condition

(d) This AD was prompted by reports of No. 3 bearing failures that resulted in in-flight shutdowns (IFSDs) and smoke in the cockpit and cabin. The actions specified in this AD are intended to prevent failure of the No. 3 bearing, which could result in IFSDs and smoke in the cockpit and cabin.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

Inspection of the Master Magnetic Chip Detector (MCD) or the No. 1, 2, 3 Bearing Chamber MCD

(f) For engines that have a No. 3 bearing, part number 2A1165, installed, do the following:

(1) Within 125 hours time-in-service (TIS) after the effective date of this AD, inspect the master MCD or the No. 1, 2, 3 bearing chamber MCD.

(2) Thereafter, within 125 hours time-since-last inspection, inspect the master MCD or the No. 1, 2, 3 bearing chamber MCD.

(3) If you find bearing material on the master MCD or No. 1, 2, 3 bearing chamber MCD, replace the engine before further flight.

Alternative Methods of Compliance

(g) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

Material Incorporated by Reference

(h) None.

Related Information

(i) You can find information on inspecting the master MCD and the No. 1, 2, 3 bearing chamber MCD in section 79–00–00–601 of the Aircraft Maintenance Manual.

Issued in Burlington, Massachusetts, on May 29, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–14133 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13971; Airspace Docket No. 02–AAL–08]

Establishment of Class E Airspace; Marshall, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Monday, May 5, 2003, (68 FR 23580). The final rule established Class E airspace at Marshall, AK.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–11022 published on Monday, May 5, 2003, (68 FR 23580) established Class E airspace at Marshall, AK. The Class E airspace was defined with reference to the Airport Reference Point for the Marshall Don Hunter Sr. Airport, Marshall, AK. The published coordinates of the Marshall Don Hunter Sr. Airport were wrong and the name of the airport was incorrectly stated.

■ Accordingly, pursuant to the authority delegated to me, the Class E airspace at Marshall, AK as published in the **Federal Register** on Monday, May 5, 2003 (68 FR 23580) is corrected as follows:

PART 71—[Corrected]

§ 71.1 [Corrected]

■ On page 23581, Column 2, second paragraph second line, change "(Marshall Airport, AK)" to read "(Marshall Don Hunter Sr. Airport, AK)." On page 23581, Column 2, second paragraph third line, change "(Lat. 61°51′53″ N., long. 162°01′28″ W.)" to "(Lat. 61°51′ 51″ N., long. 162°01′34″ W.)"

Issued in Anchorage, AK, on May 28, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–14162 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 30 and 40

Amendment to Appendix C of Part 40 and Redesignation as Appendix D of Part 30

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is revising its guidance specifying the information that a foreign board of trade should submit to Commission staff when seeking no-action relief to offer and sell to persons located in the United States a futures contract on a foreign non-narrow-based security index traded on that board of trade. Specifically, the Commission is adding an introductory section to provide an explanation of how its staff evaluates information submitted by the foreign board of trade, is deleting information that it no longer deems necessary, and is adding a provision specifying that the foreign board of trade should, if applicable, make a request to make the futures contract available for trading in accordance with the terms and conditions of its Foreign Trading System No-Action letter received from Commission staff and certification of its continued compliance with that letter.

DATES: Effective June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Harold L. Hardman, Senior Assistant General Counsel (Regulation), (202) 418–5120, electronic mail: *hhardman@cftc.gov*; Julian E. Hammar, Counsel, (202) 418–5118, electronic mail: *jhammar@cftc.gov*, Office of General Counsel, or Thomas M. Leahy, Jr., Financial Instruments Unit Chief, (202) 418–5278, electronic mail: *tleahy@cftc.gov*, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In June of 1999, the Commission added Appendix E to Part 5 of 17 CFR Chapter I, which specified the information that a foreign board of trade should submit to Commission staff when seeking no-action relief to offer and sell to persons located in the United States ("U.S."), a futures contract on a foreign security index traded on that foreign board of trade.[1] After the enactment of the Commodity Futures Modernization Act of 2000 ("CFMA"),[2] which extensively amended the Commodity Exchange Act ("Act"),[3] the Commission reorganized its rules, and redesignated Appendix E as Appendix C to Part 40 of 17 CFR Chapter I.[4] The Commission later made technical amendments to the Appendix amending that guidance to incorporate the changes made by the CFMA to the criteria for approving non-narrow-based security index futures contracts.[5]

[1] 64 FR 29217 (June 1, 1999).

[2] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[3] 7 U.S.C. § 1 *et seq.* (2000).

[4] 66 FR 42255 (Aug. 10, 2001).

[5] 67 FR 62873 (Oct. 9, 2002). Generally, foreign exchange-traded security futures products (futures or options on narrow-based security indices or single securities), may not be offered or sold in the

Continued

Today, the Commission is further amending the guidance in Appendix C to part 40. Specifically, the Commission is adding introductory language that explains to the public how its staff uses the information requested by the Appendix in evaluating requests for no-action relief by foreign boards of trade seeking to offer and sell their futures contracts on security indices to persons located in the U.S. The Commission also is deleting certain information that it no longer deems necessary in evaluating such requests. Further, the Commission is adding a provision to the guidance specifying that the foreign board of trade should, if applicable, make a request to the staff to make the futures contract available for trading in accordance with the terms and conditions of its Foreign Trading System No-Action letter received from Commission staff and provide a certification of its continued compliance with that letter.[6] This provision will obviate the need for the foreign board of trade to seek a separate letter from the Division of Market Oversight ("DMO") in order to allow the offer and sale of its approved futures contract on its trading system in the U.S. pursuant to no-action relief provided by DMO staff.

In addition, the Commission is redesignating Appendix C of part 40 as Appendix D of part 30 of 17 CFR, Chapter I. The Commission's rules in Part 30 govern foreign futures and options transactions, and accordingly it would be more appropriate for the guidance to foreign exchanges on foreign exchange-traded products to be placed there.

Because the information in newly designated Appendix D of part 30 represents guidance only, this amendment does not constitute a rule under the Administrative Procedure Act ("APA"), 5 U.S.C. 551 *et seq.*, and accordingly, the provisions of the APA that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable. For the same reason, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, concerning the impact of rules on small entities, and the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), concerning rules that contain collections of information, are inapplicable.

■ In view of the forgoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

■ 1. Appendix C to Part 40 is redesignated as Appendix D to Part 30.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 2. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

■ 3. In Part 30, newly designated appendix D is revised to read as follows:

Appendix D—Information That a Foreign Board of Trade Should Submit When Seeking No-Action Relief To Offer and Sell, to Persons Located in the United States, a Futures Contract on a Foreign Non-Narrow-Based Security Index Traded on That Foreign Board of Trade

A. Section 2(a)(1)(C)(iv) of the Commodity Exchange Act ("Act") generally prohibits any person from offering or selling a futures contract based on a security index in the U.S., except as otherwise permitted under the Act, including Section 2(a)(1)(C)(ii) of the Act. By its terms, Section 2(a)(1)(C)(iv) of the Act applies to futures contracts on security indices traded on both domestic and foreign boards of trade. Section 2(a)(1)(C)(ii) of the Act sets forth three criteria to govern the trading of futures contracts on a group or index of securities on contract markets and derivatives transaction execution facilities:

(1) The contract must provide for cash settlement;

(2) The contract must not be readily susceptible to manipulation or to being used to manipulate any underlying security; and

(3) The group or index of securities must not constitute a narrow-based security index.

B. While Section 2(a)(1)(C)(ii) of the Act provides that no board of trade or derivatives transaction execution facility may trade a security index futures contract unless it meets the three criteria noted above, it does not explicitly address the standards to be applied to a foreign security index futures contract traded on a foreign board of trade. The Office of General Counsel has applied those same three criteria in evaluating requests by foreign boards of trade to allow the offer and sale within the United States of their foreign security index futures contracts when those foreign boards of trade do not seek designation as a contract market or registration as a derivatives transaction execution facility to trade those products.[1]

C. In the analysis of a no-action request for a foreign security index futures contract traded on a foreign board of trade, the Office of the General Counsel asks the Division of Market Oversight (Division) to evaluate the foreign security index futures contract to ensure that it complies with the three criteria of Section 2(a)(1)(C)(ii) of the Act.

D. Because security index futures contracts are cash settled, the Division also evaluates the contract to ensure that the contract terms and conditions relating to cash settlement are consistent with the Commission's Guideline No. 1 requirements for cash settled contracts. In that regard, Guideline No. 1 requires that the cash price series be reliable, acceptable, publicly available and timely; that the cash settlement price be reflective of the underlying cash market; and that the cash settlement price not be readily susceptible to manipulation. In making its determination, the Division considers the design and maintenance of the index, the method of index calculation, the nature of the component security prices used to calculate the index, the breadth and frequency of index dissemination, and any other relevant factors.

E. In considering the susceptibility of an index to manipulation, the Division examines several factors, including the structure of the primary and secondary markets for the component equities, the liquidity of the component stocks, the method of index calculation, the total capitalization of stocks underlying he index, the number, weighting and capitalization of individual stocks in the index, and the existence of surveillance

U.S. until the Commission and the U.S. Securities and Exchange Commission (SEC) adopt rules governing such products. *See* Section 2(a)(1)(E) of the Act, 7 U.S.C. § 2(a)(1)(E) and Section 6(k) of the Securities Exchange Act of 1934, 15 U.S.C. § 78f(k). *But see* Section 2(a)(1)(F) of the Act, 7 U.S.C. § 2(a)(1)(F).

[6] *See* the Commission's Statement of Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief to Place Electronic Trading Devices in the U.S., 65 FR 41641–01 (July 6, 2000).

[1] With regard to the third criterion, and CFTC and SEC jointly promulgated Rule 41.13 under the Act and Rule 3a55–3 under the Securities Exchange Act of 1934 ("Exchange Act"), governing security index futures contracts traded on foreign boards of trade. These rules provide that "[w]hen a contract of sale for future delivery on a security index is traded on or subject to the rules of a foreign board of trade, such index shall not be a narrow-based security index if it would not be a narrow-based security index if a futures contract on such index were traded on a designated contract market or registered derivatives transaction execution facility." CFTC Rule 41.13, 17 C.F.R. § 41.13; Exchange Act Rule 3a55–3, 17 C.F.R. § 240.3a55–3.

sharing agreements between the board of trade and the securities exchange(s) on which the underlying securities are traded.

F. To verify that the index is not narrow based, the Division considers the number and weighting of the component securities and the value of average daily trading volume of the lowest weighted quartile of securities. Under the Act, a security index is narrow-based if it meets any one of the following criteria:

(1) The index is composed of fewer than 10 securities;

(2) Any single security comprises more than 30% of the total index weight

(3) The five largest securities comprise more than 60% of the total index weight; or

(4) The lowest-weighted securities that together account for 25% of the total weight of the index have an aggregate dollar value of average daily trading volume of less than US$30 million (or US$50 million if the index includes fewer than 15 securities).

G. Accordingly, a foreign board of trade seeking no-action relief to offer and to sell, to persons located in the U.S., a futures contract on a non-narrow based foreign security index traded on that foreign board of trade should submit to the Office of General Counsel the following in English:

(1) The terms and conditions of the contract and all other relevant rules of the exchange and, if applicable, of the exchange on which the underlying securities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(2) Surveillance agreements between the foreign board of trade and the exchange(s) on which the underlying securities are traded;

(3) Assurances from the foreign board of trade of its ability and willingness to share information with the Commission, either directly or indirectly;

(4) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information concerning the trading of such contracts;

(5) Information and data denoted in U.S. dollars (and the conversion date and rate used) relating to:

(i) The method of computation, availability, and timeliness of the index;

(ii) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index as well as the combined weighting of the five highest-weighted stocks in the index;

(iii) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(iv) Method of calculation of the case-settlement price and the timing of its public release;

(v) Average daily volume of trading, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to Commission Rule 41.11; and

(vi) If applicable, average daily futures trading volume;

(6) A statement that the index is not a narrow-based security index as defined in Section 1a(25) of the Act and the analysis supporting that statement; and

(7) When applicable, a request to make the futures contract available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, the Foreign Trading System No-Action letter that the foreign board of trade received from Commission staff and a certification from the foreign board of trade that it is in compliance with the terms and conditions of that no-action letter.

Issued in Washington, DC on May 21, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–13414 Filed 6–4–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE34

Distribution of Fiscal Year 2003 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Temporary rule and request for comments.

SUMMARY: We are issuing a temporary rule requiring that we distribute 75 percent of available fiscal year 2003 Indian Reservation Roads (IRR) Program funds to projects on or near Indian reservations using the relative need formula. As we did in fiscal years 2000, 2001 and 2002, we are using the Federal Highway Administration (FHWA) Price Trends report for information to calculate the relative need formula, with appropriate modifications to address non-reporting states. We will distribute the balance of the remaining 25 percent of fiscal year 2003 IRR Program funds according to the relative need formula.

DATES: This temporary rule is effective June 5, 2003, through September 30, 2003. We will accept comments on this temporary rule until July 7, 2003.

ADDRESSES: You may send comments on the formula for distribution of the Fiscal Year 2003 IRR Program funds to: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at (202) 208–4359.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202–208–4359 (phone), or 202–208–4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads Program, the Relative Need Formula, the FHWA Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR Program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** Notice dated February 15, 2000 (65 FR 7431).

What Was the Basis for Distribution of Fiscal Years 2000, 2001 and 2002 IRR Program Funds?

For fiscal year 2000 IRR Program funds, the Secretary published a temporary and final distributing one-half of the funds in February 2000 and the second half of the funds in June 2000. For fiscal years 2001 and 2002 IRR Program funds, the Secretary published a temporary distributing 75 percent of the funds in January 2001 and January 2002 and the remaining 25 percent of the funds in March 2001 and July 2002. These distributions followed the TEA–21 Negotiated Rulemaking Committee's

recommendation to distribute fiscal years 2000, 2001 and 2002 IRR Program funds under the relative need formula used in 1999, while continuing to develop a proposed formula to publish for comment as part of the 25 CFR 170 Notice of Proposed Rulemaking. In addition, in each of these years we modified the Federal Highway Administration Price Trends Report indices to account for non-reporting states.

What Is the Basis for Distribution of Fiscal Year 2003 IRR Program Funds?

The Transportation Equity Act for the 21st Century (TEA–21) provides that the Secretary develop rules and a funding formula for fiscal year 2000 and subsequent fiscal years to implement the Indian Reservation Roads Program section of the Act. The Negotiated Rulemaking Committee created under section 1115 of TEA–21 and comprised of representatives of tribal governments and the Federal Government has been diligently working to develop a funding formula that addresses the Congressionally identified criteria, Committee and tribal recommendations, and is consistent with overall Federal Indian Policy.

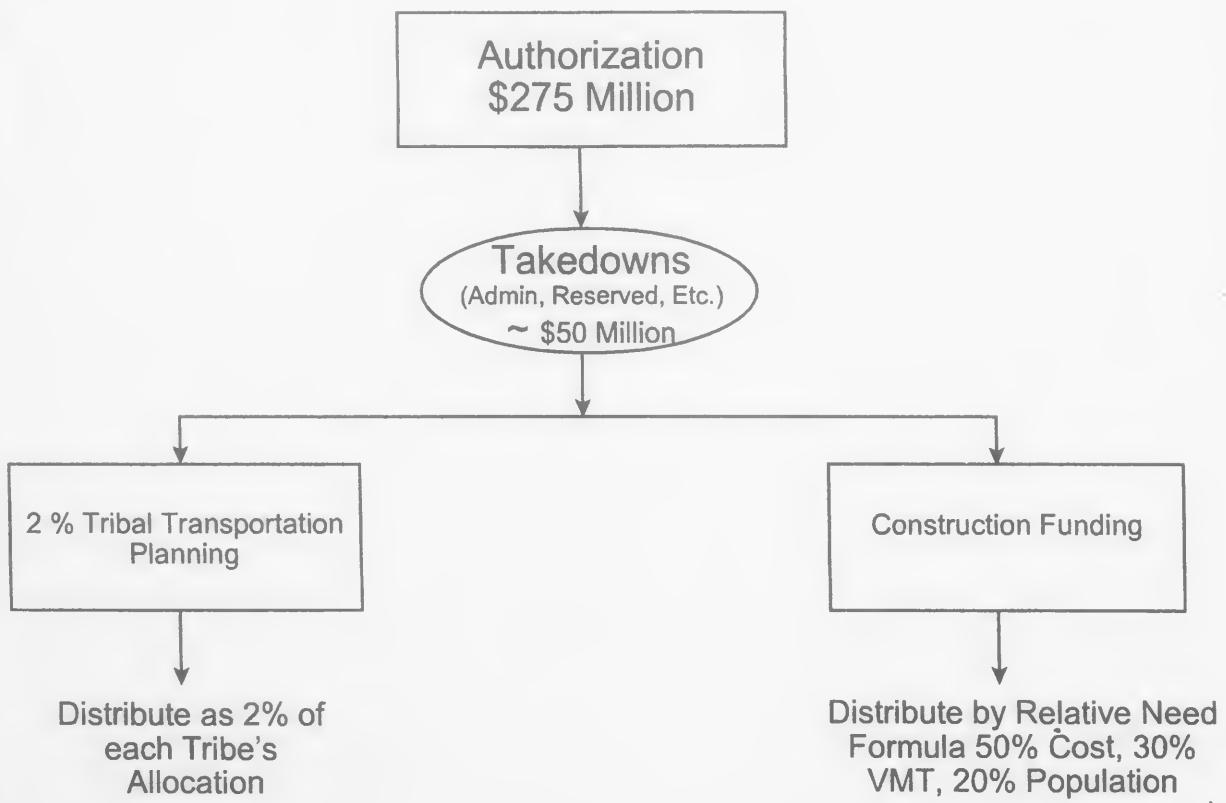
The Committee proposed a permanent funding formula that was published on August 7, 2002 (67 FR 51328) in the **Federal Register** for public comment. The Secretary is completing the review of comments and drafting a final rule at this time. In the meantime, there are about 1300 ongoing road and bridge construction projects on or near Indian reservations which need fiscal year 2003 funding to continue or complete work. Partially constructed road and bridge projects could pose safety threats. Other road and bridge projects need to be planned or initiated in this fiscal year. This rule is published as a temporary rule only for interim funding for fiscal year 2003 and sets no precedent for the final rule to be published as required by section 1115 of TEA–21. We expect to publish the final rule and funding formula before the beginning of fiscal year 2004. The interim formula for the current fiscal year will provide tribes with the critical resources to develop inventory data, long-range transportation plans, transportation improvement programs and other information necessary to distribute funds under a new funding formula to be put in place for fiscal year 2004. The Secretary is basing this distribution on similar methodologies used in fiscal year 2000, 2001 and 2002.

How Will the Secretary Distribute Fiscal Year 2003 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute 75 percent of fiscal year 2003 IRR Program funds based on the current relative need formula used in fiscal years 2000, 2001 and 2002, and the indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process. We will distribute fiscal year 2003 IRR Program funds to the twelve BIA regions using this distribution process. We are requesting comments on the use of the current relative need formula for distribution of the remaining 25 percent of fiscal year 2003 IRR Program funds.

What Formula Components Are We Using for Distribution of Fiscal Year 2003 IRR Program Funds and How Are They Related?

The following diagram shows the relationship between components for fiscal year 2003 IRR Program funds distribution:



What Data Are We Using for the Interim Distribution Funding Formula?

We are using the most current road inventory data (June 2002) maintained by the Bureau of Indian Affairs.

Are There Any Differences in the Distribution of Fiscal Year 2003 IRR Program Funds as Compared to the Distributions of Fiscal Years 2000, 2001 and 2002 IRR Program Funds?

The distribution of fiscal year 2003 IRR Program funds is based on the current relative need formula and the FHWA Price Trends Report indices that were used for the adjusted fiscal years 2000, 2001 and 2002 distribution. In February 2000 the Secretary partially distributed fiscal year 2000 IRR Program funds using the relative need formula. In June 2000 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for two nonreporting states, Washington and Alaska, that impact tribes in those nonreporting states. In January 2001 the Secretary partially distributed fiscal year 2001 IRR Program funds using the relative need formula. In June 2001 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for non-reporting states. In January 2002 the Secretary partially distributed fiscal year 2002 IRR Program funds using the relative need formula. In July 2002 the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for non-reporting states. We are using the same modification process for non-reporting states for distribution of fiscal year 2003 IRR Program funds. For fiscal years 2001 and 2002 we distributed funds in the same manner as in fiscal year 2000, except that we reserved up to $19.53 million for administrative capacity building for federally recognized tribes. We are distributing fiscal year 2003 funds in the same way as fiscal year 2000 IRR Program funds.

Why Does This Temporary Rule Not Allow for Notice and Comment on the First Partial Distribution of Fiscal Year 2002 IRR Program Funds, and Why Is It Effective Immediately?

Under 5 U.S.C. 553(b)(3)(B), notice and public procedure on the first partial distribution under this rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this temporary rule for distribution of 75 percent of fiscal year 2003 IRR Program funds effective immediately under 5 U.S.C. 553(d)(3).

Notice and public procedure would be impracticable because of the urgent need to distribute 75 percent of fiscal year 2003 IRR Program funds. Approximately 1300 road and bridge construction projects are at various phases that require additional funds this fiscal year to continue or complete work, including 220 deficient bridges and the construction of approximately 7300 miles of roads. Fiscal year 2003 IRR Program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this immediate partial distribution of fiscal year 2003 IRR Program funds, tribal and BIA IRR projects will be forced to cease activity, placing projects and jobs in jeopardy. Waiting for notice and comment on this temporary rule would be contrary to the public interest. In some of the BIA regions, approximately 80 percent of the roads in the IRR system (and the majority of the bridges) are designated school bus routes. Roads are essential access to schools, jobs, and medical services. Many of the priority tribal roads are also emergency evacuation routes and represent the only access to tribal lands. Approximately 40 percent of the road miles in Indian country are unimproved roads. Deficient bridges and roads are health and safety hazards. Partially constructed road and bridge projects and deficient bridges and roads jeopardize the health and safety of the traveling public. Further, over 600 projects currently in progress are directly associated with environmental protection and preservation of historic and cultural properties. This temporary rule is going into effect immediately because of the urgent need for partially distributing fiscal year 2003 IRR Program funds to continue these construction projects. Distribution of the remaining 25 percent of fiscal year 2003 IRR Program funds will be distributed under the same relative need formula as the first 75 percent of the funds after we review and consider comments.

Clarity of This Temporary Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this temporary rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the temporary rule clearly stated? (2) Does the temporary rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the temporary rule (grouping and order of sections, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the temporary rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the temporary rule? What else could we do to make the temporary rule easier to understand?

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this temporary rule is a significant regulatory action requiring review by the Office of Management and Budget because it will have an annual effect of more than $100 million on the economy. The total amount available for distribution of fiscal year 2003 IRR Program funds is approximately $196 million and we are distributing approximately $147 million under this temporary rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2003 IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This temporary rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This temporary rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports.

This temporary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR Program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This temporary rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR Program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This temporary rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the distribution of fiscal year 2002 IRR Program funds.

Approximately 1300 road and bridge construction projects are at various phases that depend on this fiscal year's IRR Program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This rule continues to adopt the relative need formula that we have used since 1993.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* is not required for this temporary rule because it applies only to tribal governments, which are not covered by the Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it has an annual effect on the economy of $100 million or more. We are distributing approximately $147 million under this temporary rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements.

This rule 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. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this temporary rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This temporary rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this temporary rule is to immediately provide 75 percent of fiscal year 2003 IRR Program funds to tribal governments for ongoing IRR activities and construction projects.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This temporary rule should not affect the relationship between State and Federal governments because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. We are still pursuing the TEA–21 mandated negotiated rulemaking process to set up a permanent funding formula distributing IRR Program funds. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to 75 percent of fiscal year 2003 IRR Program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 218), consultation with representatives of Indian tribal governments who serve on the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Committee has occurred. Distributing IRR Program funds under this interim rule has tribal implications in that transportation planning and projects rely on this funding. Distributing funds under this interim rule does not impose direct compliance costs on Indian tribal governments and does not preempt tribal law. While TEA–21 Negotiated Rulemaking Committee tribal representatives agree that we use the funding method for distributing IRR Program funds we have used since 1993, as they have agreed for fiscal years 2000, 2001, and 2002, there is disagreement among tribal representatives about reserving funds (approximately $20 million) to distribute $35,000 to each Federally-recognized tribe for administrative capacity building for fiscal year 2003. We reserved administrative capacity building funds in fiscal years 2001 and 2002 and distributed $35,000 to each Federally-recognized tribe in each year. For fiscal year 2003, however, since there is no consensus to provide administrative capacity building funds, the method of formula distribution of all available funds will reflect the same distribution as in FY2000, FY2001 and FY2002.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians-lands.

■ For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

■ 2. Effective June 5, 2003, through September 30, 2003, revise § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute 75 percent of fiscal year 2003 Indian Reservation Roads funds?

On June 5, 2003, we will distribute 75 percent of fiscal year 2003 IRR Program funds authorized under section 1115 of the Transportation Equity Act for the 21st Century, Pub. L. 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. We are modifying the formula to account for non-reporting States by inserting the latest data reported for those States for use in the relative need formula process.

Dated: May 26, 2003.

Aurene M. Martin,

Assistant Secretary-Indian Affairs.

[FR Doc. 03–14184 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF JUSTICE

28 CFR Part 5

[AG Order No. 2674–2003]

RIN 1105–AA45

Foreign Agents Registration Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending its existing regulations implementing the Foreign Agents Registration Act of 1938, as amended. The rule establishes new regulations needed as a result of the passage of the Lobbying Disclosure Act of 1995 (LDA) and the Lobbying Disclosure Technical Amendments Act of 1998 (LDTAA), both of which amended the Foreign Agents Registration Act, and makes technical amendments to existing regulations.

DATES: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Heather H. Hunt, Attorney, Registration Unit, Counterespionage Section, Criminal Division, United States Department of Justice, 1400 New York Avenue, NW., Washington, DC 20530, telephone (202) 514–1216, facsimile (202) 514–2836. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Why Is the Department Changing the Foreign Agents Registration Act Regulations?

Under the Foreign Agents Registration Act of 1938 (FARA or the Act), 22 U.S.C. 611–621, agents of foreign principals are required to register with the Department of Justice in order to make periodic public disclosure of their relationship with the foreign principal, activities on behalf of the foreign principal, and receipts and disbursements in support of these activities. In the Lobbying Disclosure Act of 1995, Pub. L. 104–65, 2 U.S.C. 1601–1613 (LDA), and the Lobbying Disclosure Technical Amendments Act of 1998, Pub. L. 105–166 (LDTAA), Congress amended FARA in several respects. First, Congress generally narrowed the scope of FARA to agents of foreign governments and foreign political parties. Under new section 3(h) of FARA, 22 U.S.C. 613(h), agents of foreign principals other than foreign governments or foreign political parties need not register under FARA if such agents engage in lobbying activities and register under the LDA. Second, Congress repealed section 1(q) of the Act, 22 U.S.C. 611(q), which had provided a safe harbor specifying circumstances in which agents of multinational corporations would be exempt from registration under section 3(d)(2) of the Act, 22 U.S.C. 613(d)(2). When Congress authorized registration under the LDA rather than FARA for lobbying activities on behalf of foreign principals other than foreign governments and foreign political parties, section 1(q) became largely unnecessary.

In addition, in the LDA, Congress clarified the applicability of an exemption in section 3(g), 22 U.S.C. 613(g), for legal representation of a foreign principal in certain proceedings. Finally, Congress substituted the term "informational materials" for the term "political propaganda" throughout FARA, except in section 4(e), 22 U.S.C. 614(e), which concerns the dissemination of materials on behalf of the foreign principal, and in section 11, 22 U.S.C. 621, which concerns the filing of a semi-annual report with Congress. These amendments require changes in the FARA regulations.

Did the Department Solicit Public Comments?

On July 9, 1999, a proposed rule was published in the **Federal Register** (64 FR 37065). Interested persons were afforded the opportunity to participate in the regulatory process. The comment period ended on September 7, 1999. No written comments were received on the proposed rule. Notwithstanding the fact that comments were not received, the Department made minor clarifying adjustments to the proposed rule under 28 CFR 5.304 and 5.307 to more clearly construe the section 3(d)(2) and 3(h) exemptions.

How Does This Final Rule Change the Current Regulations?

The amendments to FARA required changes implementing, among others, sections 3(d)(2), 3(g), 3(h) and 4 of FARA. First, this rule clarifies the reach of section 3(d)(2) in light of the repeal of section 1(q) of FARA. Section 3(d)(2) of the Act exempts from registration under FARA activities of a political nature "not serving predominantly a foreign interest." Under the rule, political activities of an agent on behalf of a foreign corporation, even if the foreign corporation is owned in whole or in part by a foreign government, where the political activities further the bona fide commercial, industrial, or financial operations of the foreign corporation, are not directed by a foreign government or foreign political party, and do not directly promote the public or political interests of a foreign government or foreign political party, do not require registration under FARA because such activities do not "serve predominantly a foreign interest" for purposes of 3(d)(2). Even after the deletion of section 1(q), any person, including a foreign or domestic corporation, who engages in political activities, not in furtherance of the bona fide commercial, industrial, or financial operations of a foreign corporation, but, on behalf of a foreign government or foreign political party, is required to register under FARA, as these activities will "serve predominantly a foreign interest" and thus not be exempt under section 3(d)(2).

Second, the rule clarifies the circumstances in which agents of foreign principals, other than foreign governments or foreign political parties, can claim the new exemption provided in section 3(h), and it clarifies the reach of the revised "attorneys' exemption" in section 3(g). In addition, the rule strikes

the term "political propaganda" wherever it appears in the regulations and substitutes the LDA term, "informational materials." Finally, the rule makes certain technical amendments to the existing regulations to delete references to other repealed sections of the Act and to enable the Registration Unit to administer the statute more effectively by allowing for electronic filing in the future.

Certifications and Determinations

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The rule primarily affects those persons required to register pursuant to FARA, currently approximately 500 primary registrants and 2,500 individual short form registrants. The rule merely conforms Department regulations to changes made by the LDA and the LDTAA. These acts reduced the number of people who had to file reports with the Department.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that it does not constitute "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly it has not been reviewed by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

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

Executive Order 12988

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

Plain Language

We try to write clearly. If you can suggest how to improve the clarity of these regulations, contact Heather H. Hunt, Attorney, Registration Unit, Counterespionage Section, Criminal Division, United States Department of Justice, telephone (202) 514–1216.

List of Subjects in 28 CFR Part 5

Aliens, Foreign relations, Reporting and recordkeeping requirements, Security measures.

■ Accordingly, the Department of Justice amends Part 5 of title 28 of the Code of Federal Regulations, chapter 1, as follows:

PART 5—ADMINISTRATION AND ENFORCEMENT OF FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

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

Authority: 28 U.S.C. 509, 510; Section 1, 56 Stat. 248, 257 (22 U.S.C. 620); title I, Pub. L. 102–395, 106 Stat. 1828, 1831 (22 U.S.C. 612 note).

§ 5.5 [Amended]

■ 2. a. Amend § 5.5 in paragraph (d)(10) by adding the words "informational materials," following "reports,".

■ b. Amend § 5.5 in paragraph (d)(11) by adding the words "informational materials," following "reports,".

§ 5.100 [Amended]

■ 3. a. Amend § 5.100 in paragraph (c) by removing "1(q),".

■ b. Amend § 5.100 in paragraph (d) by removing "1(q),".

§ 5.200 [Amended]

■ 4. Amend § 5.200 in paragraph (b) by removing the words "Form OBD–63" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.201 [Amended]

■ 5. a. Amend § 5.201 in paragraph (a)(1) by removing the words "Form OBD–67" and adding, in their place, the words "a form provided by the Registration Unit".

■ b. Amend § 5.201 in paragraph (a)(2) by removing the words "Form OBD–65" and adding, in their place, the words "a form provided by the Registration Unit"".

§ 5.202 [Amended]

■ 6. a. Amend § 5.202 in paragraph (b) by adding the word "registrable" before the word "activity".

■ b. Amend § 5.202 in paragraph (e) by removing the words "Form OBD–66" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.203 [Amended]

■ 7. Amend § 5.203 in paragraph (a) by removing the words "Form OBD–64" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.204 [Amended]

■ 8. Amend § 5.204 in paragraph (a) by removing the words "Form OBD–68" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.205 [Amended]

■ 9. Amend § 5.205 in paragraph (a) by removing the words "OBD–64" and adding, in their place, the words "the supplemental statement form".

§ 5.206 [Amended]

■ 10. Amend § 5.206 in paragraph (b) by adding the words ", or if it is filed in an electronic format acceptable to the Registration Unit" following the word "ink".

■ 11. Revise paragraph (c) of § 5.304 to read as follows:

§ 5.304 Exemptions under section 3(d) and (e) of the Act.

* * * * *

(c) For the purpose of section 3(d)(2) of the Act, a person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or foreign political party and the political activities do not directly promote the public or political interests of a foreign

government or of a foreign political party.

* * * * *

■ 12. Revise paragraph (a) of § 5.306 to read as follows:

§ 5.306 Exemption under section 3(g) of the Act.

* * * * *

(a) Attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record, shall include only such attempts to influence or persuade with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party; and

* * * * *

§ 5.306 [Amended]

■ 13. Amend § 5.306 in paragraph (b) by removing the word "like" and adding, in its place, the word "fall".

■ 14. Add § 5.307 to read as follows:

§ 5.307 Exemption under 3(h) of the Act.

For the purpose of section 3(h) of the Act, the burden of establishing that registration under the Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 *et seq.* (LDA), has been made shall fall upon the person claiming the exemption. The Department of Justice will accept as prima facie evidence of registration a duly executed registration statement filed pursuant to the LDA. In no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized.

§ 5.400 Filing of informational materials.

■ 15. a. The section heading of §5.400 is revised to read as set forth above.

■ b. Amend § 5.400 in paragraph (a) by removing the words "two copies of each item of political propaganda" and adding, in their place, the words "informational materials", and by adding, before the period, the words "no later than 48 hours after the beginning of the transmittal of the informational materials".

■ c. Amend § 5.400 in paragraph (b) by removing the words "two copies of an item of political propaganda" and adding, in their place, the words "informational materials" and by removing the word "material" and adding, in its place, the word "materials".

■ d. Amend § 5.400 in the first sentence of paragraph (c) by removing the words "two copies of a motion picture containing political propaganda" and adding, in their place, the words "a copy of a motion picture".

§ 5.401 [Removed]

■ 16. Remove § 5.401.

§ 5.402 Labeling informational materials.

■ 17. a. The section heading of § 5.402 is revised to read as set forth above.

■ b. Amend § 5.402 in paragraph (a) by removing the words "political propaganda" and adding, in their place, the words "informational materials", by removing the words "it has" and adding, in their place, the words "they have", and by removing the word "its" and adding in its place, the word "their".

■ c. Amend § 5.402 in paragraph (b) by removing the words "An item of political propaganda which is" and adding, in their place, the words "Informational materials which are", and by removing the word "is" from the phrase "which is in the form of prints" and adding, in its place, the word "are", and by removing the word "item" from the phrase "such item" and adding, in its place, the word "materials".

■ d. Amend § 5.402 in paragraph (c) by removing the words "An item of political propaganda which is" and adding, in their place, the words "Informational materials", and by removing the word "is" from the phrase "which is not in the form of prints" and adding, in its place, the word "are".

■ e. Amend § 5.402 in paragraph (d) by removing the words "Political propaganda as defined in section 1(j) of the Act which is" and adding, in their place, the words "Informational materials that are", and by removing the word "is" before the word "caused" and adding, in its place, the word "are".

■ f. Amend § 5.402 in paragraph (e) by removing the words "political propaganda as defined in section 1(j) of the Act" and adding, in their place, the words "informational materials".

■ g. Amend § 5.402 in paragraph (f) by removing the words "political propaganda" and adding, in their place, the words "informational materials".

§ 5.500 [Amended]

■ 18. Amend § 5.500 in paragraph (a)(4) by removing the words "political propaganda has" and adding, in their place, the words "informational materials have".

§ 5.600 [Amended]

■ 19. Amend § 5.600 by adding the words "informational materials," following the words "Registration statements," and by removing the words "from 10 a.m. to 4 p.m." and adding, in their place, the words "during the posted hours of operation."

§ 5.601 [Amended]

■ 20. a. Amend § 5.601 in paragraph (a) by adding the words "informational materials," following the word "thereto,".

■ b. Amend § 5.601 in paragraph (b) by adding the words "informational materials," following the word "thereto,".

Dated: May 28, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–13947 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN81–7306a; FRL–7493–9]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) State Implementation Plan (SIP) for Flint Hills Resources, L.P. (formerly known as Koch Petroleum Group, L.P.). The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision request on March 13, 2003. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

DATES: This direct final rule will be effective August 4, 2003, unless EPA receives adverse comment by July 7, 2003. If EPA receives adverse comments, 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: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

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

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SO_2 SIP a site-specific revision for Flint Hills Resources L.P. (FHR), located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving and thereby incorporating Amendment No. 6 to FHR's administrative order (order) into the Minnesota SO_2 SIP.

2. Why Is EPA Taking this Action?

EPA is taking this action because the state's submittal for FHR is fully approvable. The SIP revision provides for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS) and satisfies the applicable SO_2 requirements of the Act. A more detailed explanation of how the state's submittal meets these requirements is in EPA's March 20, 2003 Technical Support Document (TSD).

3. What Is the Background for this Action?

EPA redesignated the Pine Bend area from a primary SO_2 nonattainment area to attainment of the SO_2 NAAQS in a direct final notice published on May 31, 1995 (60 FR 28339).

On December 20, 2000, MPCA submitted a SIP revision consisting of Amendment No. 4 to FHR's order. EPA approved Amendment No. 4 into the SO_2 SIP on June 12, 2001 (66 FR 31545). On May 2, 2001, MPCA submitted a SIP revision consisting of Amendment No. 5 to FHR's order. EPA approved Amendment No. 5 into the SO_2 SIP on February 21, 2002 (67 FR 7957). Amendment No. 4 and Amendment No. 5 were required to reduce emissions of nitrogen oxides (NO_X) and SO_2 at FHR.

Koch Petroleum Group, L.P. changed its corporate name to Flint Hills Resources, L.P. on January 1, 2002.

II. Review of State Implementation Plan Revision

1. Why Did the State Submit this SIP Revision?

This is the third revision to the order initiated by FHR to reduce emissions of NO_X and SO_2 pursuant to a December 22, 2000 consent decree in United States v. Koch Petroleum Group, L.P., Civil Action No. 00–2756–PAM–SRN. The revised order contains changes needed to reduce emissions as required by the consent decree, changes supporting the production of lower-sulfur fuels, and changes affecting the refinery that have occurred since the Order was first issued.

2. What Did Minnesota Submit for Approval into the SIP?

The March 13, 2003 revision submitted by MPCA requests that EPA approve Amendment No. 6 to FHR's order into the Minnesota SO_2 SIP. Amendment No. 6 will allow FHR to modify its refinery in order to meet the requirements established in the consent decree and to make other changes, such as allowing FHR to make lower sulfur gasoline (Tier 2 gasoline) and lower-sulfur diesel fuels. The revised order also reflects other changes previously made at the refinery, such as the removal or addition of equipment, the elimination of fuel oil combustion, limiting the sulfur content of diesel fuel used at the refinery, and reducing the number of locations for decoking.

3. How Does the SIP Revision Show Attainment of the SO_2 Standards?

The MPCA submitted air quality modeling in support of FHR's SO_2 SIP revision. The modeled attainment demonstration included all significant SO_2 emission sources at FHR and included emissions from several nearby facilities. A background concentration was also added to the modeled values for comparison to the NAAQS. The modeling demonstrates attainment and maintenance of the SO_2 NAAQS in the Pine Bend area. A more detailed discussion is in EPA's March 20, 2003 TSD.

III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for Flint Hills Resources, L.P., located in the Pine Bend area of Rosemount, Dakota County, Minnesota. Specifically, EPA is incorporating Amendment No. 6 to FHR's Administrative Order into the Minnesota SO_2 SIP. The State submitted this SIP revision on March 13, 2003 as a result of negotiations to a consent decree between EPA, MPCA and FHR, in which FHR proposed a series of modifications at the Pine Bend refinery. The revised Order contains changes needed to reduce emissions as required by the Consent Decree, changes supporting the production of lower-sulfur fuels, and changes affecting the refinery that have occurred since the Order was first issued. As described above, this project provides for attainment and maintenance of the SO_2 NAAQS in the Pine Bend area and is therefore fully approvable.

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 August 4, 2003 without further notice unless we receive relevant adverse comments by July 7, 2003. 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. 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 August 4, 2003.

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.

IV. Statutory and Executive Order Reviews

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. section 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. section 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 August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 17, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Title 40, chapter I 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.*

■ 2. Section 52.1220 is amended by removing and reserving paragraphs (c)(57) and (c)(60) and adding paragraph (c)(62) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(57) [Reserved]

* * * * *

(60) [Reserved]

* * * * *

(62) On March 13, 2003, the State of Minnesota submitted a site-specific State Implementation Plan (SIP) revision for the control of emissions of sulfur dioxide (SO_2) for Flint Hills Resources, L.P., located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving into the SO_2 SIP Amendment No. 6 to the Administrative Order previously approved in paragraph (c)(35) and revised in paragraphs (c)(57) and (c)(60) of this section.

(i) Incorporation by reference.

(A) An administrative order identified as Amendment Six to Findings and Order by Stipulation, for Flint Hills Resources, L.P., dated and effective March 11, 2003, submitted March 13, 2003.

[FR Doc. 03–13570 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA275–0393c; FRL–7495–3]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern BAAQMD Rule 8–5—Storage of Organic Liquids and 8–18—Equipment Leaks.

DATES: This interim final determination is effective on June 5, 2003. However, comments will be accepted until July 7, 2003.

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

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

Rulemaking Office (AIR–4), Air Division, U.S. Environmental

Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*.

Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

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

I. Background

On October 10, 2001, (66 FR 51568), we published a limited approval and limited disapproval of BAAQMD Rules 8–5 and 8–18 as adopted locally on December 15, 1999 and January 7, 1998, respectively, and submitted by the State on March 28, 2000. We based our limited disapproval action on certain deficiencies in each submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after November 9, 2001 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On November 27, 2002, BAAQMD adopted revisions to Rules 8–5 and 8–18 that were intended to correct the deficiencies identified in our limited disapproval action. On January 21, 2003, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of these submittals because we believe they correct the deficiencies identified in our October 10, 2001 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our October 10, 2001 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised BAAQMD Rules 8–5 and 8–18, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with BAAQMD Rules 8–5 and 8–18 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional 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.

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

The administrator certifies that this action 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.*).

This rule 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 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 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. § 272) do not apply to this rule because it imposes no standards.

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary

to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 5, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule 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 August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–13882 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA275–0393a; FRL–7495–1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and San Diego County Air Pollution Control District (SDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic liquid storage, equipment leaks at petroleum refineries, and wood product coating operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse comments by July 7, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

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

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109; and,

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

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

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

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

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SDCAPCD	67.11.1	Large Wood Product Coating Operations	09/25/02	11/19/02
BAAQMD	8–5	Storage of Organic Liquids	11/27/02	01/21/03
BAAQMD	8–18	Equipment Leaks	11/27/02	01/21/03

EPA found that these rule submittals met the completeness criteria in 40 CFR part 51, appendix V on February 7, 2003. These completeness criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

We approved versions of BAAQMD Rule 8–5 and 8–18 into the SIP on October 10, 2001 (*see* 66 FR 51568).

Between these SIP incorporations and today, CARB has made no intervening submittals of these BAAQMD rules. SDCAPCD Rule 67.11.1 has not been approved into the SIP.

C. What Is the Purpose of the Rule Revisions?

SDCAPCD Rule 67.11.1, Large Wood Product Coating Operations, is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in preparing and coating wood products such as furniture, cabinets, shutters, frames, and art objects. The rule applies to these industrial sites emitting 25 tons per year or more of VOCs. The provisions of this rule apply to any person who applies, specifies the use of, or supplies coatings for the surface preparation and coating of these wood products.

BAAQMD Rule 8.5, Storage of Organic Liquids is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in storing or transferring organic liquids. VOCs are emitted from containment vessels such as tanks and transfer lines due to the high vapor pressure of the processed crude oil and organic liquids.

BAAQMD's November 27, 2002 amendments to Rule 8.5 included significant changes to the 2001 SIP version. While some were editorial, BAAQMD made many of these changes either to correct the deficiencies cited in EPA's October 2001 limited disapproval, or to implement Measure SS–12 from the 2001 Ozone Attainment Plan. Editorial changes included reformatting the section on control requirements, deleting ambiguous or misleading terms, and certain rule sections were relocated to allow for the revised rule's structure. Substantive changes to the rule are described in detail within our TSD and its attached BAAQMD Staff Report.

BAAQMD Rule 8.18, Equipment Leaks is a rule designed to reduce volatile organic compound (VOC) emissions at petroleum refineries by reducing leaking in valves, flanges, connectors, pumps, compressors, and pressure relief valves. Rule 8.18 defines what constitutes a leak and prohibits use of that component until the component is repaired. The rule also specifies inspection schedules for pumps, compressors, and valves.

BAAQMD's November 27, 2002 amendments to Rule 8.18 included limited but significant changes to the 2001 SIP version. BAAQMD made these changes to correct the deficiencies cited in EPA's October 2001 limited disapproval.

—Section 8–18–405 was amended to require that alternative compliance plans be submitted to EPA and approved by EPA prior to action by the Air Pollution Control Officer (APCO).

—Section 8–18–406 was amended to require that a facility comply with all rule requirements until an alternative compliance plan is approved by both EPA and the APCO.

The subject TSD has more information about each rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The BAAQMD and SDCAPCD regulate an ozone nonattainment area (*see* 40 CFR part 81), so each of the subject rules must fulfill RACT.

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

—Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987;

—"Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook);

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

—"Guideline Series: Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations," USEPA, April, 1996;

—"Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA–450/2–78–047, USEPA, December 1978; and

—"Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks, " EPA–450/2–77–036, USEPA, December 1977.

B. Do the Rules Meet the Evaluation Criteria?

We believe SDCAPCD Rule 67.11.1, BAAQMD Rule 8–5, and BAAQMD Rule 8–18 are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations.

Both BAAQMD Rule 8–5 and Rule 8–18 were subjects of a limited approval and limited disapproval in our October 10, 2001 rulemaking. We believe that the deficiencies that provided cause for our limited disapproval have been corrected.

Specifically, Rule 8–5 corrected the deficiencies related to its inconsistency with EPA's Excess Emission Policy. These deficiencies are described below.

—Revise Rule 8–5 to define "stock change", "tank cleaning", and "temporary removal from service" within Section 8–5–111.

—Revise Rule 8–5 to define "roof repair" and "primary seal inspection" within Section 8–5–112.

—Clarify the language in sections 8–5–111 and 8–5–112 to be consistent with the Excess Emissions Policy. Also, demonstrate via a discussion within the Staff Report how these sections are consistent with the policy's requirement that use of the control measure is technically infeasible during the startup and shutdown periods described by these exemptions.

BAAQMD addressed these deficiencies with revisions to Sections 8–5–111, 8–5–112, and added definitions. We believe that these amendments are sufficient to make the rule consistent with the Excess Emissions Policy. Prior to relaxing the control requirements of the rule via the exemptions, sources are required to notify the APCO and explain the work required, why rule requirements must be relaxed, and how they will minimize emissions during the shutdown, repair, or inspection. Given prior notification, the APCO may observe or inspect the work that proceeds under the exemption.

BAAQMD corrected the deficiencies within Rule 8–18 related to "director's discretion" by making the revisions described earlier to sections 8–18–405 and 8–18–406.

C. EPA Recommendations to Further Improve the Rules

The TSD for SDCAPCD Rule 67.11.1 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 7, 2003, we will

publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 4, 2003. This action will incorporate these rules into the federally enforceable SIP and terminate permanently all sanction and Federal Implementation Plan obligations associated with our October 10, 2001 limited disapproval action.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

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

TABLE 2.—OZONE NONATTAINMENT MILESTONES

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

IV. Stationary and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(307)(i)(C)(*2*) and (c)(312) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(307) * * *

(i) * * *

(C) * * *

(*2*) Rule 67.11.1, adopted on September 25, 2002.

* * * * *

(312) New and amended rules for the following districts were submitted on January 21, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rules 8.5 and 8.18, amended on November 27, 2002, and adopted on January 1, 1978 and October 1, 1980, respectively.

* * * * *

[FR Doc. 03–13883 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC042–2031a; FRL–7507–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Determining Conformity of Federal Actions to State or Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a State Implementation Plan (SIP) revision submitted by the District of Columbia. The revision includes the District's regulation for conformity, which sets forth policy, criteria and procedures for demonstrating and assuring conformity of transportation and non-transportation related Federal actions to state or Federal implementation plans. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 4, 2003 without further notice, unless EPA receives adverse written comment by July 7, 2003. If EPA receives such 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: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, N.E., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 1998, the District of Columbia Department of Health (DCDH) submitted a revision consisting of the District's regulation for determining conformity of Federal actions to state or Federal implementation plans (DCMR Chapter 4, section 403.1). The purpose of this SIP revision is to meet the requirements of 40 CFR part 51, subpart W, which requires states to submit a plan revision containing criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan. Subpart W is also known as the General Conformity Rule. It pertains to non-transportation related Federal actions.

II. Summary of SIP Revision

The District's regulation at 20 DCMR Chapter 4, section 403.1 incorporates by reference the Federal regulations at 40 CFR part 93, in effect as of September 30, 1997, which establishes requirements for determining conformity of both general and transportation related Federal actions to state or Federal implementation plans. Under 40 CFR part 51, subpart W, states are only required to have SIP-approved general conformity regulations. By incorporating by reference all of 40 CFR part 93, the District has adopted and submitted as a SIP revision a rule that includes regulations for determining conformity of general as well as transportation-related Federal actions.

40 CFR part 51, subpart W and 40 CFR part 93 were promulgated to implement section 176(a) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), which requires that all Federal actions conform to applicable air quality implementation plans. The Federal conformity rule in 40 CFR part 93 establishes standards and procedures to follow when evaluating the conformity of Federal projects to all applicable implementation plans developed pursuant to section 110 and part D of the CAA. This rule only applies to areas designated as nonattainment or maintenance under the CAA. By adopting a rule that incorporates by reference 40 CFR part 93, and submitting this rule to EPA as a SIP revision, the District has satisfied the requirement to submit a plan revision containing criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan.

III. Final Action

EPA is approving as a SIP revision the District's regulation at Title 20, DCMR Chapter 4, Section 403.1, Determining Conformity of Federal Actions to State or Federal Implementation Plans, submitted as a SIP revision on December 16, 1998.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003 without further notice unless EPA receives adverse comment by July 7, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General 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.*).

B. 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 the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the District's conformity regulations must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the District of Columbia's general conformity rule, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: May 23, 2003.

William C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 J—District of Columbia

■ 2. In § 52.470, the table in paragraph (c) is amended by revising the entry for Chapter 4 and adding an entry to Chapter 4 after the second existing entry to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
*	* * * * *	*	*	*
Chapter 4	Ambient Monitoring, Emergency Procedures, Chemical Accident Prevention and Conformity			
*	* * * * *	*	*	*
Section 403	Determining Conformity of Federal Actions to State or Federal Implementation Plans.	11/6/98	6/5/03 68 FR 33639.	
*	* * * * *	*	*	*

[FR Doc. 03–14033 Filed 6–4–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 01–185; FCC 03–15]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document is a summary of the Report and Order adopted by the Commission in this proceeding. The Commission permitted certain mobile-satellite service (MSS) providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands to integrate ancillary terrestrial components (ATCs) into their MSS networks. Specifically, MSS operators are allowed to seek authority to integrate ATCs into their networks for the purpose of enhancing their ability to offer high-quality, affordable mobile services on land, in the air and over oceans without using any additional spectrum resources beyond spectrum already allocated and authorized by the Commission for MSS in these bands. The Commission found that permitting MSS ATC in the manner prescribed in the Report and Order should increase the efficiency of spectrum use through MSS network integration and terrestrial reuse and permit better coverage in areas that MSS providers could not otherwise serve; provide additional communications that may enhance public protection; and provide new services in the markets served by MSS. Thus, it concluded that making ATC available to licensed MSS operators serves the public interest.

DATES: Effective July 7, 2003, except for §§ 25.149, 25.252, 25.253, 25.254, which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. The incorporation by reference of certain publications listed in § 25.254 will be approved by the Director of the Federal Register as of the effective date announced in the **Federal Register**. OMB, the general public, and other Federal agencies are invited to comment on the information collection requirements on or before August 4, 2003.

FOR FURTHER INFORMATION: Trey Hanbury, Breck Blalock, or James Ball, Policy Division, International Bureau, (202) 418–1460. For information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in IB Docket No. 01–185, FCC No. 03–15, adopted January 29, 2003, and released on February 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–15A1.pdf*. The complete text may also be purchased from the Commission's copy contractor, Qualex International, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 863–2893, via facsimile at (202) 863–2898, or via e-mail at *qualexint@aol.com*.

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–3. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collections contained in this proceeding.

Summary of Report and Order

On August 9, 2001, the Commission adopted a notice of proposed rulemaking in this proceeding (66 FR 47621, September 13, 2001) to obtain comment on proposals to bring flexibility to the delivery of communications by mobile satellite service (MSS) providers. On February 3, 2003, the Commission released a Report and Order and notice of proposed rulemaking in this proceeding. The notice of proposed rulemaking relating to this proceeding is published elsewhere in this issue of the **Federal Register**. In the Report and Order, the Commission permitted flexibility in the delivery of communications by MSS providers that operate in three sets of radio frequency bands: the 2 GHz MSS band, the L-band and the Big LEO bands. Specifically, we permit MSS licensees to integrate ATCs into their MSS networks. The Commission permits MSS operators to seek authority to integrate ATCs into their networks for the purpose of enhancing their ability to offer high-quality, affordable mobile services on land, in the air and over the oceans without using any additional spectrum resources beyond spectrum already allocated and authorized by the Commission for MSS in these bands. The Commission will authorize MSS ATC subject to conditions that ensure that the added terrestrial component remains ancillary to the principal MSS offering. The Commission does not intend, nor will it permit, the terrestrial component to become a stand-alone service. Permitting MSS ATCs in this manner should: (1) Increase the efficiency of spectrum use through MSS network integration and terrestrial reuse and permit better coverage in areas that MSS providers could not otherwise serve; (2) reduce costs, eliminate inefficiencies and enhance operational ability in MSS systems; (3) provide additional communications that may enhance public protection; and (4) strengthen competition in the markets served by MSS. An Errata was issued on March 7, 2003, to correct minor errors in the text and appendices of the Report and Order. The summary and rules that appear herein reflect the corrected text.

Procedural Matters

Paperwork Reduction Act

This Report and Order contains a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due August 4, 2003. A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

Final Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule

making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." *See* 5 U.S.C. 601–612, the RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104–121, title II, 110 Stat. 857 (1996). The RFA generally defines the term "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. *See* 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 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 U.S. Small Business Administration (SBA). *See* 15 U.S.C. 632. The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such companies having $12.5 million or less in annual revenue. *See* 13 CFR 121.201, NAICS code 517410.

Pursuant to the RFA, the Commission incorporated an Initial Regulatory *Flexibility Analysis* (IRFA) into the *Flexibility NPRM*. (*Flexibility Notice*, 16 FCC Rcd at 15565–67, paragraphs 85–93.) We received no comments in response to the IRFA. For the reasons described below, we now certify that the policies and rules adopted in the present *Flexibility Order* will not have a significant economic impact on a substantial number of small entities.

The *Flexibility Order* provides additional operational flexibility for MSS providers that operate in three sets of radio frequency bands: the 2 GHz MSS band, the L-band, and the Big LEO bands. The flexibility consists of permitting the MSS providers to integrate ancillary terrestrial components (ATC) into their networks. We find that providing this flexibility will have no significant economic impact on small entities because the MSS operators will not be required to make use of the additional capability. We believe that permitting the additional flexibility will enhance the ability of MSS operators to offer American consumers high quality, affordable mobile services on land, in the air, and over the oceans without using spectrum resources beyond the spectrum already allocated and authorized for MSS use in these bands. Operational flexibility will: (1) Increase efficient spectrum use through MSS network integration and terrestrial reuse; (2) reduce costs, eliminate inefficiencies, and enhance operational ability in MSS systems; (3) encourage technological innovation and the development of new wireless applications; and (4) strengthen competition in the telecommunications marketplace both in the United States and in other nations. We implement the *Flexibility Order* through the addition of a footnote to the U.S. Table of Frequency Allocations, found in § 2.106 of our rules, 47 CFR 2.106.

We also find that our action—which brings additional flexibility to existing MSS licensees—will not affect a substantial number of small entities. There are currently five 2 GHz MSS licensees, two Big LEO MSS licensees and three L-band MSS licensees authorized to provide service in the United States. Although at least one of the 2 GHz MSS system licensees and one of the Big LEO licensees are small businesses, small businesses often do not have the financial ability to become MSS system operators because of the high implementation costs associated with satellite systems and services. We expect that, by the time of MSS ATC system implementation, these current small businesses will no longer be considered small due to the capital requirements for launching and operating a proposed system.

Ordering Clauses

It is ordered that, pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r), this Report and Order is adopted and that part 25 of the Commission's rules is amended, as specified in the rule changes, effective August 4, 2003.

It is further ordered that the petition for rulemaking filed by Iridium Satellite LLC is granted in part to the extent described above and is denied in all other respects.

It is further ordered that the Regulatory Flexibility Analysis, as required by section 604 of the Regulatory Flexibility Act and as set forth in Appendix D of the Report and Order, is adopted.

It is further ordered that the Regulatory Flexibility Analysis, as required by section 604 of the Regulatory Flexibility Act and as set forth in Appendix D of the Report and Order, is adopted.

It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 25

Incorporation by reference, Radio, Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 25 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising pages 43, 44, 45, 46, 48, 49, and 52 of the Table of Frequency Allocations and adding footnote US380 to the list of United States (US) Footnotes, to read as follows:

§ 2.106 Table of Frequency Allocations.

BILLING CODE 6712–01–P

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1429-1452 FIXED MOBILE except aeronautical mobile	1429-1452 FIXED MOBILE 5.343		1429.5-1432	See previous page	See previous page
				1430-1432 FIXED (telemetry) LAND MOBILE (telemetry) FIXED-SATELLITE (space-to-Earth) US368	Private Land Mobile (90) Personal (95)
			5.341 US352	5.341 US350 US352	
			1432-1435	1432-1435 FIXED MOBILE except aeronautical mobile	Wireless Communications (27)
5.341 5.342	5.341		5.341 US361	5.341 US361	
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347	1452-1492 FIXED MOBILE 5.343 BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347		1435-1525 MOBILE (aeronautical telemetry)		Aviation (87)
5.341 5.342	5.341 5.344				
1492-1525 FIXED MOBILE except aeronautical mobile	1492-1525 FIXED MOBILE 5.343 MOBILE-SATELLITE (space-to-Earth) 5.348A	1492-1525 FIXED MOBILE			
5.341 5.342	5.341 5.344 5.348	5.341 5.348A	5.341 US78		
1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile except aeronautical mobile 5.349	1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Fixed Mobile 5.343	1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile 5.349	1525-1530 MOBILE-SATELLITE (space-to-Earth) US380 Mobile (aeronautical telemetry)		Satellite Communications (25) Aviation (87)
5.341 5.342 5.350 5.351 5.352A 5.354	5.341 5.351 5.354	5.341 5.351 5.352A 5.354	5.341 5.351 US78		

1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile except aeronautical mobile 5.341 5.342 5.351 5.354	1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.351 5.354	1530-1535 MOBILE-SATELLITE (space-to-Earth) US380 MARITIME MOBILE-SATELLITE (space-to-Earth) Mobile (aeronautical telemetry) 5.341 5.351 US78 US315	
1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.351A 5.341 5.351 5.353A 5.354 5.355 5.356 5.357 5.357A 5.359 5.362A		1535-1544 MOBILE-SATELLITE (space-to-Earth) US380 MARITIME MOBILE-SATELLITE (space-to-Earth) 5.341 5.351 US315	Satellite Communications (25) Maritime (80)
		1544-1545 MOBILE-SATELLITE (space-to-Earth) 5.341 5.356	
		1545-1549.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) Mobile-satellite (space-to-Earth) US380 5.341 5.351 US308 US309	Aviation (87)
		1549.5-1558.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US380 5.341 5.351 US308 US309	
		1558.5-1559 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) 5.341 5.351 US308 US309 US380	
1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.329A 5.341 5.362B 5.362C 5.363		1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) 5.341 US208 US260	Note: The NTIA Manual (footnote G126) states that differential GPS stations may be authorized in the 1559-1610 MHz band, but the FCC has not yet addressed this footnote

1610-1670 MHz (UHF)					Page 45
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) US319 US380 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE(Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US208		Satellite Communications (25) Aviation (87)
1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION 5.149 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.149 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) 5.149 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) US319 US380 RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) 5.149 5.341 5.364 5.366 5.367 5.368 5.372 US208		
1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) 5.341 5.355 5.359 5.363 5.364 5.365 5.366 5.367 5.368 5.369 5.371 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.365 5.366 5.367 5.368 5.370 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) Radiodetermination-satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.365 5.366 5.367 5.368 5.369 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.365 5.366 5.367 5.368 5.372 US208 US380		

1626.5-1660 MOBILE-SATELLITE (Earth-to-space) 5.351A	1626.5-1645.5 MOBILE-SATELLITE (Earth-to-space) US380 MARITIME MOBILE-SATELLITE (Earth-to-space) 5.341 5.351 US315	Satellite Communications (25) Maritime (80)
	1645.5-1646.5 MOBILE-SATELLITE (Earth-to-space) 5.341 5.375	
	1646.5-1651 AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) Mobile-satellite (Earth-to-space) US380 5.341 5.351 US308 US309	Aviation (87)
5.341 5.351 5.353A 5.354 5.355 5.357A 5.359 5.362A 5.374 5.375 5.376	1651-1660 MOBILE-SATELLITE (Earth-to-space) US380 AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) 5.341 5.351 US308 US309	
1660-1660.5 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY 5.149 5.341 5.351 5.354 5.362A 5.376A	1660-1660.5 AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) RADIO ASTRONOMY 5.149 5.341 5.351 US308 US309 US380	
1660.5-1668.4 RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149 5.341 5.379 5.379A	1660.5-1668.4 RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	
1668.4-1670 METEOROLOGICAL AIDS FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149 5.341	1668.4-1670 METEOROLOGICAL AIDS (radiosonde) RADIO ASTRONOMY US74 5.149 5.341 US99	

			1755-1850 FIXED MOBILE G42	1755-1850	
5.149 5.341 5.385 5.386 5.387 5.388			1850-2025	1850-2000 FIXED MOBILE NG177	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
1930-1970 FIXED MOBILE 5.388A 5.388	1930-1970 FIXED MOBILE 5.388A Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388			
1970-1980 FIXED MOBILE 5.388A 5.388					
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F				2000-2020 MOBILE-SATELLITE (Earth-to-space) US380 NG156	Satellite Communications (25)
2010-2025 FIXED MOBILE 5.388A 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389D 5.389E 5.390	2010-2025 FIXED MOBILE 5.388A 5.388		2020-2025 FIXED MOBILE NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347	2025-2110 FIXED NG23 NG118 MOBILE 5.391 5.392 US90 US222 US346 US347	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2110-2120 FIXED MOBILE 5.388A SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2155 FIXED NG23 MOBILE US252	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
2120-2160 FIXED MOBILE 5.388A 5.388	2120-2160 FIXED MOBILE 5.388A Mobile-satellite (space-to-Earth) 5.388	2120-2170 FIXED MOBILE 5.388A	2120-2200	2155-2160 FIXED NG23	Domestic Public Fixed (21) Fixed Microwave (101)
2160-2170 FIXED MOBILE 5.388A 5.388 5.392A	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389D 5.389E 5.390	5.388		2160-2180 FIXED NG23 NG153 MOBILE NG178	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F 5.392A				2180-2200 MOBILE-SATELLITE (space-to-Earth) US380 NG23 NG168	Satellite Communications (25)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only)	2200-2290	

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation 5.150 5.371 5.397 5.398 5.399 5.400 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398 5.150 5.400 5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403 5.405 5.407 5.412 5.414	2500-2520 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.403 5.404 5.407 5.414 5.415A		2500-2655	2500-2655 FIXED 5.409 5.411 US205 FIXED-SATELLITE (space-to-Earth) NG102 MOBILE except aeronautical mobile BROADCASTING-SATELLITE NG101	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2520-2655 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.405 5.412 5.418 5.418B 5.418C	2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.418B 5.418C	2520-2535 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.403 5.415A			
		2535-2655 FIXED 5.409 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.418 5.418A 5.418B 5.418C	5.339 US205 US269	5.339 US269	

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United States (US) Footnotes

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US380 In the bands 1525–1544 MHz, 1545–1559 MHz, 1610–1645.5 MHz, 1646.5–1660.5 MHz, 2000–2020 MHz, 2180–2200 MHz, and 2483.5–2500 MHz, a non-Federal Government licensee in the mobile-satellite service (MSS) may also operate an ancillary terrestrial component in conjunction with its MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of its MSS authorization.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

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

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 4. Section 25.117 is amended by adding paragraph (f) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(f) An application for modification of a space station license to add an ancillary terrestrial component to an eligible satellite network will be treated as a request for a minor modification if the particulars of operations provided by the applicant comply with the criteria specified in § 25.149.

■ 5. Section 25.143 is amended by adding paragraphs (i), (j), and (k) to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and the 2 GHz mobile-satellite service.

* * * * *

(i) *Incorporation of ancillary terrestrial component base stations into a 1.6/2.4 GHz mobile-satellite service network or a 2 GHz mobile-satellite service network.* Any licensee authorized to construct and launch a 1.6/2.4 GHz or a 2 GHz mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(j) *Pre-operational testing.* An MSS ATC licensee may, without further authority from the Commission, conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, its ATC authorization, the rules and regulations in this part and the applicable engineering standards. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.149 and must have been granted ATC authority through a modification of its space station license.

(k) *Aircraft.* ATC mobile terminals must be operated in accordance with § 25.136(a). All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 2000–2020/2180–2200 MHz or 1610–1626.5 MHz/2483.5–2500 MHz bands shall bear the following statement in a conspicuous location on the device: "This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft."

■ 6. Section 25.146 is amended by revising the section heading and paragraphs (g), (h), and (i) to read as follows:

§ 25.146 Licensing provisions for the L-Band mobile-satellite service.

* * * * *

(g) *Incorporation of ancillary terrestrial component base station into an L-band Mobile-Satellite Service System.* Any licensee authorized to construct and launch an L-band mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(h) *Pre-operational testing.* An MSS ATC licensee may, without further authority from the Commission, conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, its ATC authorization, the rules and regulations in this part and the applicable engineering standards. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.147 and must have been granted ATC authority through a modification of its space station license.

(i) *Aircraft.* All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 1626.5–1660.5 MHz and 1525–1559 MHz bands shall bear the following statement in a conspicuous location on the device: "This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft."

* * * * *

■ 7. Section 25.149 is added to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellite service networks operating in the 1.5/1.6 GHz, 1.6/2.4 GHz and 2 GHz mobile-satellite service.

(a) Applicants for ancillary terrestrial component authority shall demonstrate compliance with the following through certification or explanatory technical exhibit, as appropriate:

(1) ATC shall be deployed in the forward-band mode of operation whereby the ATC mobile terminals transmit in the MSS uplink bands and the ATC base stations transmit in the MSS downlink bands in portions of the 2000–2020 MHz/2180–2200 MHz bands (2 GHz band), the 1626.5–1660.5 MHz/1525–1559 MHz bands (L-band), and the 1610–1626.5 MHz/2483.5–2500 MHz bands (Big LEO band).

(2)ATC operations shall be limited to certain frequencies:

(i) In the 2000–2020 MHz/2180–2200 MHz bands (2 GHz MSS band), ATC operations are limited to the selected assignment of the 2 GHz MSS licensee that seeks ATC authority.

(ii) In the 1626.5–1660.5 MHz/1525–1559 MHz bands (L-band), ATC operations are limited to the frequency assignments authorized and internationally coordinated for the MSS system of the MSS licensee that seeks ATC authority.

(iii) In the 1610–1626.5 MHz/2483.5–2500 MHz bands (Big LEO band), ATC operations are limited to the 1610–1615.5 MHz, 1621.35–1626.5 MHz, and 2492.5–2498.0 MHz bands and to the specific frequencies authorized for use by the MSS licensee that seeks ATC authority.

(3) ATC operations shall not exceed the geographical coverage area of the mobile-satellite service network of the applicant for ATC authority.

(4) ATC base stations shall comply with all applicable antenna and structural clearance requirements established in part 17 of the Commission's rules.

(5) ATC base stations and mobile terminals shall comply with part 1 of the Commission's rules, Subpart I—Procedures Implementing the National Environmental Policy Act of 1969, including the guidelines for human exposure to radio frequency

electromagnetic fields as defined in §§ 1.1307(b) and 1.1310 of this chapter for PCS networks.

(6) ATC base station operations shall use less than all available MSS frequencies when using all available frequencies for ATC base station operations would exclude otherwise available signals from MSS space-stations.

(b) Applicants for an ancillary terrestrial component shall demonstrate compliance with the following criteria through certification:

(1) *Geographic and temporal coverage.* (i) For the 2 GHz MSS band, an applicant must demonstrate that it can provide space-segment service covering all 50 states, Puerto Rico, and the U.S. Virgin Islands one-hundred percent of the time, consistent with the coverage requirements for 2 GHz MSS GSO operators.

(ii) For the L-band, an applicant must demonstrate that it can provide space-segment service covering all 50 states, Puerto Rico, and the U.S. Virgin Islands one-hundred percent of the time, unless it is not technically possible for the MSS operator to meet the coverage criteria from its orbital position.

(iii) For the Big LEO band, an applicant must demonstrate that it can provide space-segment service: to all locations as far north as 70° North latitude and as far south as 55° South latitude for at least seventy-five percent of every 24-hour period, *i.e.*, that at least one satellite will be visible above the horizon at an elevation angle of at least 5° for at least 18 hours each day; and on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, *i.e.*, that at least one satellite will be visible above the horizon at an elevation angle of at least 5° at all times.

(2) *Replacement satellites.* (i) Operational NGSO MSS ATC systems shall maintain an in-orbit spare satellite.

(ii) Operational GSO MSS ATC systems shall maintain a spare satellite on the ground within one year of commencing operations and launch it into orbit during the next commercially reasonable launch window following a satellite failure.

(iii) All MSS ATC licensees must report any satellite failures, malfunctions or outages that may require satellite replacement within ten days of their occurrence.

(3) *Commercial availability.* Mobile-satellite service must be commercially available (*viz.*, offering services for a fee) in accordance with the coverage requirements that pertain to each band as a prerequisite to an MSS licensee's offering ATC service.

(4) *Integrated services.* MSS ATC licensees shall offer an integrated service of MSS and MSS ATC. Applicants for MSS ATC may establish an integrated service offering by affirmatively demonstrating that:

(i) The MSS ATC operator will use a dual-mode handset that can communicate with both the MSS network and the MSS ATC component to provide the proposed ATC service; or

(ii) Other evidence establishing that the MSS ATC operator will provide an integrated service offering to the public.

(5) *In-band operation.* (i) In the 2 GHz MSS band, MSS ATC is limited to an MSS licensee's selected assignment. MSS ATC operations on frequencies beyond the MSS licensee's selected assignment are prohibited.

(ii) In the Big LEO band, MSS ATC is limited to no more than 5.5 MHz of spectrum in each direction of operation. Licensees in these bands may implement ATC only on those channels on which MSS is authorized, consistent with the Big LEO band-sharing arrangement.

(iii) In the L-band, MSS ATC is limited to those frequency assignments available for MSS use in accordance with the Mexico City Memorandum of Understanding, its successor agreements or the result of other organized efforts of international coordination.

(c) *Equipment certification.* (1) Each ATC MET utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its certification procedure for use under this part.

(2) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

(3) Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. MSS ATC base stations must comply with the requirements specified in § 1.1307(b) of this chapter for PCS base stations. MSS ATC mobile terminals must comply with the requirements specified for mobile and portable PCS transmitting devices in § 1.1307(b) of this chapter. MSS ATC mobile terminals must also comply with the requirements in §§ 2.1091 and 2.1093 of this chapter for Satellite Communications Services devices. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(d) Applicants for an ancillary terrestrial component authority shall demonstrate compliance with the provisions of §§ 1.924 of this chapter and 25.203(e) through (g) and with §§ 25.252, 25.253, or 25.254, as appropriate, through certification or explanatory technical exhibit.

(e) Upon receipt of ATC authority, all ATC licensees must ensure continued compliance with this section and §§ 25.252, 25.253, or 25.254, as appropriate.

■ 8. Section 25.201 is amended by adding the following definitions in alphabetical order to read as follows:

§ 25.201 Definitions.

* * * * *

Ancillary terrestrial component. The term "ancillary terrestrial component" means a terrestrial communications network used in conjunction with a qualifying satellite network system authorized pursuant to these rules and the conditions established in the Report and Order issued in IB Docket 01–185, *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.*

Ancillary terrestrial component base station. The term "ancillary terrestrial component base station" means a terrestrial fixed facility used to transmit communications to or receive communications from one or more ancillary terrestrial component mobile terminals.

Ancillary terrestrial component mobile terminal. The term "ancillary terrestrial component mobile terminal" means a terrestrial mobile facility used to transmit communications to or receive communications from an ancillary terrestrial component base station or a space station.

* * * * *

Selected assignment. The term "selected assignment" means a spectrum assignment voluntarily identified by a 2 GHz MSS licensee at the time that the licensee's first 2 GHz mobile-satellite service satellite reaches its intended orbit, or other mobile-satellite service spectrum in which the Commission permits a 2 GHz mobile-

satellite service licensee to conduct mobile-satellite service operations with authority superior to that of other in-band, mobile-satellite service licensees.

* * * * *

Structural attenuation. The term "structural attenuation" means the signal attenuation caused by transmitting to and from mobile terminals which are located in buildings or other man-made structures that attenuate the transmission of radiofrequency radiation.

* * * * *

■ 9. Section 25.252 is added to read as follows:

§ 25.252 Special requirements for ancillary terrestrial components operating in the 2000–2020 MHz/2180–2200 MHz bands.

(a) Applicants for an ancillary terrestrial component in these bands must demonstrate that ATC base stations shall not:

(1) Exceed an EIRP of −100.6 dBW/4 kHz for out-of-channel emissions at the edge of the MSS licensee's selected assignment.

(2) Exceed a peak EIRP of 27 dBW in 1.23 MHz.

(3) Exceed an EIRP toward the physical horizon (not to include man-made structures) of 25.5 dBW in 1.23 MHz.

(4) Be located less than 190 meters from all airport runways and aircraft stand areas, including takeoff and landing paths.

(5) Exceed an aggregate power flux density of −51.8 dBW/m² in a 1.23 MHz bandwidth at all airport runways and aircraft stand areas, including takeoff and landing paths and all ATC base station antennas shall have an overhead gain suppression according to the following.

(6) Be located less than 820 meters from a U.S. Earth Station facility operating in the 2200–2290 MHz band. In its MSS ATC application, the MSS licensee should request a list of operational stations in the 2200–2290 MHz band.

(7) Exceed an EIRP in the 1559–1610 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW in the 1559–1605 MHz band for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the base station is transmitting.

(8) Use ATC base station antennas that have a gain greater than 17 dBi and must have an overhead gain suppression according to the following:

Angle from direction of maximum gain, in vertical plane, above antenna (degrees)	Antenna discrimination pattern (dB)
0	Gmax
2	Not to Exceed Gmax − 14
8 to 180	Not to Exceed Gmax − 25

Where: Gmax is the maximum gain of the base station antenna in dBi.

(b) Applicants for an ancillary terrestrial component in these bands must demonstrate that ATC mobile terminals shall:

(1) Observe a peak EIRP limit of 1.0 dBW in 1.23 MHz.

(2) Limit out-of-channel emissions at the edge of a MSS licensee's selected assignment to an EIRP density of −67 dBW/4 kHz.

(3) Not exceed an EIRP in the 1559–1610 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW in the 1559–1605 MHz band for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the mobile terminal is transmitting.

(c) For ATC operations in the 2000–2020 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency within the 2000 to 2020 MHz band outside the licensee's frequency band(s) of operations, emissions shall be attenuated by at least 43 + 10 log (P) dB.

(2) Emissions on frequencies lower than 1995 MHz and higher than 2025 MHz shall be attenuated by at least 70 + 10 log P. Emissions in the bands 1995–2000 MHz and 2020–2025 MHz shall be attenuated by at least a value as determined by linear interpolation from 70 + 10 log P at 1995 MHz or 2025 MHz, to 43 + 10 log P dB at the nearest MSS band edge at 2000 MHz or 2020 MHz respectively.

(3) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, in its discretion, require greater attenuation than specified in paragraphs (c)(1) and (2) of this section.

(4) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater.

Note to § 25.252: The preceding rules of § 25.252 are based on cdma2000 system architecture. To the extent that a 2 GHz MSS licensee is able to demonstrate that the use of a different system architecture would produce no greater potential interference than that produced as a result of implementing the rules of this section, an MSS licensee is permitted to apply for ATC authorization based on another system architecture.

■ 10. Section 25.253 is added to read as follows:

§ 25.253 Special requirements for ancillary terrestrial components operating in the 1626.5–1660.5 MHz/1525–1559 MHz bands.

(a) An applicant for an ancillary terrestrial component in these bands shall:

(1) Implement the maximum available power control for all ATC base stations and mobile terminals under GSM 800 or GSM 1800 standard (dynamic range of 30 dB in steps of 2 dB).

(2) Implement a variable rate vocoder in the ATC mobile terminal such that the duty cycle of the mobile terminal is reduced when the EIRP of the mobile terminals requested by the power control system is increased above a nominal −7.4 dBW. The duty cycle will be reduced by refraining from transmitting on consecutive time slots. The duty cycle of the mobile terminal, as measured over a 0.25 second period, shall comply with the following schedule:

Nominal mobile terminal peak EIRP	Mobile terminal transmit duty cycle (percent)
Equal to or less than −7.4 dBW	100
Greater than −7.4 dBW	50
Greater than −4.4 dBW	25
Greater than −1.4 dBW	20
Greater than −0.4 dBW	18.2

(3) Implement the provisions of paragraph (a)(2) of this section in a manner that precludes other ATC mobile terminals from using the open time slots.

(4) Demonstrate, at the time of application, how the ATC network will comply with the requirements of paragraphs (a) and (b)(1) through (b)(3) of this section.

(5) Demonstrate, at the time of application, how its ATC network will comply with the requirements of footnotes US308 and US315 to the table of frequency allocations contained in § 2.106 of this chapter regarding priority and preemptive access to the L-band MSS spectrum by the aeronautical mobile-satellite en-route service (AMS(R)S) and the global maritime distress and safety system (GMDSS).

(6) Demonstrate how its ATC network base stations and mobile terminals will comply with the Global Mobile Personal Communications by Satellite (GMPCS) system requirements to protect the radionavigation satellite services (RNSS) operations in the allocation above 1559 MHz.

(7) Coordinate with the terrestrial CMRS operators prior to initiating ATC transmissions when co-locating ATC base stations with terrestrial commercial mobile radio service (CMRS) base stations that make use of Global Positioning System (GPS) time-based receivers.

(8) Demonstrate that the cellular structure of the ATC network design includes 18 dB of link margin allocated to structural attenuation. If less structural attenuation is used, the maximum number of base stations permitted under paragraph (c) of this section must be reduced or a showing must be made that there would be no increase in interference to other MSS operators and that the applicant's satellite would continue to meet the other requirements of this section.

(b) ATC base stations shall not exceed an out-of-channel emissions measurement of −57.9 dBW/MHz at the edge of a MSS licensee's authorized and internationally coordinated MSS frequency assignment.

(c) The maximum number of base stations operating in the U.S. on any one 200 kHz channel shall not exceed 1725. During the first 18 months following activation for testing of the first ATC base station, the L-band ATC operator shall not implement more than 863 base stations on the same 200 kHz channel. L-band ATC operators shall notify the Commission of the date of the activation for testing of the first ATC base station and shall maintain a record of the total number of ATC base stations operating in the U.S. on any given 200 kHz of spectrum. Upon request by the Commission, L-band ATC operators shall provide this information to resolve any claim it receives from an L-band MSS operator that ATC operations are causing interference to its MSS system.

(d) Applicants for an ancillary terrestrial component in these bands must demonstrate that ATC base stations shall not:

(1) Exceed peak EIRP of 19.1 dBW, in 200 kHz, per carrier with no more than three carriers per sector;

(2) Exceed an EIRP toward the physical horizon (not to include man-made structures) of 14.1 dBW per carrier in 200 kHz;

(3) Locate any ATC base station less than 470 meters from all airport runways and aircraft stand areas, including takeoff and landing paths;

(4) Exceed an aggregate power flux density level of −73.0 dBW/m²/200 kHz at the edge of all airport runways and aircraft stand areas, including takeoff and landing paths;

(5) Locate any ATC base station less than 1.5 km from the boundaries of all navigable waterways or the ATC base stations shall not exceed a power flux density level of −64.6 dBW/m²/200 kHz at the water's edge of any navigable waterway;

(6) Exceed a peak antenna gain of 16 dBi;

(7) Exceed an EIRP in the 1559–1605 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The ATC station shall not exceed an EIRP in the 1605–1610 MHz frequency range that is determined by the linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz for wideband emissions. The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the base station is transmitting.

(e) Applicants for an ancillary terrestrial component in these bands must demonstrate, at the time of the application, that ATC base stations shall use left-hand-circular polarization antennas with a maximum gain of 16 dBi and overhead gain suppression according to the following:

Angle from direction of maximum gain, in vertical plane, above antenna (degrees)	Antenna discrimination pattern (dB)
0	Gmax
5	Not to Exceed Gmax − 5
10	Not to Exceed Gmax − 19
15 to 30	Not to Exceed Gmax − 27
30 to 55	Not to Exceed Gmax − 35
55 to 145	Not to Exceed Gmax − 40
145 to 180	Not to Exceed Gmax − 26

Where: Gmax is the maximum gain of the base station antenna in dBi.

(f) Prior to operation, ancillary terrestrial component licensees shall:

(1) Provide the Commission with sufficient information to complete coordination of ATC base stations with Search-and-Rescue Satellite-Aided Tracking (SARSAT) earth stations operating in the 1544–1545 MHz band for any ATC base station located either within 27 km of a SARSAT station, or within radio horizon of the SARSAT station, whichever is less.

(2) Take all practicable steps to avoid locating ATC base stations within radio line of sight of MAT receive sites in order to protect U.S. MAT systems consistent with ITU–R Recommendation ITU–R M.1459. MSS ATC base stations

located within radio line of sight of a MAT receiver must be coordinated with the Aerospace and Flight Test Radio Coordinating Council (AFTRCC) for non-Government MAT receivers on a case-by-case basis prior to operation. For government MAT receivers, the MSS licensee shall supply sufficient information to the Commission to allow coordination to take place. A listing of current and planned MAT receiver sites can be obtained from AFTRCC for non-Government sites and through the FCC's IRAC Liaison for Government MAT receiver sites.

(g) Applicants for an ancillary terrestrial component in these bands must demonstrate that ATC mobile terminals shall:

(1) Be limited to a peak EIRP level of 0 dBW and an out-of-channel emissions of −67dBW/4 kHz at the edge of an MSS licensee's authorized and internationally coordinated MSS frequency assignment.

(2) Take all practicable steps to avoid ATC mobile terminals from causing interference to U.S. radio astronomy service (RAS) observations in the 1660–1660.5 MHz band.

(3) Not exceed an EIRP in the 1559–1605 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The ATC station shall not exceed an EIRP in the 1605–1610 MHz frequency range that is determined by the linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz for wideband emissions. The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the mobile terminal is transmitting.

Note to § 25.253: The preceding rules of § 25.253 are based on GSM/TDMA 800 or GSM 1800 system architecture. To the extent that an L-band MSS licensee is able to demonstrate that the use of a different system architecture would produce no greater potential interference than that produced as a result of implementing the rules of this section, an MSS licensee is permitted to apply for ATC authorization based on another system architecture.

■ 11. Section 25.254 is added to read as follows:

§ 25.254 Special requirements for ancillary terrestrial components operating in the 1610–1626.5 MHz/2483.5–2500 MHz bands.

(a) An applicant for an ancillary terrestrial component in these bands must demonstrate that ATC base stations shall:

(1) Not exceed a peak EIRP of 32 dBW in 1.25 MHz;

(2) Not cause unacceptable interference to systems identified in paragraph (c) of this section and, in any case, shall not exceed out-of-channel emissions of −44.1 dBW/30 kHz at the edge of the MSS licensee's authorized frequency assignment;

(3)At the time of application, that it has taken, or will take steps necessary to avoid causing interference to other services sharing the use of the 2450–2500 MHz band through frequency coordination; and

(4)Not exceed an EIRP in the 1559–1605 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The ATC station shall not exceed an EIRP in the 1605–1610 MHz frequency range that is determined by the linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz for wideband emissions. The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the base station is transmitting.

(b) An applicant for an ancillary terrestrial component in these bands must demonstrate that mobile terminals shall:

(1) Meet the requirements contained in § 25.213 to protect radio astronomy service (RAS) observations in the 1610.6–1613.8 MHz band from unacceptable interference;

(2) Observe a peak EIRP limit of 1.0 dBW in 1.25 MHz;

(3) Observe an out-of-channel EIRP limit of −57.1 dBW/30 kHz at the edge of the licensed MSS frequency assignment.

(4) Not exceed an EIRP in the 1559–1605 MHz band of −70 dBW/MHz for wideband emissions and −80 dBW for narrowband emissions (discrete emissions of less than 700 Hz bandwidth). The ATC station shall not exceed an EIRP in the 1605–1610 MHz frequency range that is determined by the linear interpolation from −70 dBW/MHz at 1605 MHz to −10 dBW/MHz at 1610 MHz for wideband emissions. The wideband EIRP level is to be measured using a root mean square (RMS) detector function with a resolution bandwidth of 1 MHz or equivalent and the video bandwidth is not less than the resolution bandwidth. The narrowband EIRP level is to be measured using an RMS detector function with a resolution bandwidth of 1 kHz or equivalent. The measurements are to be made over a 20 millisecond averaging period when the mobile terminal is transmitting.

(c) Applicants for an ancillary terrestrial component to be used in conjunction with a mobile-satellite service system using CDMA technology shall coordinate the use of the Big LEO MSS spectrum designated for CDMA systems using the framework established by the ITU in Recommendation ITU–R M.1186 "Technical Considerations for the Coordination Between Mobile Satellite Service (MSS) Networks Utilizing Code Division Multiple Access (CDMA) and Other Spread Spectrum Techniques in the 1–3 GHz Band" (1995). Recommendation ITU–R M.1186 is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendations can also be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

Note to § 25.254: The preceding rules of § 25.254 are based on cdma2000 and IS–95 system architecture. To the extent that a Big LEO MSS licensee is able to demonstrate that the use of different system architectures would produce no greater potential interference than that produced as a result of implementing the rules of this section, an MSS licensee is permitted to apply for ATC authorization based on another system architecture.

■ 12. Section 25.255 is added to read as follows:

§ 25.255 Procedures for resolving harmful interference related to operation of ancillary terrestrial components operating in the 1.5/1.6 GHz, 1.6/2.4 GHz and 2 GHz bands.

If harmful interference is caused to other services by ancillary MSS ATC operations, either from ATC base stations or mobile terminals, the MSS ATC operator must resolve any such

interference. If the MSS ATC operator claims to have resolved the interference and other operators claim that interference has not been resolved, then the parties to the dispute may petition the Commission for a resolution of their claims.

[FR Doc. 03–14081 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1124, MM Docket No. 01–104, RM–10103, RM–10323, and RM–10324]

Radio Broadcasting Services; Auburn, Birmingham, Camp Hill, Dadeville, Gardendale, Goodwater, Homewood, Jemison, Northport, Pine Level, Thomaston, and Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration granted.

SUMMARY: This document grants a petition for reconsideration, reinstates, and conditionally grants two counterproposals subject to the outcome of an earlier proceeding. Originally, the *Report and Order* in this proceeding dismissed the two counterproposals because they relied on an effective but non-final action in an earlier rulemaking proceeding. See 67 FR 57203 (September 9, 2002). This document reverses that policy, finding that the counterproposals did not have to await final action in the earlier rulemaking proceeding. *See also* Supplemental Information.

DATES: Effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket 01–104, adopted May 16, 2003, and released May 20, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

In granting the first counterproposal, this document reallotted and changed the community of license for Station WLXY(FM), Channel 263C1 from Northport, Alabama, to Helena, Alabama, as a first local service, at reference coordinates 33–07–07 and 87–15–18. To prevent the removal of the sole local service in Northport, the document reallotted and changed the community of license of Station WTUG(FM), Channel 225C1, from Tuscaloosa to Northport. The reference coordinates for Channel 225C1 at Northport are 33–03–20 and 87–32–59.

In granting the second counterproposal, the document upgraded, reallotted, and changed the community of license for Station WODL(FM) from Channel 247A at Homewood, Alabama, to Channel 247C2 at Gardendale, Alabama The coordinates for Channel 247C2 at Gardendale are 33–34–55 and 86–56–46. To accommodate this action, the document made seven other changes to the FM Table of Allotments. First, the document substituted Channel 262A for Channel 247A at Dadeville, Alabama, at reference coordinates 32–52–58 and 85–49–16, and modified the license for Station WZLM(FM) accordingly. Second, the document substituted Channel 300A for Channel 247A at Orrville, Alabama, at a new site. The reference coordinates for Channel 300A at Orrville are 32–19–35 and 87–11–57. Third, the staff reallotted and changed the community of license for Station WSSY-FM, Channel 248A from Talladega, Alabama, to Goodwater, Alabama, at reference coordinates 33–02–22 and 86–00–21.

Fourth, the documented modified the reference coordinates for vacant and unapplied for Channel 248A, Pine Level, Alabama. The new reference coordinates for Channel 248A at Pine Level are 31–59–33 and 86–00–05. Fifth, the document reallotted and changed the community of license for Station WEZZ–FM, Channel 249A from Clanton, Alabama, to Jemison, Alabama, at reference coordinates of 32–56–23 and 86–46–11. Sixth, the document modified the reference coordinates for Station WAYI(FM), Channel 249A, Thomaston, Alabama, to 32–17–45 and 87–44–45. Seventh, to prevent the removal of the sole local service at Homewood, the document reallotted and changed the community of license for Station WBPT(FM), Channel 295C, from Birmingham to Homewood, Alabama, at reference coordinates of 33–29–19 and 86–45–78.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 295C at Birmingham, by removing Clanton, Channel 249A, by removing Channel 247A and by adding Channel 262A at Dadeville, by removing Channel 247A and by adding Channel 295C at Homewood, by adding Gardendale, Channel 247C2, by adding Goodwater, Channel 248A, by adding Helena, Channel 263C1, by adding Jemison, Channel 249A, by removing Channel 263C1 and by adding Channel 225C1 at Northport, by removing Channel 247A and by adding Channel 300A at Orrville, by removing Channel 248A at Talladega, and by removing Channel 225C1 at Tuscaloosa.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–14093 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1709; MB Docket No.03–41; RM–10642]

Radio Broadcasting Services; Lincoln City and Monmouth, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 236C3 for Channel 236C2 at Lincoln City, Oregon, reallots Channel 236C3 to Monmouth, Oregon, and modifies the license for Station KSND to specify operation Channel 236C3 at Monmouth in response to a petition filed by Radio Beam, LLC. *See* 68 FR 10681, March 6, 2003. The coordinates for Channel 236C3 at Monmouth are 44–50–43 and 123–30–07. With this action, this proceeding is terminated.

DATES: Effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report

and Order, MB Docket No. 03–41, adopted May 16, 2003, and released May 20, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 236C2 at Lincoln City by adding Monmouth, Channel 236C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–14091 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574, 575, and 597

[Docket No. NHTSA–03–15278]

RIN 2127–AI32

Tire Safety Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final Rule; response in part to petitions for reconsideration; delay of effective date.

SUMMARY: On November 18, 2002, NHTSA published a final rule that established a new Federal Motor Vehicle Safety Standard and amended existing standards to improve the information readily available to consumers about tires. The final rule specified an effective date of September 1, 2003 for the vehicle labeling provisions. Subsequently, the agency received petitions for reconsideration of the rule. Several petitioners requested a delay of that effective date. In response to this request, this document delays the effective date for the vehicle labeling provisions of the final rule to September 1, 2004.

DATES: This rule is effective June 5, 2003. The effective date of the final rule amending 49 CFR parts 567, 571, 574, 575, and 597, published at 67 FR 69600, Nov. 18, 2002, is delayed from Sept. 1, 2003, to Sept. 1, 2004. Any petitions for reconsideration of this final rule must be received by NHTSA not later than July 21, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Ms. Mary Versailles, Office of Planning and Consumer Standards. Telephone: (202) 366–2750. Fax: (202) 493–2290. Mr. Joseph Scott, Office of Crash Avoidance Standards, Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

All of these persons may be reached at the following address: National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Final Rule

On November 18, 2002, NHTSA published a final rule that established a new Federal Motor Vehicle Safety Standard and amended existing standards to improve the information readily available to consumers about tires. (67 FR 69600)(Docket No. NHTSA–02–13678) The final rule was published in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. It established a new Federal Motor Vehicle Safety Standard, FMVSS No. 139, *New pneumatic tires for light vehicles,* requiring improved labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. The final rule also required other consumer information to increase public awareness of the importance and methods of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. The final rule applies to all new and retreaded tires for use on vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and to all vehicles with a GVWR of 10,000 pounds or less, except for motorcycles and low speed vehicles.

The final rule made numerous modifications to the vehicle labeling requirements. The agency made four sets of revisions to the presentation of tire inflation pressure and load limit information on the vehicle placard required for passenger cars by S4.3 of § 571.110 and to be required for all light vehicles with a GVWR of 10,000 pounds or less under this rule.[1] This placard, permanently affixed to the glove compartment door or an equally accessible location, currently displays the vehicle capacity weight, the designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location), the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation.

Under the first set of revisions, the agency is requiring that tire inflation pressure information be visually separated by a red colored border from the other information on the existing vehicle placard or, alternatively, be placed on a separate tire inflation pressure label. The vehicle placard is to contain only the information specified in the adopted version of S4.3 (paragraphs (a)–(e)).[2] This information will not be combined with other labeling or certification requirements. The vehicle placard will also have to

[1] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the tire size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, *i.e.*, a passenger car tire) is appropriate for the GAWR.

[2] (a) Vehicle capacity weight expressed as "THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX POUNDS";

(b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupant for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure;

(d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer; and

(e) "SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION".

meet the color and content requirements as discussed below.

Second, the agency is requiring that the tire inflation pressure label and vehicle placard meet the following three requirements: (1) The tire inflation pressure information is in color—red, yellow, and black on a white background, (2) contain a black and white tire symbol icon in the upper left corner, 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) tall/high, and (3) include the phrases "Tire and Loading Information" and "Tire Information" and "See Owner's Manual For Additional Information" in yellow text on a black background.

Third, the agency is replacing the vehicle capacity weight statement on the vehicle placard with the following sentence: "[t]he combined weight of occupants and cargo should never exceed XXX kg or XXX pounds." The "XXX" amount equals the "vehicle capacity weight" of the vehicle as defined in FMVSS No. 110. The information is the same as that currently required to be placed on the vehicle placard by manufacturers.

Fourth, the agency is replacing the vehicle's recommended tire size designation with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would be identical, this minor revision ensures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the vehicle manufacturer. The original tire size designation and accompanying recommended inflation pressure will be indicated by the headings "original tire size" or "original size" on the placard or label.

This rule also requires that the placard or placard and label be located on the driver's side B-pillar. If a vehicle does not have a B-pillar, then the placard and label must be placed on the edge of the driver's door. If the vehicle does not have a driver's side B-pillar and the driver's side door edge is too narrow or does not exist, the placard or placard and label must be affixed to the inward facing surface of the vehicle next to the driver's seating position.

Finally, with regard to vehicle requirements, the agency is requiring that owner's manuals for light vehicles discuss the following five subject areas: (1) Tire labeling, (2) recommended tire inflation pressure, (3) glossary of tire terminology, (4) tire care, and (5) vehicle load limits. A single, reliable source containing the information listed above will aid consumers by providing the information that they need to properly maintain their tires and adhere to recommended load limits.

II. Petitions for Reconsideration

In response to the November 2002 final rule, NHTSA received petitions for reconsideration from tire and vehicle manufacturers and their associations. These petitions made requests addressing various aspects of the both tire and vehicle labeling, *e.g.*, Tire Identification Number (TIN) placement, placement of the vehicle placard and label, content of vehicle placard and label, and effective dates for the tire and vehicle labeling provisions. This final rule will, however, only address the requests regarding the effective date for the vehicle labeling provisions scheduled under the November 2002 final rule to become effective on September 1, 2003.

In January 2003, the Alliance of Automobile Manufacturers (Alliance) and National Truck Equipment Association (NTEA) petitioned the agency to extend the effective date of the vehicle labeling provisions of the final rule. The Alliance petitioned the agency to change the effective date to September 1, 2004, or one year after addressing the issues raised in this petition, and/or issuing the final rule establishing the performance requirements of FMVSS No. 139, whichever is later. NTEA asked for an extension to September 1, 2004.

The Alliance argued that the new labeling requirements for vehicle placards, labels, and owner's manuals were complex and there was a lack of justification of urgently providing this information to customers. The Alliance concluded that it would therefore be reasonable for the agency to allow additional lead time for implementation.

More specifically, the Alliance explained that the final rule will require major changes to the end-of-line manufacturing process and associated facilities. They stated that automotive plants are not currently equipped to compute certain loading information or print a multicolored label as required by the final rule. The vehicle manufacturers will need additional time to procure equipment to print labels and install computers with extensive programming to create the interface to generate occupant and cargo weight information required on each label. NTEA expressed similar concerns about their members' ability to alter processes and acquire necessary equipment for the revised placards and labels during the provided lead time.

With regard to the new owner's manual requirements, the Alliance stated that the writing and publishing of owner's manuals is a 1-year to 2-year process. Because owner's manuals are typically completed in April or May for the following model year, the Alliance argued that the current effective date does not allow sufficient lead time to make the major changes required by the final rule to every owner's manual published.

In addition to considering the Alliance's petition, the agency met with representatives from General Motors (GM) on March 13, 2003 and Ford Motor Company (Ford) on April 22, 2003. GM echoed the Alliance's recommendations concerning the effective date. Ford briefed us in greater detail on why the 8 months lead time presents an obstacle to manufacturers. The new label contains VIN specific data, including payload, seating capacity and spare tire information, not previously required on the label. To comply with the new requirement, Ford is developing a new system and associated processes for their plants to allow them to manage the engineering data required for the label. Ford estimates that Spring 2004 is the earliest that it can have the system operational.

III. Agency Decision

After considering the Alliance's petitions and the discussions with GM and Ford, the agency is modifying the mandatory compliance date for vehicle labeling, including owner's manual requirements. The agency concurs with the Alliance, GM and Ford that manufacturers of light trucks will need to make calculations regarding occupant and cargo weights that they have not needed to make in the past. For many car lines, manufacturers will have to calculate a number of different occupant/cargo weight combinations, depending on the specific model selected by the purchaser. For car lines with a variety of placard/label possibilities, manufacturers also will have to develop processes to ensure that the correct label is applied to each vehicle as it comes off the assembly line. Unlike other rules that may entail relatively greater challenges for small manufacturers, the number of new calculations required by this final rule may be especially challenging for manufacturers with many product lines. Additionally, for all car lines, manufacturers will be required to make extensive changes to their owner's manuals and these changes typically require a longer lead time than that provided by the final rule. For these reasons, the agency is granting the

Alliance's and NTEA's recommendation to extend the mandatory compliance date of the vehicle labeling provisions to September 1, 2004.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review, and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 Fed. Reg. 51735; October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, we have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979).

This final rule delays the effective date of a November 18, 2002 final rule. There are no additional costs associated with today's final rule. Additionally, there are no loss of benefits since compliance was not possible by the originally specified date.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) provides that 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 governmental 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. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In the November 18, 2002 final rule, the agency certified that that rule would not have a significant economic impact on a substantial number of small entities. Bearing that certification in mind, I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this final rule, which delays the effective date of that earlier final rule, will not have a significant economic impact on a substantial number of small entities. There are no additional costs associated with this final rule.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Since it only delays the effective date of a final rule, this final rule does not impose any new collections of information requirements for which a 5 CFR part 1320 clearance must be obtained.

D. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act. We have determined that implementation of this action will not have any significant impact on the quality of the human environment.

E. Executive Order 13132, Federalism

Executive Order 13132 requires us 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" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the regulation.

This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to manufacturers of light vehicles and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States Government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the

aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

H. Executive Order 13045—Economically Significant Rules Disproportionately Affecting Children

Executive Order 13045 (62 FR 19885; April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental, health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: May 30, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–14160 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 68, No. 108
Thursday, June 5, 2003

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM248; Special Conditions No. 25–03–03–SC]

Special Conditions: Embraer Model ERJ–170 Series Airplanes; Electronic Flight Control Systems; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed special conditions; reopening of comment period.

SUMMARY: This document revises proposed special conditions which were previously published in the **Federal Register** for the Embraer Model ERJ–170 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with (1) Electronic Flight Control Systems and (2) Automatic Takeoff Thrust Control System (ATTCS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. This revision adds a limitation on the amount of performance credit to be given for the propulsive thrust provided by the ATTCS that was omitted from the original notice. Additional special conditions will be issued for other novel or unusual design features of Embraer Model 170 series airplanes.

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

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM248, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM248. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149; e-mail *tom.groves@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, 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 these proposed special conditions. 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 notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

If you want the FAA to acknowledge receipt of your comments on this proposal, 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 back to you.

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model ERJ–170 airplane. Two basic versions of the Model ERJ–170 are included in the application. The ERJ–170–100 airplane is a 69–78 passenger, twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The ERJ–170–200 is a derivative with a lengthened fuselage. Passenger capacity for the ERJ–170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds.

Special conditions—pertaining to Electronic Flight Control Systems and to the ATTCS—were proposed as part of the type certification basis applicable to Embraer Model ERJ–170 series airplanes. These proposed special conditions were initially published in the **Federal Register** on April 23, 2003 (68 FR 19958). Shortly thereafter, the Federal Aviation Administration (FAA) received new information which indicated the need for a limitation on the amount of performance credit to be given for the propulsive thrust provided by the ATTCS that was omitted from the original notice. The purpose of the limitation is to reduce adverse performance effects of a failure of the ATTCS and to ensure adequate all-engines-operating go-around performance.

Upon consideration, the FAA determined that a limitation reflecting the new information must be incorporated into the special conditions for the Embraer Model ERJ–170 series airplanes. Accordingly, the FAA is issuing this supplemental notice of proposed special conditions. A description of the proposed limitation is provided in the preamble of this document (*see* Novel or Unusual Design Features, paragraph II), and the proposed limitation itself is included as paragraph 2.(e) of The Proposed Special Conditions.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the Model ERJ–170 series airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety

standards for Embraer Model ERJ–170 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model ERJ–170 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporates the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Embraer Model ERJ–170 series airplanes will incorporate the following novel or unusual design features:

I. Electronic Flight Control System

In airplanes with electronic flight control systems, there may not always be a direct correlation between pilot control position and the associated airplane control surface position. Under certain circumstances, a commanded maneuver that does not require a large control input may require a large control surface movement, possibly encroaching on a control surface or actuation system limit without the flightcrew's knowledge. This situation can arise in either manually piloted or autopilot flight and may be further exacerbated on airplanes where the pilot controls are not back-driven during autopilot system operation. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, control of the airplane by the pilot or autoflight system may be inadvertently continued so as to cause loss of control of the airplane or other unsafe characteristics of stability or performance.

Given these possibilities, a special condition is proposed for Embraer Model ERJ–170 series airplanes to address control surface position awareness. This special condition would require that suitable display or annunciation of flight control position be provided to the flightcrew when near full surface authority (not crew-commanded) is being used, unless other existing indications are found adequate or sufficient to prompt any required crew actions. Suitability of such a display or annunciation must take into account that some piloted maneuvers may demand the airplane's maximum performance capability, possibly associated with a full control surface deflection. Therefore, simple display systems—that would function in both intended and unexpected control-limiting situations—must be properly balanced to provide needed crew awareness and minimize nuisance alerts. A monitoring system that compares airplane motion, surface deflection, and pilot demand could be useful in eliminating nuisance alerting.

II. Automatic Takeoff Thrust Control System (ATTCS)

The Embraer Model ERJ–170 series airplane will incorporate an Automatic Takeoff Thrust Control System (ATTCS) in the engine's Full Authority Digital Electronic Control (FADEC) system architecture. It has been proposed that the FAA allow performance credit to be taken for use of this function during go-around to show compliance with the requirement of § 25.121(d) regarding the approach climb gradient.

Section 25.904 and Appendix I refer to operation of ATTCS only during takeoff. Model ERJ–170 series airplanes have this feature for go-around also. The ATTCS will automatically increase thrust to the maximum go-around thrust available under the ambient conditions in the following circumstances:

- If an engine failure occurs during an all-engines-operating go-around, or
- If an engine has failed or been shut down earlier in the flight.

This maximum go-around thrust is the same as that used to show compliance with the approach-climb-gradient requirement of § 25.121(d). If the ATTCS is not operating, selection of go-around thrust will result in a lower thrust level.

The part 25 standards for ATTCS, contained in § 25.904 [Automatic takeoff thrust control system (ATTCS) and Appendix I], specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, such as go-around, was considered when the standards were issued but was not accepted because of the effect on the flightcrew's workload. As stated in the preamble to amendment 25–62:

> In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb [§ 25.121(d)] than for the landing climb [§ 25.119]. The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase." (Refer to 52 FR 43153, November 9, 1987.)

The ATTCS incorporated on Embraer Model ERJ–170 series airplanes allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent. Since the ATTCS is permanently armed for the go-around phase, it will function automatically following an engine failure and advance the remaining engine to the ATTCS thrust level. This design adequately addresses the concerns about pilot workload which were discussed in the preamble to Amendment 25–62.

The system design allows the pilot to enable or disable the ATTCS function for takeoff. If the pilot enables ATTCS, a white "ATTCS" icon will be displayed on the Engine Indication and Crew Alerting System (EICAS) beneath the thrust mode indication on the display. This white icon indicates to the pilot that the ATTCS function is enabled. When the throttle lever is put in the TO/GA (takeoff/go-around) detent position, the white icon turns green, indicating to the pilot that the ATTCS is armed. If the pilot disables the ATTCS function for takeoff, no indication appears on the EICAS.

Regardless of whether the ATTCS is enabled for takeoff, it is automatically enabled when the airplane reaches the end of the take-off phase (that is, the thrust lever is below the TO/GA position and the altitude is greater than 1,700 feet above the ground, 5 minutes have elapsed since lift-off, or the airplane speed is greater than 140 knots).

During climb, cruise and descent, when the throttle is not in the TO/GA position, the ATTCS indication is inhibited. During descent and approach to land, until the thrust management system go-around mode is enabled—

either by crew action or automatically when the landing gear are down and locked and flaps are extended—the ATTCS indication remains inhibited.

When the go-around thrust mode is enabled, unless the ATTCS system has failed, the white "ATTCS" icon will again be shown on the EICAS, indicating to the pilot that the system is enabled and in an operative condition in the event a go-around is necessary. If the thrust lever is subsequently placed in the TO/GA position, the ATTCS icon turns green, indicating that the system is armed and ready to operate.

If an engine fails during the go-around or during a one-engine-inoperative go-around in which an engine had been shut down or otherwise made inoperative earlier in the flight, the EICAS indication will be GA RSV (go-around reserve) when the thrust levers are placed in the TO/GA position. The GA RSV indication means that the maximum go-around thrust under the ambient conditions has been commanded.

The propulsive thrust used to determine compliance with the approach climb requirements of § 25.121(d) is limited to the lesser of (i) the thrust provided by the ATTCS system, or (ii) 111 percent of the thrust resulting from the initial thrust setting with the ATTCS system failing to perform its uptrim function and without action by the crew to reset thrust. This requirement limits the adverse performance effects of a failure of the ATTCS and ensures adequate all-engines-operating go-around performance.

These special conditions would require a showing of compliance with the provisions of § 25.904 and Appendix I applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case is of primary importance. During this time it must be extremely improbable to violate a flight path derived from the gradient requirement of § 25.121(d). That gradient requirement implies a minimum one-engine-inoperative flight path with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model ERJ–170 series airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on the Embraer Model ERJ–170 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Embraer Model ERJ–170 series airplanes.

I. Electronic Flight Control System

In addition to compliance with §§ 25.143, 25.671 and 25.672, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and (or) continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action. Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

II. Automatic Takeoff Thrust Control System (ATTCS)

To use the thrust provided by the ATTCS to determine the approach climb performance limitations, the Embraer Model ERJ–170 series airplane must comply with the requirements of § 25.904 and Appendix I, including the following requirements pertaining to the go-around phase of flight:

1. Definitions.

(a) *TOGA—(Take Off/Go-Around).* Throttle lever in takeoff or go-around position.

(b) *Automatic Takeoff Thrust Control System—(ATTCS).* The Embraer Model ERJ–170 series ATTCS is defined as the entire automatic system available in takeoff when selected by the pilot and always in go-around mode; including all devices, both mechanical and electrical, that sense engine failure, transmit signals, and actuate fuel controls or power levers or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and to furnish cockpit information on system operation.

(c) *Critical Time Interval.* The definition of the Critical Time Interval in appendix I, § I25.2(b) shall be expanded to include the following:

(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as 120 seconds. A shorter time interval may be used if justified by a rational analysis. An accepted analysis that has been used on past aircraft certification programs is as follows:

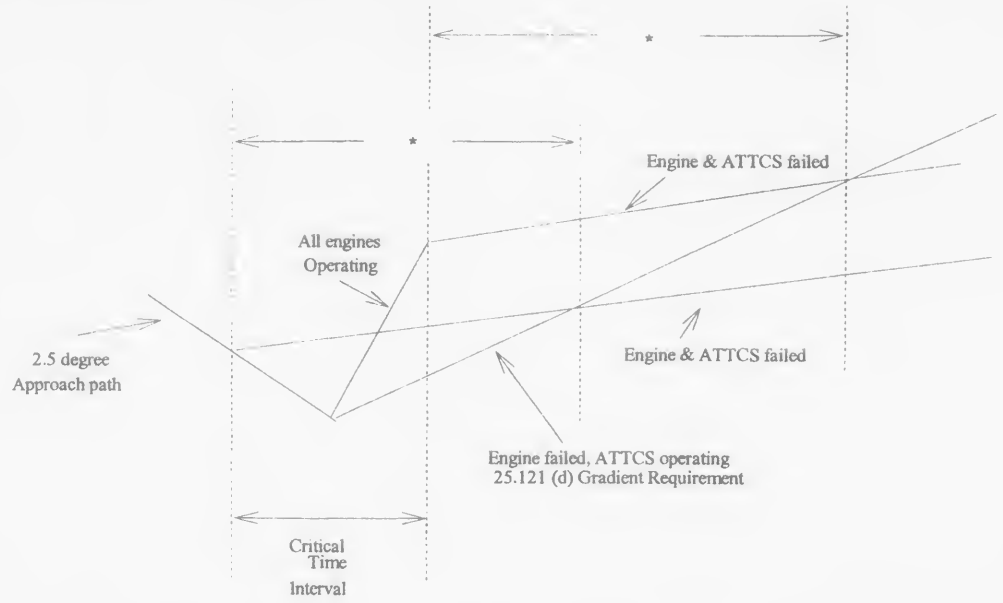
(i) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(ii) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach-climb-gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative, approach-climb-gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach

climb performance data are presented in the Airplane Flight Manual (AFM).

(3) The critical time interval is illustrated in the following figure:



The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

2. Performance and System Reliability Requirements.

The applicant must comply with the following performance and ATTCS reliability requirements:

(a) An ATTCS failure or combination of failures in the ATTCS during the critical time interval:

(1) Shall not prevent the insertion of the maximum approved go-around thrust or power or must be shown to be an improbable event.

(2) Shall not result in a significant loss or reduction in thrust or power or must be shown to be an extremely improbable event.

(b) The concurrent existence of an ATTCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

(c) All applicable performance requirements of part 25 must be met with an engine failure occurring at the most critical point during go-around with the ATTCS system functioning.

(d) The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

(e) The propulsive thrust obtained from the operating engine after failure of the critical engine during a go-around used to show compliance with the one-engine-inoperative climb requirements of § 25.121(d) may not be greater than the lesser of:

(i) The actual propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS functioning; or

(ii) 111 percent of the propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS failing to reset thrust or power and without any action by the crew to reset thrust or power.

3. Thrust Setting.

(a) The initial go-around thrust setting on each engine at the beginning of the go-around phase may not be less than any of the following:

(1) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(2) That shown to be free of hazardous engine response characteristics when thrust or power is advanced from the initial go-around position to the maximum approved power setting.

(b) For approval of an ATTCS for go-around, the thrust setting procedure must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one engine inoperative.

4. Powerplant Controls.

(a) In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety.

(b) The ATTCS must be designed to accomplish the following:

(1) Following any single engine failure during go around: Apply thrust or power on the operating engine(s) to achieve the maximum approved go-around thrust without exceeding engine operating limits;

(2) Permit manual decrease or increase in thrust or power up to the maximum go-around thrust approved for the airplane under existing conditions through the use of the power lever. For airplanes equipped with limiters that automatically prevent engine operating limits from being exceeded under existing ambient conditions, other means may be used to increase the thrust in the event of an ATTCS failure. Any such means must be located on or forward of the power levers; be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and meet the requirements of § 25.777(a), (b), and (c);

(3) Provide a means to verify to the flightcrew before beginning an approach for landing that the ATTCS is in a condition to operate (unless it can be

demonstrated that an ATTCS failure combined with an engine failure during an entire flight is extremely improbable); and

(4) Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

5. In addition to the requirements of § . 25.1305, the following requirements pertaining to powerplant instruments must be met:

(a) A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

(b) If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during go-around.

Issued in Renton, Washington, on May 28, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14161 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–08–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 P1, P2, T1, and T2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for Eurocopter Deutschland GmbH (ECD) Model EC135 P1 and EC135 T1 model helicopters. That AD currently requires adding the AD or a statement to the Rotorcraft Flight Manual (RFM) informing the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight. That AD also requires visually inspecting the main rotor drive torque strut assembly (strut) for a crack or a break, recording the inspections in the historical or equivalent record, and re-marking and relocating the strut, as appropriate, and replacing any unairworthy strut with an airworthy strut. Also, that AD establishes life limits for certain struts and revises the life limit for other struts. This action would retain the same requirements but would add the ECD Model EC135 P2 and EC135 T2 helicopters to the applicability and would require replacing certain life-limited struts with titanium struts. This proposal is prompted by the manufacture of a titanium strut that provides a permanent correction to the unsafe condition that led to limiting the life of other struts that have failed. The actions specified by the proposed AD are intended to prevent failure of a strut and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–08–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: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments 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. 2003–SW–08–AD." The postcard will be date stamped and returned to the commenter.

Discussion

On September 4, 2001, the FAA issued AD 2001–18–13, Amendment 39–12439 (66 FR 47878, September 14, 2001), to require adding the AD or a statement in the Emergency Procedures section of the RFM informing the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight. That AD also requires inspecting struts, part number (P/N) L633M1001 103 and L633M1001 105; replacing any cracked or broken strut with an airworthy strut before further flight; and recording each inspection in the helicopter's historical or equivalent record. That AD revised the Airworthiness Limitations section of the maintenance manual by establishing life limits for certain struts. That action was prompted by a report of a thump-like sound heard during flight followed by unusual vibrations due to failure of the right-hand (RH) strut between the main transmission and the fuselage. The requirements of that AD are intended to prevent failure of a strut and subsequent loss of control of the helicopter.

Since issuing that AD, the Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, advises that struts, (P/N) L633M1001 103 and L633M1001 105, should not be used beyond December 31, 2004. The LBA advises replacing those struts with torque struts, P/N L633M1001 104, after January 1, 2005.

ECD has issued Alert Service Bulletin EC135–63A–002, Revision 2, dated June 26, 2002 (ASB), which specifies inspecting for a crack, marking strut locations and serial numbers, and transferring the location side of the torque struts or replacing each strut, P/N L633M1001 103 or L633M10001 105, with a torque strut, P/N L633M1001 104, that is anodized and not coated with paint, which have no life limit. The LBA classified this ASB as mandatory and issued AD No. 2001–107/2, dated September 19, 2002, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for

operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would supersede AD 2001–18–13 to require the same actions but would add ECD Model EC135 P2 and EC135 T2 helicopters to the applicability. Also, the proposed AD would require replacing each strut, P/N L633M1001 103 or L633M1001 105, upon reaching its life limit with a titanium strut, P/N L633M1001 104, which would constitute terminating action for the requirements of this AD. The titanium strut must be used in pairs. one on each side of the transmission, and may not be used in conjunction with a strut, P/N L633M1001 103 or L633M1001 105. The titanium strut has no life limit. The proposed AD would require a weight and balance adjustment after installing the titanium strut. The proposed AD would also require on or before December 31, 2004, replacing each strut, P/N L633M1001 103 or L633M1001 105, with a strut, P/N L633M1001 104.

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

The FAA estimates that this proposed AD would affect 50 helicopters of U.S. registry. The proposed actions would take approximately ½ work hour for the flashlight and mirror inspection; 2.5 work hours to remark, relocate, and inspect with a magnifying glass; and 1 hour to replace both struts. The average labor rate is $60 per work hour. Required parts would cost approximately $9,696 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $496,800.

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 39–12439 (66 FR 47878, September 14, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter Deutschland GmbH: Docket No. 2003–SW–08–AD. Supersedes AD 2001–18–13, Amendment 39–12439. Docket No. 2001–SW–19–AD.

Applicability: Model EC135 P1, P2, T1, and T2 helicopters, with main rotor drive torque strut assembly (strut), part number (P/N) L633M1001 103 or L633M1001 105, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, insert a copy of this AD or a statement into the Emergency Procedures Section of the Rotorcraft Flight Manual (RFM) to inform the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight.

(b) Within 10 hours time-in-service (TIS), visually inspect each strut with 950 or more hours TIS for a crack or a break using a flashlight and a mirror in accordance with the Accomplishment Instructions, paragraph 3.B.(1) and 3.B.(2), of Eurocopter Alert Service Bulletin EC135–63A–002, Revision 2, dated June 26, 2002 (ASB). Replace any cracked or broken strut with an airworthy strut before further flight.

(c) Inspect the following struts for a crack or a break, using a 6-power or higher magnifying glass, and re-mark and relocate each strut in accordance with the Accomplishment Instructions, paragraph 3.C., of the ASB. This AD does not require you to return any part to the manufacturer.

(1) For a strut with less than 950 hours TIS, inspect before accumulating 1000 hours TIS.

(2) For a strut with 950 or more hours TIS, inspect within 50 hours TIS.

(3) Replace any cracked or broken strut with an airworthy strut before further flight.

(d) This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a life limit of 1000 hours TIS for each strut, P/N L633M1001 103 and L633M1001 105, in its original location, with an additional 1000 hours TIS if properly re-marked and relocated (2000 hours total TIS) in accordance with the Accomplishment Instructions, paragraph 3.C.(3) of the ASB.

(e) Record details of the inspections in the historical or equivalent records in accordance with the Accomplishment Instructions, paragraph 3.C.(4) of the ASB.

(f) When a strut, P/N L633M1001 103 or L633M1001 105, reaches its life limit, replace it with a titanium strut, P/N L633M1001 104, which must be used in pairs, one strut on each side of the transmission. The titanium struts have no life limit. After installing a strut, P/N L633M1001 104, adjust the weight and balance by using the weight and moment stated in the Planning Information, paragraph 1.H., of the ASB.

(g) On or before December 31, 2004, replace each strut, P/N L633M1001 103 or L633M1001 105, with a strut, P/N L633M1001 104.

(h) Replacing struts, P/N L633M1001 103 and L633M1001 105, with titanium struts, P/N L633M1001 104, constitutes terminating action for the requirements of this AD.

(i) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group for information about previously approved alternative methods of compliance.

Note: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 2001–107/2, dated September 19, 2002.

Issued in Fort Worth, Texas, on May 30, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–14136 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN81–7306b; FRL–7494–1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a State Implementation Plan (SIP) revision for Dakota County, Minnesota, for the control of emissions of sulfur dioxide (SO_2) in the Pine Bend Area of Rosemount. The site-specific SIP revision for Flint Hills Resources, L.P. (formerly known as Koch Petroleum Group, L.P.), was submitted by the Minnesota Pollution Control Agency on March 13, 2003, and is approvable because it satisfies the requirements of the Clean Air Act. Specifically, EPA is proposing to approve into the SO_2 SIP Amendment No. 6 to the Administrative Order for Flint Hills Resources. In the final rules section of this **Federal Register**, we are approving the SIP revision 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 no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive 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 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 July 7, 2003.

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 Notice 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 17, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–13569 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 275–0393b; FRL–7495–2]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and San Diego County Air Pollution Control District (SDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic liquid storage, equipment leaks at petroleum refineries, and wood product coating operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 7, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov.*

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109; and,

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SDCAPCD Rule 67.11.1—Large Wood Product Coating Operations; BAAQMD Rule 8–5—Storage of Organic Liquids; and, BAAQMD 8–18—Equipment Leaks. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–13884 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC042–2031b; FRL–7507–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Determining Conformity of Federal Actions to State or Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia for the purpose of establishing

regulations for demonstrating and assuring conformity of transportation and non-transportation related Federal actions to state or Federal implementation plans. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives 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 rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 7, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 23, 2003.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 03–14034 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 02–364; FCC 03–15]

Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document solicits comment on redistributing spectrum in the 1.6/2.4 GHz band (Big LEO band). The Commission initiated the notice of proposed rulemaking in this proceeding because recent rule changes, as well as changing traffic patterns and consumer demands, suggest that it is an appropriate time for the Commission to re-examine the Big LEO spectrum. In addition, a licensed Big LEO operator requested access to additional spectrum in this band.

DATES: Comments are due July 7, 2003, and reply comments are due July 21, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC, 20554.

FOR FURTHER INFORMATION: Trey Hanbury, Breck Blalock, or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking in IB Docket No. 02–364, FCC No. 03–15, adopted January 29, 2003, and released on February 3, 2002. The full text of this document is available for public inspection and copying during normal reference room hours at the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–15A1.pdf.* The document may be obtained from Qualex International, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 863–2893, via facsimile at (202) 863–2898, or via e-mail at *qualexint@aol.com.*

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Summary of Notice of Proposed Rulemaking

On February 3, 2003, the Commission released a Report and Order and Notice of Proposed Rulemaking (NPRM) in this proceeding. The Report and Order relating to this proceeding is published elsewhere in this issue of the **Federal Register**. The NPRM seeks comment on proposals for reassigning or reallocating a portion of spectrum in the Big LEO MSS frequency bands. At the time that the Commission developed the Big LEO spectrum sharing plan, it explained that it might be appropriate to re-visit the plan in the future. Since then, two MSS systems deployed and have begun to operate, while several other systems have either surrendered their license or failed to meet the terms of their license. These changes, as well as changing traffic patterns and consumer demands, suggest that now is an appropriate time to re-examine the Big LEO spectrum plan. In addition, Iridium, one of the two licensed Big LEO operators, has requested access to additional spectrum in the Big LEO band. In the NPRM, the Commission tentatively concludes that a

rebalancing of spectrum in the Big LEO band would serve the public interest and seeks comment on the proposal in Iridium's petition and on various alternative uses for the Big LEO spectrum, including whether the Commission should reallocate spectrum for unlicensed services, an additional commercial mobile radio service (CMRS) licensee or other services, or initiate a second processing round by which the Commission could authorize new MSS entry.

The Commission seeks specific technical detail and cost-benefit analysis on the current and projected use of the Big LEO band in the NPRM. For example, given Iridium's request for additional spectrum, how is Iridium utilizing its current spectrum allocations and what are its future spectrum requirements? If the Commission were to make more Big LEO spectrum available, exactly how much additional spectrum would be appropriate? What type of system would Iridium deploy in this additional spectrum? How is Globalstar utilizing its currently assigned Big LEO spectrum? What are Globalstar's projected spectrum needs? Will it require additional Big LEO spectrum in the future? If Globalstar does not use or is not permitted to use the entire Big LEO service downlink spectrum, what should the Commission do with any unused spectrum? Will changes to the Big LEO spectrum sharing plan have any effect on GLONASS, the Russian Global Navigation System, and radioastronomy service (RAS) operations in the band? How does the current U.S. Big LEO spectrum sharing plan fit with international band plans for Big LEO operations and what impact will changes to the U.S. plan have on plans in other regions?

The Commission also seeks comment on the possibility of making any returned spectrum available in a second Big LEO processing round. How much spectrum would need to be made available to provide sufficient incentive for applicants to participate in a second Big LEO processing round? Are the current Big LEO processing rules sufficient to handle a second processing round or would the Commission need to conduct a rulemaking to develop appropriate rules for second round applicants and licensees?

In addition, the Commission seeks comment on possibility of re-allocating any returned Big LEO spectrum. Should unlicensed devices be allowed to operate in the band? Should this band be allocated for site-based or critical infrastructure licensees? Alternatively, should the Commission pair spectrum in the uplink and downlink service bands for assignment to a terrestrial CMRS licensee? The Commission seeks comment on implementation of ATC in the portion of the Big LEO bands beyond those authorized for ATC in the *Report and Order* adopted in this docket, *see In the Matter of Flexibility for Delivery of Communications by Mobil Satellite Service Providers in the 2 GHz Band,* the L-Band, and the 1.6/2.4 GHz Bands, Report and Order, IB Docket 01–185, FCC No. 03–15. This Report and Order is published elsewhere in this issue of the **Federal Register**. The Commission asks whether there are any advantages or disadvantages to allowing CDMA or TDMA systems to deploy ATC in particular parts of the unresolved portions of the Big LEO service up and downlink spectrum.

Procedural Issues

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." In the *NPRM,* the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities. Pursuant to the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) on the possible significant economic impact on small entities by the policies and actions considered in the *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* Comments are due July 7, 2003. The Commission will send a copy of the document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM. See* 5 U.S.C. 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). *See* 5 U.S.C. 601 *et seq.*, title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Need for and Objectives of the Proposed Rules

This *NPRM* seeks comment on proposals for reassigning or reallocating a portion of spectrum in the Big LEO MSS frequency bands. Given the state of the Big LEO MSS industry including changing traffic patterns, consumer demand and a recent request for additional spectrum by Iridium, one of the Big LEO operators, the *NPRM* seeks comment on: (1) the Commission's original spectrum sharing plan, (2) the proposal of Iridium for additional spectrum and (3) other possible uses of the band.

Legal Basis

This action is taken pursuant to sections 1, and 4(i) and (j) of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), and section 201(c)(11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c)(11), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under section 3 of 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 SBA. *Id.* section 632

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. *See* 13 CFR 121.201, NAICS Code 51334. This definition provides that a small entity is one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified which could potentially fall into the L-band, Big LEO or 2 GHz MSS category. Of those, approximately 775 reported annual receipts of $11 million or less

and qualify as small entities. The options proposed in this *NPRM* apply only to entities providing Big LEO MSS. Small businesses may not have the financial ability to become MSS system operators because of the high implementation costs associated with satellite systems and services. At least one of the Big LEO licensees may be considered a small business at this time. We expect, however, that by the time of implementation they will no longer be considered small businesses due to the capital requirements for launching and operating their proposed systems. Therefore, because of the high implementation costs and the limited spectrum resources, we do not believe that small entities will be impacted by this rulemaking to a great extent.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed action in this *NPRM* would affect those entities applying for Big LEO MSS space station authorizations and those applying to participate in assignment of Big LEO MSS spectrum, including through potential re-allocation. In this *NPRM*, we tentatively conclude that a re-balancing of the Big LEO MSS band will serve the public interest. We seek comment on the current use of the Big LEO MSS uplink band (1610–1626.5 MHz) by the current licensees, Iridium and Globalstar, any potential impact on GLONASS, the Russian Global Navigation Satellite System, and radioastronomy, and Big LEO MSS service downlink (2483.5–2500 MHz) spectrum uses. We also seek comment on the possibility of making Big LEO MSS spectrum available in a second Big LEO processing round, re-allocating a portion of the Big LEO spectrum for other uses, including unlicensed devices, site-based or critical infrastructure licensees, or assignment to terrestrial commercial mobile radio service licensees. We do not propose any other reporting, recordkeeping or compliance requirements in the *NPRM*.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In developing the tentative conclusion and the proposals contained in this *NPRM*, we have attempted to allow flexibility for efficient operations in the Big LEO MSS market, regardless of size, consistent with our other objectives. We have also sought comment on other uses of the spectrum that may enhance service to the public. We believe that our tentative conclusion that the Big LEO MSS band should be re-balanced, our request for comment on the current use of the band by the Big LEO licensees, and our request for comment on other uses of the band will not impose a significant economic impact on small entities because: (1) The information sought is reasonable and not overly burdensome; and (2) as mentioned above, we do not expect small entities to be impacted by this *NPRM* due to the substantial implementation costs involved to use the spectrum at issue in this *NPRM*. Nonetheless, we seek comment on the impact of our proposals on small entities and on any possible alternatives that could minimize any such impact.

Federal Rules and May Duplicate, Overlap, or Conflict With Proposed Rules

None.

Ordering Clauses

It is ordered that, pursuant to sections 1, 4(i)–4(j), 201–205, 214, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–154(j), 201–205, 214, 303(r), 309, this notice of proposed rulemaking is hereby adopted.

It is ordered that, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this notice of proposed rulemaking, including the initial regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–14082 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1707; MB Docket No. 03–119; RM–10694]

Radio Broadcasting Services; Savannah, Springfield and Tybee Island, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Cumulus Licensing Corp. ("Petitioner"), requesting the substitution of Channel 280C2 for 280C3 at Springfield, Georgia, reallotment of Channel 280C2 to Tybee Island, Georgia, and modification of the license for Station WEAS accordingly. The coordinates for Channel 280C2 at Tybee Island are 32–00–45 and 80–50–44. The license for Station WSIS, Springfield, Georgia, was modified from Channel 280A to Channel 280C3 in a one-step application (BPH–19990325IE) which has not been reflected in the FM Table of Allotments. Upon termination of this proceeding, we shall correct the FM Table of Allotments to reflect the correct class of channel. Petitioner further requests the reallotment of Channel 226C1, Station WSIS from Savannah, Georgia, to Springfield, Georgia, as a replacement service for Station WEAS. The coordinates for Channel 226C1 at Springfield are 32–02–48 and 81–20–27. Petitioner is the licensee for Station WEAS and WSIS. The proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channels 280C2 at Tybee Island and 226C1 at Savannah.

DATES: Comments must be filed on or before July 11, 2003, and reply comments on or before July 28, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, Interested parties should serve the petitioners' counsel, as follows: Mark N. Lipp, Shook, Hardy & Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No.

03–119, adopted May 16, 2003, and released May 20, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 226C1 at Savannah, by removing Channel 280A and adding Channel 226C1 at Springfield, and by adding Tybee Island, Channel 280C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–14092 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1708; MB Docket No. 03–120, RM–10591]

Radio Broadcasting Services; Chattanooga and Lake City, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Ronald C. Meredith ("petitioner") to allot Channel 244A to Lake City, Tennessee, as that community's first local aural transmission service. To accommodate this proposal, petitioner requests substitution of Channel 243C0 for Channel 243C at Chattanooga, Tennessee. WDOD of Chattanooga, Inc., the licensee of WDOD–FM operating on Channel 243C at Chattanooga, has stated, in response to an order to show cause, that it does not intend to seek authority to modify WDOD–FM's technical facilities to minimum Class C standards. Channel 243C0 can be allotted at Chattanooga, Tennessee, at the current coordinates for Channel 243C. If Channel 243C0 is substituted for Channel 243C at Chattanooga, Tennessee, Channel 244A can be allotted to Lake City, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 km (4.2 miles) west of Lake City. The coordinates for Channel 244A at Lake City are 36–12–08 North Latitude and 84–13–36 West Longitude.

DATES: Comments must be filed on or before July 11, 2003, and reply comments on or before July 28, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Vincent Pepper, Womble, Carlyle, Sandridge & Rice, PLLC, 1401 Eye Street, NW., Washington 20005; and Coe W. Ramsey, Brooks Pierce McLendon, Post Office Box 1800, Raleigh, NC 27602.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–120; adopted May 16, 2003 and released May 20, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 243C and by adding Channel 243C0 at Chattanooga, and by adding Lake City, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–14090 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 052803C]

Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Intent to Prepare an Environmental Impact Statement for Fishing Conducted Under the Pacific Coast Groundfish Fishery Management Plan

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); announcement of public scoping period; request for written comments.

SUMMARY: NMFS, in cooperation with the Pacific Fishery Management Council (Council), announces its intention to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) to assess the impacts of the 2004 Pacific Coast groundfish fishery specifications and management measures on the human environment.

DATES: Written comments must be received no later than 5 p.m, local time (l.t.), on July 7, 2003. Two public scoping meetings are scheduled as part of the Council's June 16–20, 2003, meeting in Foster City, CA (*see* **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Comments may also be sent via facsimile (fax) to 503–820–2299 or via e-mail (*pfmc.comments@noaa.gov* and write "2004 groundfish specifications EIS" in subject line).

FOR FURTHER INFORMATION CONTACT: John DeVore, Groundfish Fishery Management Coordinator; phone: 503–820–2280 and e-mail: *john.devore@noaa.gov* or Matthew Harrington, NMFS Northwest Region NEPA Coordinator; phone: 206–526–4742 and email: *Matthew.Harrington@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background and Need For Agency Action

There are more than 80 species managed under the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP), nine of which have been declared overfished. The groundfish stocks support an array of commercial, recreational, and Indian tribal fishing interests in state and Federal waters off the coasts of Washington, Oregon, and California. In addition, groundfish are also harvested incidentally in nongroundfish fisheries, most notably the trawl fisheries for pink shrimp, spot/ridgeback prawns, California halibut, and sea cucumber.

The proposed action is needed to establish commercial and recreational harvests levels in 2004 that will ensure groundfish stocks are maintained at, or restored to, sizes and structures that will produce the highest net benefit to the nation, while balancing environmental and social values.

The Proposed Action

The proposed action is to implement management measures consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that constrain total fishing mortality during 2004 within limits that maintain fish stocks at, or rebuild them to, a level capable of producing maximum sustained yield (MSY), or to a stock size less than this if such stock size results in long-term net benefit to the nation.

These fishing mortality limits are harvest specifications that include acceptable biological catches (ABCs) and optimum yields (OYs) for groundfish species or species groups in need of particular protection; OYs may be represented by harvest guidelines or quotas for species that need individual management. The allocation of commercial OYs between the open access and limited entry segments of the fishery is also part of the proposed action. The FMP requires that the groundfish specifications be annually evaluated and revised as necessary, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Act and the Groundfish FMP also require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks. These specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the U.S. exclusive economic zone (3–200 nm offshore).

Alternatives

NEPA requires that agencies evaluate reasonable alternatives to the proposed action in an EIS. The purpose and need for agency action determines the range of reasonable alternatives. A preliminary set of alternatives will be developed during the June 16–20, 2003, Council meeting. Alternatives will be structured around a range of ABCs/OYs for assessed groundfish species. This range of ABCs/OYs is based on stock assessments, including seven new assessments completed since 2003 harvest specification were established, rebuilding analyses for overfished species based on these assessments, and a stock assessment of cabezon due to be completed before the end of 2003. This last assessment, although it will not be completed and peer-reviewed early in the decision process, will be used to identify different management measures for nearshore fisheries. For some species ABC/OY ranges that would be used to develop alternatives may be based on consultations by the Council with state and Federal agencies, Indian tribes, and the affected public on the allocation of harvest opportunity between sectors. Allocation decisions can affect OYs because different sectors may catch fish of different ages, allowing different sustainable harvest levels.

For each set of ABCs/OYs used in a given alternative, a set of management measures will be identified that will constrain total harvest mortality (across all fisheries intercepting groundfish). Restrictive management measures intended to rebuild overfished species have been adopted and implemented over the past several years for most commercial and recreational fishing sectors. Management measures intended to control the rate at which different groundfish species or species groups are taken in the fisheries include trip limits, bag limits, size limits, time/area closures, and gear restrictions. Large area closures, intended to reduce bycatch of overfished species and referred to as Rockfish Conservation Areas were first implemented in late 2002. These closed areas will continue to be a key feature of alternatives considered in the EIS to manage groundfish fisheries in 2004.

Preliminary Identification of Environmental Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the EIS. The EIS evaluates a range of feasible alternatives (described above) to determine their likely impacts on the human environment and identify significant impacts. Council and NMFS staff conducted initial screening to identify the potentially significant impacts of the range of alternatives that will be

developed. They identified the following potentially significant impacts: (1) effects of fishing operations on essential fish habitat; (2) effects of fishing operations on protected species listed under the Endangered Species Act and Marine Mammal Protection Act and their critical habitat; and (3) effects on the sustainability of target and non-target fish stocks, and especially overfished groundfish stocks. Socioeconomic impacts are also considered in terms of the effect changes in projected harvests will have on the following groups of individuals: (1) Those who participate in harvesting the fishery resources and other living marine resources; (2) those who process and market fish and fish products; (3) those who are involved in allied support industries; (4) those who consume fish products; (5) those who rely on living marine resources in the management area, either for subsistence needs or for recreational benefits; (6) those who benefit from non-consumptive uses of living marine resources; (7) those involved in managing and monitoring fisheries; and (8) fishing communities.

Public Scoping Process

Two public scoping meetings will occur at the June 16–20, 2003, Council meeting as part of the Council's regular agenda. The meeting will take place at the Crown Plaza Hotel, 1221 Chess Drive, Foster City, CA. The first public scoping meeting will be held on Tuesday, June 17, 2003, as part of agendum *B.4, Preliminary Range of Harvest Levels for 2004.* The second scoping meeting will be held on Friday, June 20, 2003, as part of agendum *B.14, Adoption of Proposed Range of Alternatives for 2004 Groundfish Management Measures.* A public comment period is scheduled for each agendum and comments on the scope of the DEIS are encouraged during these comment periods. Because these scoping opportunities will occur as part of the regular agenda, the time at which they will begin depends on the agenda as a whole. Council business begins at 8 a.m. each day and usually ends not later than 5 p.m. A scoping document identifying the management issues, and an outline of the proposed analysis will be made available at the June 16–20, 2003 Council meeting and on the Council's Web site (*www.pcouncil.org*). A full agenda and other information about this meeting is also available on this website or by request from Council offices (*see* **ADDRESSES** above).

NMFS invites comments and suggestions on the scope of the analysis to be included in the DEIS. The scope includes the range of alternatives to be considered and potentially significant impacts to the human environment that should be evaluated in the DEIS. In addition, NMFS is notifying the public that, in conjunction with the Council, it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision.

A DEIS will be prepared for comment later on in the process. The comment period on the DEIS environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or merits of the alternatives discussed. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the DEIS. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA CFR 1503.3 in addressing these points.) Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter 503–820–2280 (voice) or 503–820–2299 (fax), at least 5 days prior to the scheduled meeting date.

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

Dated: May 30, 2003.

Richard W. Surdi,

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

[FR Doc. 03–14177 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 108
Thursday, June 5, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service.

ACTION: Notice of meeting; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on June 2, 2003 (68 FR 32725), which announced the first meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture. This action is necessary to correct erroneous dates listed for the meeting.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The announcement of the first meeting of the USDA Advisory Committee on Biotechnology and 21st Century Agriculture in the June 2, 2003 edition of the **Federal Register** incorrectly listed the dates for the meeting. The correct dates for the meeting are June 16–17, 2003, from 8:30 am to 5 pm each day. On June 16, 2003, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration from members of the public who wish to make statements. Individuals wishing to make such statements should also inform Dr. Schechtman in writing or via E-mail at the indicated addresses at least three business days before the meeting.

Michael G. Schechtman,

Designated Federal Official, Advisory Committee on Biotechnology and 21st Century Agriculture.

[FR Doc. 03–14226 Filed 6–2–03; 3:34 pm]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation 2003-Crop Year Beet Sugar Marketing Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) will hold a public hearing to receive comments on (1) a new entrant's beet sugar allocation request and possible impacts on existing beet processors and producers, and (2) increasing an existing beet processor's allocation beginning in FY 2004.

DATES: The public hearing will be held June 16, 2003, in room 107–A of the U.S. Department of Agriculture (USDA) Jamie L. Whitten Federal Building, 12th and Jefferson Drive, SW., Washington, DC. The hearing will start at 9:30 a.m. Eastern Daylight Time (EDT).

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: USDA will hold a public hearing regarding the application of Cargill, Inc. (Cargill), for a new entrant beet sugar marketing allocation for the 2003 crop year. Cargill is requesting a 2003-crop year allocation of 80,000 short tons, raw value, annually, for years 2003 through 2007. The facility will be located in Renville, Minnesota.

Section 359d(b)(2)(H)(i) of the Agricultural Adjustment Act of 1938, as amended by the Farm Security and Rural Investment Act of 2002, authorizes CCC to assign an allocation for beet sugar to any entity who (1) starts processing sugar beets after the date of enactment of this section; and (2) does not already have an allocation of beet sugar. The statute provides that the allocation of beet sugar to the new entrant shall provide a fair and equitable distribution of the allocations for beet sugar while reducing the allocations of beet sugar of all other processors on a pro rata basis to reflect the new allocation.

Cargill has requested a beet sugar marketing allocation as a new entrant through an agreement with Southern Minnesota Beet Sugar Cooperative's (Southern Minnesota) growers for a beet supply and a tolling agreement with Southern Minnesota to extract the sugar from Cargill's beets.

CCC will also use this hearing to collect comments on any adverse effects that the allocation to Cargill would have on existing sugar beet processors and producers.

In addition, CCC will hear comments on the request by the Pacific Northwest Sugar Company, LLC (PNS) to increase its allocation 1.5 percent of the sum of all beet sugar producers' production history. Of this increase, 0.25 percent is requested based on the opening of a molasses desugaring facility in summer 1999. The balance, 1.25 percent, is based on PNS's request for a 1998-crop quality loss adjustment as required by Section 359d(b)(2)(D)(ii)(IV) of the Agricultural Adjustment Act of 1938, as amended. CCC notes that PNW certified on September 13, 2002, to CCC that it had not opened an eligible desugaring facility or suffered an eligible quality loss when they were surveyed about those issues.

The hearing will be held on June 16, 2003, from 9:30 a.m. to 12 p.m. EDT in room 107–A of the Jamie L. Whitten Building, 12th and Jefferson Drive, SW., Washington, DC. Attendance is open to interested parties.

Anyone wishing to make an oral statement may do so, time permitting. Each comment will be limited to 5 minutes. A sign up sheet for oral statements will be available at the entrance of room 107–A one hour before the hearing begins. Oral statements will be made in the order the requests are received. Anyone wishing to make a written statement in lieu of or in addition to an oral statement should send their statement to Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff,

Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516. Washington, DC 20250–0516; e-mail: *barbara.fecso@usda.gov.* Statements must be received by close of business on June 15, 2003.

Persons with disabilities who require special accommodations to attend or participate in the hearing should contact Barbara Fecso.

Signed in Washington, DC on June 2, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–14250 Filed 6–2–03; 4:05 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting of June 26, 2003, at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held June 26, 2003, beginning at 9 a.m. and ending at 3 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 543–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: Budget Subcommittee report, status report on the Final Draft Report to Congress by the Lands Subcommittee, Lake Tahoe Environmental Education public outreach, Pathway 2007 Phase II Science update, Review of the USFS Lake Tahoe Restoration Act Project Priority List for FY 2004, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 03–14122 Filed 6–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on June 16, 2003 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to review Forest Service project submittals in detail, based on presentations made by project proponents, and follow-up question and answer sessions.

DATES: The meeting will be held June 16, 2003, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671; e-mail *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Status of replacement member applicants; (2) Presentation of nine Forest Service, and two related (non-Forest Service) project submittals by project proponents, with follow-up question and answer sessions. Time allocated for each presentation and question/answer session is 15 minutes; and, (3) Public comment on meeting proceedings. This meeting is open to the public.

Dated: May 21, 2003.

Tom Quinn,

Forest Supervisor.

[FR Doc. 03–14088 Filed 6–4–03; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Colville Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Committee will meet on Thursday, June 19, 2003 at the Spokane Community College, Colville Campus, Monumental Room, 985 South Elm Street, Colville, Washington. The meeting will begin at 9 a.m. and conclude at 4 p.m. Agenda items include: (1) RAC officer (chair) election; (2) RAC budget, expenses, and communication strategies; (3) Bylaws and Charter Review and Update; (4) Fiscal Year 2004 Title II projects review and recommendation to the forest designated official; and (5) Public Forum.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Rolando Ortegon, Designated Federal Officer or to Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114, (509) 684–7000.

Dated: May 28, 2003.

Rolando Ortegon,

Acting Forest Supervisor, Colville National Forest.

[FR Doc. 03–14121 Filed 6–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo National Forest's Mineral County Resource Advisory Committee will meet on June 3 at 6 p.m. until 8 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: June 3, 2003.

ADDRESSES: The meeting will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper, Designated Forest Official (DFO), District Ranger, Superior

Ranger District, Lolo National Forest, at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for these meetings include the review and selection of project proposals, as authorized under Title II of Pub. L. 106–393. If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent, the Clark Fork Wagon Wheel, and the Missoulian.

Dated: May 23, 2003.

Deborah L.R. Austin,

Designated Federal Official.

[FR Doc. 03–14174 Filed 6–2–03; 3:32 pm]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Kentucky Advisory Committee will convene at 2 p.m. And adjourn at 4 p.m. On Wednesday, June 4, 2003. The purpose of the conference call is to receive a briefing from key public and private civil rights officials, regarding civil rights problems in the state.

This conference call is available to the public through the following call-in number: 1–800–923–4217, access code 17077814. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Bobby Doctor of the Southern Regional Office 404–562–7000 (TDD 404–562–7004), by 4 p.m. on Tuesday, June 3, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 7, 2003.[1]

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–14231 Filed 6–2–03; 4:05 pm]

BILLING CODE 6335–01–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 23, 2003–MAY 19, 2003

Firm name	Address	Date petition accepted	Product
AMG, Inc	301 Jefferson Ridge Parkway, Lynchburg, VA 24501.	04/21/03	Custom designed machined components for the telecommunications and fiber optic industries.
Butler Technologies, Inc	231 West Wayne Street, Butler, PA 16001.	05/19/03	Commercial printer producing membrane switches and automobile gauges.
Dow Precision Hydraulics, Inc	1835 Wright Avenue, La Verne, CA 91730.	04/23/03	Hydraulic parts for aircraft.
Du-Co Ceramics Company	155 South Rebecca Street, Saxonburg, PA 16056.	05/08/03	Electrical ceramic insulators.
Eric Engebretsen dba F/A Humboldt	P.O. Box 534. Homer, AK 99603	04/29/03	Salmon.
Garcia U-Pick Farms	P.O. Box 1640, San Elizario, TX 79849.	05/19/03	Chili pepper decorations.
Harold C. Haynes, dba F/V Chasina Bay.	148 Mattle Road, Ketchikan, AK 99901.	05/19/03	Salmon.
Martinez Manufacturing, Inc	1175 Alexander Court, Cary, Il 60013.	05/14/03	Mobil phone earpieces, automotive wiring sets and appliance parts.
Materials Processing, Inc	17423 W. Jefferson, Riverview, MI 48192.	05/19/03	Paints and lacquers for purchased automotive parts.
N. M. Sargents Sons, Inc	Potato Hill Rd., Industrial Park, Boonville, NY 13309.	05/09/02	Unfinished hardwood chairs primarily of maple.
Orbit Machining Company, Inc	9440 Ainslie Street, Schiller Park, IL 60176.	05/14/03	Machined metal components of valves and metal rollers for industrial machinery.
PDT Holdings, Inc	600 Heathrow Drive, Lincolnshire, IL 60069.	05/01/03	Injection molds for plastics and dies for die castings.
Pro-Mold, Inc	350 Buell Road, Rochester, NY 14624.	05/09/03	Injection and compression molds for rubber and plastic.
Peak Industries, Inc	4300 Road 18, Longmont, CO 80504.	05/09/03	Electro-medical instruments and appliances, recording devices, patient monitoring systems and optical instruments for inspecting semiconductor wafers.
R & M Apparel, Inc	721 Donahue Street, Gallitzin, PA 16641.	04/29/03	Women's shirts and pants.
Robert L. Hall, dba F/V Sea Comber	P.O. Box 1284, Sitka, AK 99835	04/29/03	Salmon.
Russell Cockrum, dba F/V Viking Maid.	4677 Tongass Highway, Ketchikan, AK 99901.	05/19/03	Salmon.

[1] *Editorial note:* This document was received at the office of the Federal Register and filed for public inspection on June 2, 2003.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD APRIL 23, 2003–MAY 19, 2003—Continued

Firm name	Address	Date petition accepted	Product
Sandy Farms, Inc	34500 SE Highway 211, Boring, OR 97009.	04/29/03	Blackberries.
Sooner Trailer Manufacturing Company, Inc.	1515 McCurdy Road, Duncan, OK 23533.	05/12/03	Trailers for transporting animals.
Spico, Inc	1099 Morgan Road, Meadville, PA 16335.	05/12/03	Molds and tooling used in Village the plastics industry.
Star Printing Company	107 North Flores, Rio Grande City, TX 78582.	04/28/03	Men's T-shirts.
TAM Metal Products, Inc	55 Whitney Road, Mahwah, NJ 07430.	05/09/03	Precision fabricated metal products.
Taylor Valve Technology, Inc	8400 SW 8th Street, Oklahoma City, OK 73128.	04/23/03	Safety relief valves.
Value Company, Inc	1252 County Road 106, Fayette, AL 35555.	04/29/03	Dies for drawing or extruding metal, with and without diamonds.
Waltco Engineering Company	401 West Redondo Beach Blvd., Gardena, CA 90248.	04/23/03	Precision machined components for wireless communications, aircraft and computer hardware.

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 28, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–14123 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Initiation of the Ninth New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(d), we are initiating a review for Anda Industries Co., Ltd, Laizhou City Luqi Machinery Co., Ltd, and Qingdao Rotec Auto Parts Co., Ltd.

EFFECTIVE DATE: June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Terre Keaton or Margarita Panayi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1766, (202) 482–1280 or 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests from Anda Industries Co., Ltd ("Anda"), Laizhou City Luqi Machinery Co., Ltd ("Luqi"), and Qingdao Rotec Auto Parts Co., Ltd ("Rotec"), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"), which has an April anniversary date.

As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), each of the exporters identified above, which are also producers, has certified that it did not export brake rotors to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export brake rotors during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Anda, Luqi and Rotec each submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on information on the record, we are initiating a new shipper review for Anda, Luqi and Rotec.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Anda, Luqi and Rotec (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides

sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, the review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on brake rotors from the PRC. The preliminary results of this new shipper review would normally be issued not later than 180 days after initiation of this review. However, on May 16, 2003, Anda, Luqi and Rotec agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrent with the sixth annual administrative review of this order for the period April 1, 2002–March 31, 2003, which is being conducted pursuant to section 751(a)(1) of the Act. Therefore, we intend to issue the preliminary results of this review not later than 245 days after the last day of the anniversary month.

Antidumping duty proceeding	Period to be reviewed
PRC: Brake Rotors, A–570–846:	
Anda Industries Co., Ltd	04/01/02–03/31/03
Laizhou City Luqi Machinery Co., Ltd	04/01/02–03/31/03
Qingdao Rotec Auto Parts Co., Ltd	04/01/02–03/31/03

We will instruct the U.S. Bureau of Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies in accordance with 19 CFR 351.214(e). Because Anda, Luqi and Rotec certified that they produce and export the subject merchandise, the sale of which was the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: May 30, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–14182 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products from Japan.

SUMMARY: On April 21, 2003, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of the anti-circumvention review of the antidumping order on certain corrosion-resistant carbon steel flat products from Japan. *See Notice of Preliminary Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products from Japan*, 68 FR 19499 (April 21, 2003) ("Preliminary Results"). Based on the comments received, we have not changed our results from the Preliminary Results.

EFFECTIVE DATE: June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or James Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207 and (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 2003, the Department published in the **Federal Register** the Preliminary Results. We invited parties to comment on our Preliminary Results. On May 5, 2003, we received comments from respondents Nippon Steel Corporation ("NSC"), and NKK Steel Corporation ("NKK"). We received no comments or rebuttal comments from any other parties.

Scope of the Order

The scope of this order is as follows: The products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150

millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: Carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: Carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: Carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: Carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: Carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: Carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: Carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: Carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: Under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Also excluded from this order are products meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet ("CRBG") with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004" (0.10mm) to 0.030" (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than ±0.2; Lankford value = ≥1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal

conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometer.

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate.

Also, excluded from this order are products meeting the following specifications: (1) Flat-rolled products (provided for in HTSUS subheading 7210.49.00), other than of high-strength steel, known as "ASE Iron Flash" and either: (A) Having a base layer of zinc-based zinc-iron alloy applied by hot-dipping and a surface layer of iron-zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40 percent by weight of zinc; or (B) two-layer-coated corrosion-resistant steel with a coating composed of (a) a base coating layer of zinc-based zinc-iron alloy by hot-dip galvanizing process, and (b) a surface coating layer of iron-zinc alloy by electro-galvanizing process, having an effective amount of zinc up to 40 percent by weight, and (2) corrosion resistant continuously annealed flat-rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel-iron-

diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length.

Analysis of Comments Received

As stated above, the only comments the Department received on the Preliminary Results were from two respondents, NKK and Nippon, who each expressed support of the Department's analysis and decision. Since we received no comments in opposition to the Preliminary Results, we find it is not necessary to discuss these comments which were in support of the Department's decision.

Changes Since the Preliminary Results

As none of the submitted comments recommended changing the Preliminary Results and as the Department's analysis has not changed regarding any aspect of the Preliminary Results, we have not changed our results from the Preliminary Results.

Final Results

After our analysis, the Department found the following: (1) The increase of imports from Japan to the United States of corrosion-resistant steel ("CRS") with boron-added was only temporary; (2) there were imports to the United States from Japan of boron-added CRS at the time the scope of the order was proposed by the domestic industry and published by the Department; (3) there are commercially and metallurgically viable reasons for the addition of boron in the context of the Continuous Annealing Process ("CAP"), which was used by the two respondents who exported the vast majority of the boron-added CRS to the United States; and (4) under the five factor test normally applied to determine if an article has been altered in form or appearance in minor respects so as to result in circumvention of the order, which includes an analysis of the overall physical characteristics, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of modification, we found that, for companies that use the CAP, the addition of boron is not a minor alteration. Therefore, the evidence on the record of this inquiry, taken as a whole, leads to our final results that the United States imports of boron-added corrosion-resistant carbon steel flat products from the respondents were not minor alterations of the subject merchandise, within the meaning of section 781(c) of the Act, and are not circumventing the antidumping duty order on CRS from Japan.

We are issuing and publishing this notice in accordance with section 781(c) of the Act and §351.225(i) of the Department's regulations.

Dated: May 29, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14180 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–810]

Certain Hot-Rolled Carbon Steel Flat Products From South Africa: Notice of Rescission of Countervailing Duty Administrative Review for the Period January 1, 2001, Through December 31, 2001

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a timely request from Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (petitioners), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products from South Africa, covering the period January 1, 2001, to December 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 68 FR 3009 (January 22, 2003). Because petitioners have submitted a withdrawal of their request for an administrative review, and there was no request for review from any other interested party, the Department is rescinding this review in accordance with § 351.213(d)(1) of the Department's regulations.

EFFECTIVE DATE: June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Julio Fernandez, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3148 or (202) 482–0961, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2002, the Department published a notice of opportunity to request an administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products from South Africa. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation* (67 FR 78219). On December 31, 2002, the Department received a timely request from petitioners for an administrative review covering the period from January 1, 2001 through December 31, 2001, in accordance with 19 CFR 351.213(b)(1).

The Department published a notice of initiation of this countervailing duty administrative review on January 22, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 68 FR 3009 (January 22, 2003). This review covered two manufacturers/exporters of the subject merchandise, Iscor, Ltd. and Saldanha Steel, Ltd., for the period January 1, 2001 through December 31, 2001. On April 24, 2003, petitioners withdrew their request for review.

In accordance with 19 CFR 351.213(d), 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). The Department is authorized to extend this deadline if it decides that it is reasonable to do so. Although petitioners submitted their withdrawal request 92 days after the initiation publication date, *i.e.*, after the 90-day period had expired, the Department has decided that it is reasonable to extend the deadline and accept the request. Petitioners were the

only parties to request this review, and the review has not progressed beyond a point where it would have been unreasonable to allow petitioners to withdraw their request for review. *See Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review*, 68 FR 16764 (April 7, 2003). Additionally, we conclude that this withdrawal does not constitute an "abuse" of our procedures. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27317 (May 19, 1997). Thus, the Department is rescinding the countervailing duty administrative review on certain hot-rolled carbon steel flat products from South Africa for the period January 1, 2001 through December 31, 2001. The Department will issue appropriate assessment instructions to the United States Bureau of Customs and Border Protection.

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 and notice are issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 30, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–14181 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052003C]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing Permits

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

ACTION: Notice of receipt of a request for exempted fishing permits (EFPs); request for comments.

SUMMARY: NMFS announces the receipt of a request for EFPs for tuna purse seine vessels to begin fishing prior to the traditional start date in order to improve market conditions and to allow retention of all incidental catch of bluefin tuna between 73 and 81 inches. NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

DATES: Written comments on this fishing activity will be considered by NMFS in issuing such EFPs if received on or before June 20, 2003.

ADDRESSES: Send comments to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to (301)713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

The East Coast Tuna Association (ECTA) has requested EFPs for five tuna purse seine vessels to begin fishing for their giant Atlantic bluefin tuna allocation on July 15, rather than the traditional start date of August 15. The ECTA believes that beginning the purse seine fishing season 30 days early could enhance marketing opportunities and therefore benefit the entire U.S. commercial bluefin tuna fishery.

ECTA also requests an exemption to allow these vessels to exceed the 10–percent tolerance level for incidental catch of bluefin tuna between 73 and 81 inches (185 to 206 cm). In their request, ECTA states that the minimum size tolerance was a restrictive factor limiting the success of last year's start date experiment and above normal water temperatures may also have been a contributing factor. ECTA also states that due to the prevalence of mixed schools of giant and large medium bluefin tuna throughout the fishing season, purse seine vessels would likely exceed the 10–percent tolerance for undersized fish. ECTA feels that the purse seine quota has not been caught in recent years because purse seine vessels have refrained from setting on mixed schools. ECTA notes that the purse seine vessels have the largest average minimum size of any of the U.S. Atlantic tuna commercial categories and that most purse seine vessels targeting mixed schools would not catch bluefin tuna below 75 inches (190 cm). Thus, they are requesting an exemption from the 10 percent tolerance level in order to ensure the purse seine quota is filled, to increase fishing efficiency, and to reduce the potential for bycatch mortality.

NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: May 30, 2003.

Richard W. Surdi,

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

[FR Doc. 03–14178 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of the first meeting of the Marine Protected Areas Federal Advisory Committee (MPAFAC) in Washington, DC.

DATES: The meeting will be held Tuesday, June 24, from 8:30 a.m. to 5:15 p.m., and Wednesday, June 25, from 8:30 a.m. to 4 p.m. These times and the agenda topics described below may be subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held both days at the Commerce Department Auditorium, 1401 Constitution Avenue, NW., Washington, DC 20230. (Please use the main entrance on 14th Street).

FOR FURTHER INFORMATION CONTACT: Marjorie Ernst, Designated Federal Officer, MPAFAC, National Marine Protected Areas Center, NOAA, Rm. 12227, 1305 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–563–7111; Fax: 301–713–3110; E-mail: *Marjorie.Ernst@noaa.gov;* or visit the National MPA Center Web site at *http://www.mpa.gov*).

SUPPLEMENTARY INFORMATION: The MPAFAC, composed of external, knowledgeable representatives of stakeholder groups, has been established by the Department of Commerce to provide advice to the

Secretaries of Commerce and Interior on implementation of section 4 of Executive Order 13158 on MPAs. While the two-day meeting is open to the public, a one-hour time period has been reserved late in the morning on Wednesday for the Committee to receive verbal comments or questions from the public. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes and written statements submitted either on site or beforehand, if possible.

Matters To Be Considered

On Tuesday, June 24, high-level officials from the Departments of Commerce and the Interior will provide opening remarks, followed by FAC member introductions. Presentations will be made by Commerce Department counsel to orient members regarding Federal Advisory Committee Act requirements and ethical guidelines. In the afternoon, officials from NOAA and the Department of the Interior will present on the background of the Executive Order and an overview of National MPA Center goals and activities. This will be followed by a presentation and discussion of the scope and charge to the Committee.

On Wednesday, June 25, the Committee will elect a chairperson before receiving more detailed presentations to develop the foundation for conducting its work. During the afternoon, the Committee will discuss various administrative and operational matters related to getting organized to fulfill its mission.

Dated: May 14, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–14139 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060203B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee (SSC) in June, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, June 19, 2003, at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Logan Airport, 225 McClellan Highway, Boston, MA 02128; telephone: (617) 569–5250.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Scientific and Statistical Committee (SSC) will provide the Council guidance on developing management reference points for the Atlantic Sea Herring Fishery Management Plan (FMP) in light of the stock assessments presented at the U.S. - Canada Transboundary Resource Assessment Committee in February 2003. The Council will consider the SSC's guidance in the development of Amendment 1 to the Herring FMP.

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: June 2, 2003.

Peter H. Fricke,

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

[FR Doc. 03–14179 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052003B]

Marine Mammals; File No. 1003–1665

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Jennifer Moss Burns, University of Alaska Anchorage, Department of Biological Sciences, College of Arts and Sciences, 3211 Providence Drive, Anchorage, AK 99508, has been issued an amendment to scientific research Permit No. 1003–1665–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, PO Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 7, 2003, notice was published in the **Federal Register** (69 FR 16786) that an amendment of Permit No. 1003–1665–00, issued April 12, 2002 (67 FR 19167), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit was amended to increase the number of takes of harbor seals (*Phoca vitulina richardsi*) in Southeast Alaska by disturbance incidental to capture and surveys from 500 to 2,000 per year.

Dated: May 30, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14175 Filed 6–4–03; 8:45am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050503A]

Marine Mammals; File No. 763–1534–01

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Zoological Park, Smithsonian Institution, Washington, D.C. 20008–2598 [Principal Investigator: Dr. Daryl Boness], has been issued an amendment to scientific research Permit No. 763–1534–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508)281–9346; fax (508)281–9371.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Skidmore (301) 713–2289.

SUPPLEMENTARY INFORMATION: On March 28, 2003, notice was published in the **Federal Register** (68 FR 14585) that an amendment of Permit No. 763–1534–00 issued March 10, 2000 (65 FR 14947), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit authorizes the Holder to import/export samples taken from non-endangered species of the Orders Cetacea and Pinnipedia [except walrus].

Dated: May 29, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14176 Filed 6–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Continuing Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces the extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 4, 2003.

ADDRESSES: Written comments and recommendations on the continuing information collection should be sent to the TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA. 22041–3206, Attn: Major Joann Kelsch.

FOR FURTHER INFORMATION CONTACT: To request more information on the continuation of this information collection, please write to the above address or contact TRICARE Management Activity, DHP Management Control and Financial Studies at 703–681–3492.

Title, Associated Form and OMB Number: Third Party Collection Program—Record of Other Health Insurance, DD Form 2569; OMB Number 0704–0323.

Needs and Uses: The information contained in the DD Form 2569 will be used to collect reimbursement from private insurers for medical care provided to family members of retirees and deceased Service members having health insurance. Such monetary benefits accruing to the Military Treatment Facility (MTF) will be used to enhance healthcare delivery in the MTF. Information will also be used by MTF staff and CHAMPUS Fiscal Intermediaries to determine eligibility for care, deductibles, and co-payments and by Health Affairs for program planning and management.

Affected Public: Family members of retirees and deceased Service members having health insurance.

Annual Burden Hours: 115,096 hours (.041 × 2,807,212).

Number of Respondents: 2,807,212.

Responses Per Respondent: 1.

Average Burden Per Response: .041 hrs (2.5 minutes).

Frequency: Annually or on occasion when insurance information changes.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This is a reinstatement of a previously approved collection that will expire July 31, 2003.

The administration has placed increased emphasis upon recovery of health care expenses under the Federal Medical Care Recovery Act. Completion of this form, while increasing total burden hours, will aid in increasing revenues (O&M dollars), services, and operating efficiency and effectiveness within the Military Health Services System. This information is collected either during the inpatient stay admission and/or discharge process or during the visit when a patient presents for an outpatient procedure.

Dated: May 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–14145 Filed 6–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: June 16–17, 2003.

ADDRESSES: RAND, 1200 S. Hayes Street, 4th floor, Arlington, VA 22202–5050.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this

Panel on its Web site at *http://www.rand.org/organization/nsrd/terrpanel;* it can also be reached at (703) 413–1100 extension 5683.

SUPPLEMENTARY INFORMATION:

Proposed Schedule and Agenda

Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 11 a.m. to 5 p.m. on June 16, 2003 and from 8:30 a.m. until 3 p.m. on June 17, 2003. Time will be allocated for public comments by individuals or organizations at the end of the meeting on June 17th. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Hillary Peck, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: May 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–14147 Filed 6–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on the Smallpox Vaccine Down Select Process will meet in closed session on July 24, 2003, in Washington, DC. The Task Force will perform an independent evaluation of the Department of Defense and Department of Health and Human Services smallpox vaccine candidates.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will evaluate each of the smallpox vaccine candidates to include the following type of issues: choice of cell line and viral strain used; preclinical data in appropriate animal models; review of vaccine production methodology to include rates of production and surge capacity; review of protocols for clinical trials to include adverse reaction rates; review of cost issues as they relate to production of the vaccine; review of critical regulatory issues associated with the use of the vaccine; and any other issues that the Task Force feels, based on its experience, are relevant.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(4) and that, accordingly, the meeting will be closed to the public.

Dated: May 29, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–14146 Filed 6–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Mandatory Use of USBank's PowerTrack System by Department of Defense Personal Property Transportation Service Providers

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for the Household Goods and Personal Property Program, proposes the mandatory use of USBank's PowerTrack System as the transaction and payment system for all DOD Transportation Service Providers (TSP), beginning with the implementation of Phase I of the Defense Future Personal Property Program, (Families First). Furthermore, the use of MTMC's Centralized Web Application (CWA) will also be mandatory. Implementation of PowerTrack at all Military Services and Coast Guard installations is the goal of Families First, which is the first stop in moving toward the reengineered Personal Property Program of the future.

This announcement is being made to afford TSPs ample time to comment and plan for potential future data feeds to PowerTrack. The Electronic Billing and Payment portion of the Families First Web site is located at *http://www.mtmc.army.mil*, under the Personal Property Program. The site offers industry access to updates on the Business Rules, Concept of Operations (CONOPS), and System Interface Specifications.

DATES: The initial rollout of PowerTrack and CWA is proposed to begin October 1, 2003. Comments must be submitted on or before 30 days from publication.

ADDRESSES: Comments may be sent by e-mail to: *thomasg@mtmc.army.mil*; or by courier to: Headquarters, Military Traffic Management Command, ATTN: MTPP–PD, Room 10N35–58 (George Thomas), Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–5000.

FOR FURTHER INFORMATION CONTACT: Mr. George Thomas at (703) 428–2237.

SUPPLEMENTARY INFORMATION: The initial rollout (*see* **DATES**) is proposed to serve as the Evaluation Period for the Phase I process, and involve a limited number of Personal Property Shipping Office's (PPSO) and TSP's. Expansion to the remaining PPSO's and TSP's is proposed to commerce on or about April 2004. It is important to note that not all PPSO's will be impacted during the Evaluation Period. For this reason, TSPs should file their rates for the Winter Cycle assuming that PowerTrack and CWA will not be used.

Transportation Providers wishing to transport personal property shipments for the DOD must have an agreement with USBank and be PowerTrack certified for the electronic payment of commercial transportation services. It is important that TPs begin the PowerTrack signup process by calling USBank at 1–800–417–1844. Additional information on PowerTrack is available at *http://www.usbank.com/powertrack.* Only those TPs that are PowerTrack certified will be eligible to receive personal property shipments.

I. Background

On 7 July 1997, the Under Secretary of Defense (Comptroller) issued a memorandum, which required the reengineering of defense transportation documentation and financial processes as part of an effort to revolutionize DOD business practices across all Military Services and Agencies. A major component of the reengineering effort is the implementation of USBank's PowerTrack System. Powertrack has been implemented for DOD freight shipments for all modes of transportation and now is under consideration for DOD personal property shipments. In June 2002, the USTRANSCOM Personal Property report was released, and USTRANSCOM directed that work begin on the future Personal Property program. USTRANSCOM tasked MTMC, in conjunction with the Military Services and Industry, to map our

Families First by August 31, 2002. As a part of the Families First effort, DOD declared that PowerTrack would be utilized as the commercial business-to-business payment system.

To begin moving forward with Families First, MTMC developed a CONOPS outlining the implementation of Phase I. Key elements of Phase I CONOPS are electronic bill payment and the CWA. The CWA will be used for approval authorization and for costing shipments, based on the current Military Rate Tender.

II. Objective

The objective of Phase I is to implement the new electronic bill payment portion of Families First. The electronic bill payment processes for Phase I will:

- Use USBank's PowerTrack system to pay Transportation Service Providers;
- Use CWA as a tool to track and approve services performed by Transportation Service Providers; and,
- Provide information visibility for Stakeholders (Personal Property Shipping Offices, Military Services, General Service Administration, Transportation Service Providers, etc.).

Regulation Flexibility Act

This action is not considered rule making within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3051 et seq., does not apply because no information collection or record keeping requirements are imposed on contractors, offerors or members of the public.

Thomas Hicks,

Chief, Personal Property Division.

[FR Doc. 03–14154 Filed 6–4–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Handheld and Hand Powered Centrifuge Device

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application No. 60/391,945 entitled "Handheld and Hand Powered Centrifuge Device," filed June 28, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to centrifuge devices. More particularly, this invention relates to portable, handheld and hand-powered centrifuge devices, and methods using the same.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–14156 Filed 6–4–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Taqman Internal Positive Control

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Provisional Patent Application No. 60/361,455 entitled "Taqman Internal Positive Control," filed March 4, 2002. Foreign rights are also available (PCT/US03/06347). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The prevent invention generally relates to probes comprising a reporter molecule and a quencher molecule for use in nucleic acid assays. In particular, the present invention relates to a universal internal positive control that may be used in polymerase chain reaction (PCR) based assays.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–14155 Filed 6–4–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement to the July 2002 Final Dredged Material Management Plan and Environmental Impact Statement, McNary Reservoir and Lower Snake River Reservoirs, in the States of Oregon, Washington, and Idaho

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Walla Walla District, intends to prepare a Supplemental Environmental Impact Statement (SEIS) to the July 2002 Final Dredged Material Management Plan (DMMP) and Environmental Impact Statement (EIS): McNary Reservoir and Lower Snake River Reservoirs. The DMMP/EIS addressed a 20-year, programmatic approach the Corps would use to maintain the navigation channel within the Walla Walla District. The study reach considered includes Lake Wallula above McNary Dam on the Columbia River in Oregon and Washington; the four lower Snake River reservoirs extending from the mouth of the Snake River upstream to the communities of Lewiston, Idaho, and Clarkston, Washington; and the lower 2 miles of the Clearwater River from its confluence with the Snake River at Lewiston upstream to the U.S. Highway 12 Bridge. This supplement will reorganize and clarify information already included in the DMMP/EIS, expand the discussions and evaluations of measures considered in the DMMP/EIS, incorporate new information and data collected subsequent to the issuance of the DMMP/EIS, and modify alternatives, as needed, including the preferred alternative. When completed and approved, this SEIS, along with the DMMP/EIS, will constitute the Corps'

long-term programmatic plan for maintaining the congressionally-authorized channel within the Walla Walla District.

The Environmental Protection Agency (EPA), Region 10, was a cooperating agency for the DMMP/EIS, and will also be a cooperating agency for this SEIS. The Corps will work with EPA during development of the SEIS to consider and incorporate, as appropriate, the policies and procedures currently evolving for the Northwest Regional Dredging Team (RDT), as referred to in the April 26, 2002, policy letter jointly signed by Brigadier General David A. Fastabend, Corps of Engineers, Northwestern Division Commander, and L. John Iani, EPA Region 10 Administrator.

DATES: Submit comments by July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Sands, Project Manager, Walla Walla District, Corps of Engineers, CENWW–PM–PPM, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7287, or Ms. Sandra Simmons, NEPA Coordinator, Walla Walla District, Corps of Engineers, CENWW–PD–EC, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7265.

SUPPLEMENTARY INFORMATION: The DMMP/EIS defined the programmatic approach the Corps planned to follow for the next 20 years for maintaining the congressionally authorized navigation channel by managing sediment deposition, dredging, and disposing of dredged material removed from those reaches of the Columbia, Snake, and Clearwater Rivers that make up that portion of the Columbia/Snake Rivers Inland Navigation Waterway within the Walla Walla District boundaries. The DMMP/EIS also addressed the need to provide flow conveyance at the confluence of the Snake and Clearwater Rivers at Lewiston, Idaho, as dredging has been used to maintain adequate flow conveyance in this area. The DMMP/EIS considered four alternatives: (1) No Action (No Change), Maintenance Dredging With In-Water Disposal; (2) Maintenance Dredging With In-Water Disposal to Create Fish Habitat and a 3-Foot Levee Raise; (3) Maintenance Dredging With Upland Disposal and a 3-Foot Levee Raise; and (4) Maintenance Dredging With Beneficial Use of Dredged Material and a 3-Foot Levee Raise.

The DMMP/EIS and September 2002 Record of Decision (ROD) were challenged in court and have not been implemented. Information regarding the case, which was filed in the U.S. District Court for the Western District of Washington, can be viewed on the Walla Walla District Web site at *http://www.nww.usace.army.mil/dmmp/hot_topics_dmmp.htm.*

In response to the court challenge, the Corps decided to withdraw the ROD for the Final DMMP/EIS and prepare an SEIS. The SEIS will reorganize and clarify information already included in the DMMP/EIS, expand the discussions and evaluations of measures considered in the DMMP/EIS, incorporate new information and data collected subsequent to the issuance of the DMMP/EIS, and modify alternatives, as needed, including the preferred alternative. Additional measures and alternatives identified during the evaluation will also be considered. The SEIS will address measures, alternatives, and impacts on a programmatic level, but will not address site-specific actions. However, the SEIS will present the coordination and environmental review steps the Corps will take with regard to subsequent site-specific actions. The SEIS will also continue to include input from a local, interagency sediment management group formed under the Northwest RDT. After public review of the final SEIS, the Corps intends to sign a new ROD for the programmatic plan.

As per 40 CFR 1502.20 and 1508.28 of the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), the Corps intends to use a tiered approach for addressing site-specific activities performed subsequent to the SEIS and ROD. For each activity, the Corps plans to prepare the compliance documentation necessary to tier off of the programmatic plan.

The site-specific documentation will address details of the proposed activity and the impacts of that activity.

As per 40 CFR section 1502.9(c)(4) of the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, the Corps does not plan to conduct scoping for this SEIS. However, affected Federal, state, and local agencies; Indian tribes; and other interested organizations and parties are invited to provide input to the Corps on the scope of this SEIS. To ensure consideration, input on the scope should be provided to the Corps by comment date (See **DATES**). Additional opportunities for public input on the SEIS will be provided during the normal review periods for the draft and final SEIS.

The draft SEIS is currently scheduled to be available for public review in late 2003. The final SEIS is currently scheduled to be available for public review in early 2004.

Edward Kertis, Jr.,

LTC, EN, Commanding.

[FR Doc. 03–14157 Filed 6–4–03; 8:45 am]

BILLING CODE 3710–GC–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a General Reevaluation Report and Draft Supplemental Environmental Impact Statement for the Poplar Island Environmental Restoration Project, Talbot County, MD

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers (Corps) is initiating a General Reevaluation Report (GRR) and Draft Supplemental Environmental Impact Statement (DSEIS) to evaluate the potential for additional expansion of the Poplar Island Environmental Restoration Project (PIERP), located in the Chesapeake Bay in Talbot County, Maryland. A DSEIS will be integrated into the GRR to document existing conditions, proposed project actions, and potential project effects and products. The Maryland Department of Transportation (MDOT), under the auspices of the Maryland Port Administration (MPA), is the non-Federal sponsor for this GRR and DSEIS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DSEIS can be addressed to Ms. Gwen Meyer, Study Team Leader, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore, MD 21203–1715, telephone (410) 962–9502. E-mail address: *gwendolyn.c.meyer@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. This GRR is being conducted under the existing PIERP authorization, section 537 of the Water Resources Development Act of 1996 (WRDA96). Certain proposed project modifications may be able to be implemented without further Congressional authorization, subject to section 902 of the Water Resources Development Act of 1986 (WRDA86), which limits cost increases in authorized projects to 20 percent.

Other proposed project modifications may require Congressional authorization.

2. The group of islands known as Poplar Island are located in Talbot County, Maryland, in the upper-middle portion of the Chesapeake Bay, 34 nautical miles south-southeast of Baltimore Harbor, and one mile northwest of Tilghman Island. Poplar Island has been identified by the U.S. fish and Wildlife Service (USFWS), the Maryland Department of Natural Resources, National Marine Fisheries Service, and other resource agencies as a valuable nesting and nursery area for many species of wildlife, including bald eagles, osprey, heron, egrets, and least terns.

The PIERP was developed through cooperative efforts of the Corps, MPA, and many other Federal, State and local agencies, public and private organizations, and the general public. The PIERP reconstructed the island to its approximately 1847 footprint. The Maryland Environmental Service (MES) completed environmental and technical reconnaissance-level studies at Poplar Island. The PIERP was studied by the Corps under the authority of section 204 of WRDA 1992. Section 204 provides authority for the Corps to implement projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in connection with the construction, operation, or maintenance of an authorized Federal navigation project. A feasibility report and Environmental Impact Statement (EIS) were completed in February 1996. The feasibility report was approved by the Assistant Secretary of the Army for Civil Works on September 4, 1996. The environmental restoration project, through the beneficial use of dredged material, was approved for construction under section 537 of WRDA96. *See* section 3, paragraph D, below for sources of this dredged material.

The PIERP containment dikes were constructed in three stages. Phase I included construction of the northern 640 acres contained by sand dikes, construction of rock reefs at the northern end of the project, construction of a rock breakwater between Poplar Island and Coaches Island and construction of geotextile tube breakwaters along the southwest side of Coaches Island as protection until Phase II. Phase I was completed in March 2000. Phase II included dike construction to contain the southern 500 acres and was completed in February 2002. Phase III construction raised the dikes in Cell No. 2, the northern upland cell, from an initial elevation of 10 feet mean lower low water (MLLW), to an elevation of 20 feet MLLW. Raising of the dikes in Cell Nos. 2 and 6 to the authorized elevation of 23 feet will be accomplished in future phases. To date, approximately 8 million cubic yards (mcy) of dredged material has been placed at Poplar Island in the Phase I area.

The current project design includes development of half of the land area as wetlands (570 acres) with the remaining portion as upland habitat (570 acres). Of the wetlands, 80 percent are being developed as low marsh and 20 percent as high marsh (456 acres low marsh, 114 acres high marsh). Small upland islands, ponds, and dendritic guts or channels will be created to increase habitat diversity within the marsh areas. It is expected that habitat diversity will be increased in the upland areas by the construction of small ponds and providing for areas of native forest, open shrub and native grasses.

The original project at Poplar Island was envisioned for construction during a 24-year period through the placement of up to 2 mcy of dredged material per year. The actual dredged material placement at Poplar Island has increased beyond planned levels due to the continued need to improve and to maintain the Chesapeake Bay approach channels to the Port of Baltimore and the restrictions of other placement options.

The proposed PIERP expansion would increase the dredged material capacity of the island and add further environmental and possibly recreational features at the facility.

3. The GRR is a decision document that will comply with NEPA through supplemental documentation to the existing Poplar Island EIS. An integrated Supplemental Environmental Impact Statement (SEIS) addressing raising the dikes above the authorized height of 23 feet and the proposed footprint expansion alternatives will be prepared. If during the study period it is determined that an EIS is not needed to comply with NEPA, an Environmental Assessment (EA) would be prepared instead. The Corps, Baltimore District proposes that the Poplar Island Expansion general reevaluation study further investigate and fully evaluate solutions to expand the placement capacity at Poplar Island by dike raising in the upland cells of the island and/or expanding the footprint with additional enhancements. The report will therefore consider the following:

a. *Dike Raising*—The study will evaluate raising the upland cell dikes (Cell Nos. 2 and 6) above the authorized height of 23 feet MLLW) at Poplar Island to an unspecified elevation to be determined during the study. This modification is not expected to change the beneficial use of the project. This alternative may increase placement capacity by 10 to 20 million cubic yards or more depending on the final elevation.

b. *Expansion of the Existing Footprint*—Expanding the footprint of the island to increase the placement capacity of the island as well as adding additional environmental benefits to the project will be studied. Proposed alignments will consider potential expansion along the northeastern side of the island and southern side of the island. All alignments would increase dredged material capacity and add environmental habitat. The northeastern alignment would also provide increased protection to Poplar Harbor and Jefferson Island.

The Talbot County government requested that Poplar Island expansion investigations include recreation and education opportunities at the island. Features of this type may include, but are not limited to recreational beach creation, hiking trails, educational facilities, bird watching, camping, and other passive recreation. The study will determine whether such features could be incorporated into the design of the island without compromising the restoration goals and intent of the project. Issues to be addressed include transportation to and from the island (and the impacts thereof) and providing facilities that allow for minimal human impact to environmentally sensitive areas. These issues will be coordinated extensively with interested agencies.

c. *Environmental Enhancements—Poplar Harbor*—To the east of the Poplar Island project is Poplar Island. This area is protected from the wave energy of the open Chesapeake Bay by the project to the west, Coaches Island to the south, and Jefferson Island to the north. One of the goals of the project is to facilitate the return of submerged aquatic vegetation (SAV) within the harbor by protecting the harbor and providing quiescent shallow water habitat. Efforts should be made to maximize this restoration potential through further protection of the northern side of the harbor. Expansion of the footprint could be designed to accomplish this goal, but if that is not considered feasible, other structural means (breakwaters, jetty, etc.) should be considered.

Jefferson Island—Jefferson Island was one of the remaining remnants of Poplar Island that existed prior to the restoration project. The project does not incorporate Jefferson Island into the

footprint. Jefferson Island is toward the northern end of Poplar Harbor and acts as a barrier to protect the harbor from waves and currents from the north. Restoration of Poplar Island does not protect the east side of Jefferson Island from continued erosion. The continued erosion of the island not only threatens to remove important protection of the harbor, but it also adds sediment to the water column that could hinder the re-colonization of SAV in the harbor. For these reasons, protection of Jefferson Island may be warranted and should be considered in the GRR.

Terrapin habitat—The diamondback terrapin is an important species in the Chesapeake ecosystem. It requires remote, sandy beaches to lay eggs. Such habitat is becoming increasingly scare in the Chesapeake Bay due to human development and activities, sea-level rise and erosion. In the spring and summer of 2002, dozens of terrapins nested on the dikes at Poplar Island resulting in the tagging and release of over 500 hatched terrapins back into the Bay. This experience has proven that the island is well situated and isolated enough for terrapin habitat. As part of the GRR study, new features will be considered at the island to enhance terrapin habitat, such as creation of non-recreational sandy beaches.

d. *Acceptance of Dredged Material from other Channels at Poplar Island*—The original Poplar Island project is limited to accepting only material from certain outer Bay channel reaches (the Craighill Entrance Channel, Craighill Channel, Craighill Angle, Craighill Upper Range, Cutoff Angle, Brewerton Channel Eastern Extension, Tolchester Channel, and Swan Point Channel). Dredged material from the channels north of the Tolchester Channel (the southern approach channels to the Chesapeake and Delaware Canal) is currently placed at the Pooles Island open water placement site. State of Maryland law requires this site to close by 2010, thereby leaving those channels with insufficient capacity until a new facility is developed. Also to be considered is the acceptability of material from State and local dredging projects for placement at Poplar Island. It is unlikely that the quantities of material that may be generated from such projects would have much impact in the overall operation and capacity of the island. This GRR will investigate sediment quality and environmental considerations before recommending that the material from these channels be accepted at Poplar Island. While the established criteria of determining dredged material acceptability at Poplar Island will not change, a modification to include fill material from additional channels may require additional authorization and will require an amendment to the existing Project Cooperation Agreement with the non-Federal sponsor.

4. The decision to implement these actions will be based on an evaluation of the probable impact of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, will be balanced against its reasonably foreseeable costs. The Baltimore District is preparing a DSEIS, which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and on the overall public interest. The DSEIS will be prepared in accordance with NEPA and will document all factors which may be relevant to the proposal, including the cumulative effects thereof. Among these factors are habitat restoration, channel and erosion control, improvements to water quality, storm water management, conservation, economics, energy needs, general environmental concerns, fish and wildlife values, wetlands, historic and cultural values, navigation, shoreline erosion and accretion, flood hazards, flood plain values, land use, recreation, safety, food production, and, in general, the needs and welfare of the people. The work will not be accomplished unless it is found to be in the public interest. If applicable, the DSEIS will also apply guidelines issued by the Environmental Protection Agency, under the authority of section 404(b)(1) of the Clean Water Act of 1977 (Pub. L. 95–217).

5. Public involvement activities for the study will include workshops, meetings, and other coordination with interested private individuals and organizations, as well as with concerned Federal, state, and local agencies, the Poplar Island Working Group, and the State's Dredged Material Management Plan Citizen's Advisory Group. Coordination letters and newsletters have been sent to appropriate agencies, organizations, and individuals on an extensive mailing list. Additional public information will be provided through print media, mailings, radio and television announcements.

6. In addition to the Corps, Talbot County, and the MPA, other participants that will be involved in the study and DSEIS process include the following: U.S. Environmental Protection Agency; USFWS; National Marine Fisheries Service; U.S. Forest Service; U.S. Geological Survey; Natural Resource Conservation Service and the Maryland Departments of Natural Resources and the Environment. The Baltimore District invites potentially affected Federal, state, and local agencies, and other organizations and entities to participate in this study.

7. The Poplar Island GRR and integrated DSEIS are tentatively scheduled for public review in November 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–14158 Filed 6–4–03; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41777 entitled "Novel Approaches to the Management of Greenhouse Gases from Fossil Fuel Energy Systems." The objective of this solicitation is to solicit applications for grants for research projects directed at novel approaches to the management of GHG emissions from fossil-fuel energy systems. Specifically, the solicitation will provide for the development of cost-effective solutions to the GHG emissions problem from fossil-fuel electric utilities.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about May 22, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Angela Delmastro, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochran's Mill Road, Pittbsburgh PA 15236, E-mail Address: *Angela.Delmastro@NETL.DOE.GOV,* Telephone Number: 412–386–5038.

SUPPLEMENTARY INFORMATION: It is anticipated that there will be 5–15 awards resulting from this solicitation.

It is estimated that $4.5 million ($1.5–$2.0 million FY04) will be available for award under this solicitation, subject to the availability of funds. The number of

awards and range of funding will depend on the number of applications received and selected for award. Future year funding will depend upon suitable progress and the availability of funds.

The objective of this solicitation is to solicit applications for grants for research projects directed at novel approaches to the management of GHG emissions from fossil-fuel energy systems. Specifically, the solicitation will provide for the development of cost-effective solutions to the GHG emissions problem from fossil-fuel electric utilities.

The goals call for resolving outstanding scientific issues and establishing reduced-cost paths to energy and cost-efficient systems to manage or mitigate GHG emissions. Proposals exploring new and innovative approaches for capturing, separating, or storing carbon, or carbonaceous compounds, are particularly welcome. Applications submitted under this solicitation should clearly describe how a successful technology or approach will reduce or mitigate the GHG emissions from fossil-fuel electric utilities. Of specific interest to DOE are CO_2 emissions resulting from the generation of electricity using coal.

The main thrust of the research efforts funded under this solicitation is experimental. As such, applications submitted under this solicitation should present a clear path forward such that, at the end of the project term, the R&D work and cost necessary to commercialize the concept can be clearly described. The anticipated term for projects is one (1) to three (3) years.

Collaborative research projects involving more than one institution are encouraged. Applications submitted from different institutions, which are directed at a common research activity, should clearly indicate they are part of a proposed collaboration and contain a brief description of the overall research project. However, each application must have a distinct scope of work and a qualified principal investigator, who is responsible for the research effort being performed at his or her institution. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are also encouraged.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on May 27, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–14167 Filed 6–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–323–000, ER03–323–001, ER03–323–002 and ER03–323–003]

Midwest Independent Transmission System Operator, Inc.; Supplemental Notice of Technical Conference

May 30, 2003.

The May 28, 2003 Notice of Technical Conference in this proceeding indicated that a technical conference regarding the Midwest ISO's Market Mitigation Measures will be held on June 26, 2003 at 9 a.m. This conference will be held in the Commission Meeting Room at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, unless otherwise notified. All interested persons may attend the conference, and registration is not required. However, attendees are asked to register on-line at *http://www.ferc.gov/home/conferences.asp*.

The agenda for the technical conference is attached. The topics will commence with a presentation by the Midwest ISO and/or the Midwest ISO Independent Market Monitor, followed by a discussion. After the conference, Commission Staff will set a schedule for Comments and Reply Comments to be filed.

Magalie R. Salas,

Secretary.

Technical Conference Agenda

9–9:15 a.m. Introductions—Commission Staff; and Midwest ISO and/or Midwest ISO Market Monitor.

9:15–12 p.m.—BCA Mitigation, NCA Mitigation and Reference Levels.

- Definition of BCA and application of BCA mitigation;
- NCA designations and mitigation thresholds;
- Reference Levels.

12–1 p.m.—Lunch Break.

1–3:45 p.m.—Interaction between Mitigation Measures and Other Mechanisms.

- Physical Withholding Penalties and Day-Ahead Resource Adequacy Assessment;
- Interaction of the Mitigation Measures with, and status of:

—Resource Adequacy Requirements;

—Safety-net Bid Caps;

—Scarcity Pricing and Demand Response.

3:45–4 p.m. Break.

4–5 p.m. Other Issues and Next Steps.

[FR Doc. 03–14211 Filed 6–4–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0087; FRL–7507–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): "Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Consumer Products," EPA No. 1764.02, OMB No. 2060–0348, expires June 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 4, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, Emission Standards Division (C504–03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5460; fax

number: (919) 541–0072; electronic mail (e-mail) address: *moore.bruce@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The EPA has established an official public docket for this ICR under Docket ID number OAR–2003–0087 (formerly A–95–40), which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *A-and-R-Docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, National Volatile Organic Compound Emission Standards for Consumer Products, 40 CFR part 59, subpart C (6102T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

The EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Regulated entities. Entities potentially affected by this action are those which manufacture, distribute, or import consumer products for sale or distribution in the United States, including the District of Columbia and all United States territories.

Title. National Volatile Organic Compound Emission Standards for Consumer Products, OMB Control No. 2060–0348; EPA ICR No. 1764.02; expires June 30, 2003.

Abstract. The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Respondents are manufacturers, distributors, and importers of consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C—National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) 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;

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

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

Burden Statement. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 hours per respondent. 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. 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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0087 (formerly A–95–40), which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EDOCKET at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID No. (OAR–2003–0087, formerly A–95–40) and

OMB control number 2060–0348 in any correspondence.

Dated: May 21, 2003.

Henry C. Thomas, Jr.,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–14197 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7507–6]

Adequacy Determination for the Kansas City Area Ozone Maintenance State Implementation Plan (SIP) for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is informing the public that we have found the motor vehicle emissions budgets for volatile organic compounds and nitrogen oxides in the Kansas City area adequate for conformity purposes. The budgets were submitted with the Kansas City Maintenance Plan for Control of Ozone which addresses the second ten-year period from the years 2003 through 2012. The Plan was submitted under two separate SIP submittals by the state of Kansas and the state of Missouri. The motor vehicle emissions budgets in each SIP were for the Kansas City Maintenance area and the budgets were the same for both states. We have determined that the budget submitted by the state of Kansas is adequate, and that the budget submitted by the state of Missouri is adequate.

DATE: This finding is effective June 20, 2003.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/traqconf.htm* (click on "Adequacy Web Pages").

You may also contact Heather Hamilton, Environmental Protection Agency, 901 N. 5th Street, Kansas City, Kansas 66101, or e-mail at *hamilton.heather@epa.gov*, telephone (913) 551–7039.

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

We sent a letter to the Kansas Department of Health and Environment and the Missouri Department of Natural Resources on March 17, 2003, stating that the motor vehicle emissions budgets in the Kansas City area submitted with the Kansas City Maintenance Plan for Control of Ozone were adequate. The Kansas City Maintenance Plan for Control of Ozone addresses the second ten-year period from the years 2003 through 2012.

On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our adequacy finding, the Kansas City Area must use the motor vehicle emissions budgets from the submitted Kansas City Maintenance Plan for Ozone for future conformity determinations.

We described our process for determining the adequacy of submitted SIP budgets in a guidance memorandum dated May 14, 1999, entitled, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." We followed this guidance in making our adequacy determination.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether SIP motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We applied these criteria in finding that the submitted budgets are adequate. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

Authority: 42 U.S.C. 7401–7671 q.

Dated: May 22, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–14195 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0334; FRL–7311–1]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a 1–day meeting on June 10, 2003. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on June 10, 2003, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), Environmental Protection Agency, Crystal Mall #2, Room 1126 (Fishbowl), 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Michael R. Barrett, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6391; fax number: (703) 305–6309; e-mail address: *barrett.michael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal, Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0334. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action.

Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

On a quarterly interval, the Exposure Modeling Workgroup meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Tentative Agenda

This section provides tentative agenda topics for the 1–day meeting:

1. Welcome and introductions.
2. Old action items.
3. Brief updates.
   - European Union activities.
   - U.S. Department of Agriculture/ Agricultural Research Service (USDA/ ARS) Pesticide Properties Database.
   - Pesticide Root Zone Model/ Exposure Analysis Modeling System (PRZM/EXAMS) Model.
   - Rice modeling.
   - Watershed Regression for Pesticides (WARP) Model.
   - Spray Drift Task Force progress.
   - AgDrift EPA review.
   - EXAMINER.
   - Pesticide Leaching U.S. (PLUS).
   - Cumulative and Aggregate Risk Evaluation System (CARES).
   - Drinking water exposure estimates for dietary risk.
   - Environmental Fate and Effects Division's (EFED) water quality projects.
   - Perspective Groundwater (PGW) Database.
   - EFED current issues in fate modeling.
4. Major topics:
   - A rapid laboratory method for studying synergism.
   - Techniques for estimating exposure time series and peak exposure levels.
   - Geographic Information System (GIS) watershed analysis for refined aquatic risk assessments.
   - Update on pesticide usage estimation procedures to support interpretation of monitoring data.
   - PRZM/EXAMS quality control issues update.
   - Software integrating frameworks for pesticide models.
5. Wrap-up and action items.

List of Subjects

Environmental protection, Pesticides, Pests, Modeling.

Dated: June 2, 2003.

Elizabeth Leovey,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 03–14311 Filed 6–3–03; 1:31 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7507–7]

Meeting of the National Drinking Water Advisory Council (NDWAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming conference call meeting of the National Drinking Water Advisory Council (Council), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will discuss follow-up actions relating to a report presented at the May 2003 meeting by NDWAC's work group on Affordability. The Council will determine whether it will make specific recommendations to EPA relating to the Affordability report.

DATES: The Council meeting will be held on June 20, 2003, from 11 a.m. to 1 p.m., Eastern Standard Time.

ADDRESSES: Council members teleconference into Room 2123 of the EPA East Building, which is physically located at 1201 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Members of the public that would like to attend the meeting, present an oral statement, submit a written statement in advance, or make arrangements to teleconference call into the meeting should contact Brenda Johnson, Designated Federal Officer, National Drinking Water Advisory Council, by June 13, 2003. Ms. Johnson can be reached at (202) 564–3791; by e-mail at *johnson.brendap@epa.gov*, or by regular mail at U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (M/C 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate 30 minutes for this purpose. A limited number of additional phone lines may be available for members of the public that are outside of the Washington, DC, metropolitan commuting area and are unable to attend in person. Any additional teleconferencing lines that are available will be reserved on a first-come, first-serve basis by the Designated Federal Officer. To ensure adequate time for public involvement, oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information. Any person needing special accommodations at this meeting, including wheelchair access, should contact the Designated Federal Officer, at the number or e-mail listed under the **FOR FURTHER INFORMATION CONTACT** section, at least five business days before the meeting so that the appropriate arrangements can be made.

Dated: May 29, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–14196 Filed 6–4–03; 8:45 am]

BILLING CODE 6450–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7509–7]

Science Advisory Board, Advisory Council on Clean Air Compliance Analysis; Notification of Changes in an Upcoming Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Advisory Council on Clean Air Compliance Analysis (Council) is announcing changes in a previously announced meeting.

DATES: Instead of holding a full meeting of the Council as previously announced for June 11–13, 2003, the Air Quality Modeling Subcommittee (AQMS) of the Council will meet for one day only on June 12, 2003 at 8 a.m. and adjourn no later than 5 p.m (EST) on that day. The meeting agenda will be posted on the SAB Web site, *http://www.epa.gov/sab/agendas.htm* by June 6, 2003.

ADDRESSES: The public meeting of the Subcommittee will be held in Washington, DC. The meeting location will be announced on the SAB Web site, *http://www.epa/sab.* For further information concerning the public meeting, please contact Dr. Angela Nugent, DFO (*see* contact information below).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board by telephone/voice mail at (202) 564–4562 or via e-mail at *nugent.angela@epa.gov.* General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, Notice was given in the **Federal Register** (68 FR 25882–25883, May 14, 2003) that the Advisory Council on Clean Air Compliance Analysis would hold a public meeting on June 11–13, 2003 to provide advice to the EPA on the Agency's plan to develop the second prospective study, the third in a series of statutorily mandated comprehensive analyses of the total costs and benefits of programs implemented pursuant to the Clean Air Act. This meeting was to include sessions for its two subcommittees, the Air Quality Modeling Subcommittee and the Health Effects Subcommittee. Background on the Council, its subcommittees, and on the advisory project was provided in a **Federal Register** notice published on February 14, 2003 (68 FR 7531–7534).

The Agency provided review material and detailed charge questions for the Council and its two subcommittees in mid May. These review materials for the "Benefits and Costs of the Clean Air Act 1990–2020; Revised Analytical Plan for EPA's Second Prospective Analysis' can be found at the following Web site, maintained by EPA's Office of Air and Radiation at: *http://www.epa.gov/oar/sect812/.* Material provided there contains the analytical plan, including individual technical appendices and charge questions submitted by EPA to the Council.

The Agency informed the SAB Staff Office and Council on May 30, 2003 that it plans to revise parts of the analytical plan and to defer many of the charge questions. Based on that information, the Council decided not to meet as planned on June 11–13, 2003. Most of the questions pertaining to the work of the Air Quality Modeling Subcommittee, however, have not been deferred. Therefore the Subcommittee will hold a short meeting on June 12, 2003 to begin providing advice on those issues.

Dated: June 2, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–14312 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7509–1]

Availability of "Allocation of Fiscal Year 2003 Youth and the Environment Training and Employment Program Funds"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled "Allocation of Fiscal Year 2003 Youth and the Environment Training and Employment Program Funds" issued on May 21, 2003. This memorandum provides National guidance for the allocation of funds used under section 104(b)(3) of the Clean Water Act.

ADDRESSES: Municipal Assistance Branch, U.S. EPA, 1200 Pennsylvania Avenue, NW., (4204–M), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Curt Baranowski, (202) 564–0636 or *baranowski.curt@epa.gov.*

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from Program's Web page at *www.epa.gov/owm/youth.htm* under the *Grant Guidance* link.

Dated: May 21, 2003.

Jane S. Moore,

Acting Director, Office of Wastewater Management.

[FR Doc. 03–14191 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7508–1]

Petroleum Products Superfund Site; Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed *de minimis* settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a *de minimis* settlement at the Petroleum Products Superfund Site (Site) under an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. Approximately 58 parties have returned signature pages accepting EPA's settlement offer. EPA will consider public comments on the proposed settlement until July 7, 2003. 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. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303. (404) 562–8887.

Written comment may be submitted to Greg Armstrong at the above address within 30 days of the date of publication.

Dated: May 16, 2003.

Anita Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–14193 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7507–9]

Prestige Chemical Company Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative order on consent.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an administrative order on consent for a removal action pursuant to section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1989 (CERCLA), as amended, regarding the Prestige Chemical Company Superfund Site located in Senoia, Coweta County, Georgia, with Ranew's Paint and Body Shop Inc. The settlement is designed to resolve fully this *de minimis* party's liability at the site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and contribution protection. EPA will consider public comments on the cost recovery component of the proposed settlement, section VII, until July 7, 2003. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that section VII is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: May 16, 2003.

Anita Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–14192 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7508–3]

Clean Water Act Section 303(d): Availability of List Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of an EPA decision identifying water quality limited segments and associated pollutants in California to be listed pursuant to Clean Water Act section 303(d)(2), and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On June 5, 2003, EPA partially approved and partially disapproved California's list submittal for the 2002 listing cycle. Specifically, EPA approved California's listing of 679 waters, associated pollutants, and associated priority rankings. EPA disapproved California's decisions not to list 5 water quality limited segments and associated pollutants, and additional pollutants for 15 water bodies already listed by the State. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2002 section 303(d) list.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants to California's 2002 section 303(d) list, as required by EPA's Public Participation regulations (40 CFR part 25). EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on California's list.

DATES: Comments must be submitted to EPA on or before July 8, 2003.

ADDRESSES: Comments on the proposed decisions should be sent to David Smith, TMDL Team Leader, Water Division, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3416, facsimile (415) 947–3537, e-mail *smith.davidw@epa.gov*. Oral comments will not be considered. Copies of EPA's decision concerning California's list that explain the rationale for EPA's decisions can be obtained at EPA Region 9's Web site at *http://www.epa.gov/region09/water/TMDL* by writing or calling Mr. Smith at the above address. Underlying documentation comprising the record for these decisions is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: David Smith at (415) 972–3416 or *smith.davidw@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, California submitted to EPA its listing decisions under section 303(d)(2) on March 3, 2003 along with several followup submittals. On June 5, 2003, EPA approved California's listing of 679 waters and associated priority rankings. EPA disapproved California's decisions not to list 5 water quality limited segments and associated pollutants, and additional pollutants for 15 water bodies already listed by the State. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2002 section 303(d) list. EPA solicits public comment on its identification of 5 additional waters and associated pollutants, and additional pollutants for 15 waters already listed by the State, for inclusion on California's 2002 section 303(d) list.

Dated: May 30, 2003.

Karen Schwinn,

Acting Director, Water Division, Region IX.

[FR Doc. 03–14194 Filed 6–4–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 22, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 4, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0095.
Title: Annual Employment Report.
Form Number: FCC Form 395–A.
Type of Review: Revision of a currently approved collection.
Respondents: Business and other for-profit, not-for-profit institutions.
Number of Respondents: 2,200.
Estimated Time per Response: 10 mins to 2.5 hrs.
Frequency of Response: Recordkeeping; Annual reporting requirement.
Total Annual Burden: 3,188 hours.
Total Annual Costs: None.
Needs and Uses: Following the D.C. Circuit's decision in *MD/DC/DE Broadcasters Association* v. *FCC ("Association")* in January 2001, vacating the FCC's broadcast EEO rules for recruitment, on January 31, 2001, the Commission suspended its EEO program requirements for both broadcasters and Multichannel Video Programming Distributors (MVPD's), including the requirement to file FCC Forms 395–A. and 395–M. The FCC is now revising Form 395–A, Annual Employment Report, to incorporate FCC Form 395-M. The new FCC Form 395-A is a data collection device used to report industry trends. The report identifies employees by gender, race, and ethnicity in fifteen job categories. The FCC Form 395–A contains a grid which collects data on full and part-time employees and requests a list of employees by job title, indicating the job category and full or part-time status of the position. However, Form 395–A omits the old EEO program report section, which is now in the new FCC Form 396–C, OMB Control No. 3060–1033.

OMB Control Number: 3060–0390.
Title: Broadcast Station Annual Employment Report, FCC Form 395–B.
Form Number: FCC Form 395–B.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit entities; State, Local or Tribal Government.
Number of Respondents: 14,000.
Estimated Time Per Response: 0.88 hours.
Frequency of Response: Annual reporting requirement.
Total Annual Burden: 12,320 hours.
Total Annual Costs: None.
Needs and Uses: FCC Form 395–B is used to compile statistics on the workforce employed by broadcast licensees/permitees. It is filed by all AM, FM, TV, international and low power TV broadcast licensees/permittees that employ five or more full-time employees. The FCC staff use the data to compile a report showing the five-year employment trends the broadcast industry.

OMB Control Number: 3060–0568.
Title: Commercial Leased Access Rates, Terms and Conditions.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 6,330.
Estimated Time per Response: 2 mins to 10 hrs.
Frequency of Response: Recordkeeping; Third party disclosure.
Total Annual Burden: 94,171 hours.
Total Annual Costs: $74,000.
Needs and Uses: The FCC and prospective leased access programmers use this information to verify rate calculations for leased access channels and to eliminate uncertainty in negotiations for leased commercial access. The Commission's leased access requirements are designed to promote programming diversity and competition in programming delivery as required by Section 612 of the Cable Television Consumer Protection and Competition Act of 1992.

OMB Control Number: 3060–0938.
Title: Application for a Low Power FM Broadcast Station License.
Form Number: FCC Form 319.
Type of Review: Extension of currently approved collection.
Respondents: Not-for-profit institutions; State, local or Tribal Government.
Number of Respondents: 1,200.
Estimated Time per Response: 1.5 hours.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 1,800 hours.
Total Annual Costs: $105,000.
Needs and Uses: The FCC Form 319 is required to apply for a new or modified low power FM broadcast station. The data are used by FCC staff to determine whether an applicant has constructed its station in accordance with the outstanding construction permit and to update FCC station files. Data are extracted from the FCC Form 319 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–14094 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 23, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the

following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 7, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0750.

Title: Section 73.673, Public Information Initiatives Regarding Educational and Informational Programming for Children.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents: 1,825.

Estimated Time per Response: 1 to 5 minutes.

Frequency of Response: Annual and eight year reporting requirements; Third party disclosure.

Total Annual Burden: 56,940 hours (multiple responses per year).

Total Annual Costs: $0.00.

Needs and Uses: On April 13, 2001, the Commission released a Memorandum Opinion and Order on Reconsideration, In the Matter of Establishment of a Class A Television Station, MM Docket 00–10, FCC 01–123. This rule expanded the scope of 47 CFR section 73.673 to include Class A television station licensees. 47 CFR section 73.673 implements the Children's Television Act of 1990 (CTA). The rule requires that commercial TV broadcasters identify programs specifically designed to educate and inform children. This identification will occur at the beginning of the programs. In addition, licensees will provide to publishers of program guides information identifying children's programs and the intended age groups. The rule provides greater clarity about broadcasters' obligations to air programming "specifically designed" to serve the educational and informational needs of children and to improve public access to information about the availability of these programs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–14095 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 23, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 7, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0589.

Title: FCC Remittance Advice and Continuation Sheet.

Form No.: FCC Forms 159 and 159–C.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, federal government, state, local or tribal government.

Number of Respondents: 300,000.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 150,000 hours.

Total Annual Cost: N/A.

Needs and Uses: These forms are required for payment of regulatory fees, and for use when paying for multiple filings with a single payment instrument, or when paying by credit card for federal benefits. The FCC Form 159 has been revised to eliminate the Taxpayer Information Number (TIN) and to add Discover and American Express to the credit cards allowable. The form requires specific information to track payment history, and to facilitate the efficient and expeditious processing of applications and other services by a lockbox bank. The information will be used by the Commission for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government.

OMB Control No.: 3060–0824.

Title: Service Provider Identification Number and Contact Information Form.

Form No.: FCC Form 498.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 10,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Administrator of the Universal Service Program must obtain contact and remittance information from service providers participating in the universal service high cost, low income, rural health care, and schools and libraries programs. The administrator uses the FCC Form 498 to collect service provider name, phone numbers, other contact information, and remittance information from universal service fund participants to enable the Administrator to perform its universal service disbursement functions under 47 CFR part 54. FCC Form 498 allows fund participants to direct remittance to third parties or receive payments directly from the Administrator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–14096 Filed 6–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Fact Finding Investigation No. 25—Practices of Transpacific Stabilization Agreement Members Covering the 2002–2003 Service Contract Season; Amended Order of Investigation

May 30, 2003.

The Federal Maritime Commission ("Commission") instituted this nonadjudicatory fact finding proceeding on August 23, 2002, to investigate allegations that the ocean common carrier members of the Transpacific Stabilization Agreement ("TSA") had engaged in practices in the inbound Far East-United States trade during the 2002–2003 service contract season that were potentially in violation of various provisions of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq* ("1984 Act"). Commissioner Joseph E. Brennan was appointed as Investigative Officer and was authorized to conduct public and non-public hearings, administer oaths and utilize compulsory process, including orders pursuant to section 15 of the 1984 Act in order to obtain relevant information. Hearings were held in Long Beach and San Francisco, CA, Seattle, WA, and Washington, DC, where testimony and documents were received under oath. Commissioner Brennan conducted the investigation and submitted a confidential Report and Recommendations to the Commission on April 10, 2003.

Allegations that the members of TSA were engaged, individually and jointly, in conduct prohibited by the 1984 Act were raised in a joint petition filed by the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") and the International Association of NVOCCS ("IANVOCC") on May 10, 2002. Specifically, the petitioners alleged that TSA members had entered into an agreement to complete service contract negotiations with proprietary shippers before beginning negotiations with non-vessel-operating common carriers ("NVOCCs"). Petitioners further alleged that TSA members discriminated against NVOCCs by subjecting NVOCC contracts to general rate increases ("GRIs") and a peak season surcharge ("PSS"), but not including similar provisions in contracts with proprietary shippers.

Following receipt of the joint petition, the Commission directed the staff to obtain and assess additional information regarding TSA member practices during the 2002–2003 contracting season. Due to the seriousness of the allegations, comments received thereon, and the decision of TSA members to institute a second GRI with the knowledge that certain shippers would be exempt from the increase due to the terms of their contracts with TSA, the Commission ordered this fact finding investigation to gather additional facts and data on the following issues, among others:

1. Refusals to deal with NVOCCs until the substantial completion of negotiations with proprietary shippers;

2. The discriminatory application in NVOCC service contracts of GRIs and/or a PSS, while waiving or otherwise not requiring similar application in proprietary shipper service contracts;

3. The extent and degree to which the rate increases and service contract policies, practices, and guidelines of TSA have been, and remain, voluntary and non-binding upon its respective members;

4. The extent and degree to which TSA and its members have maintained and transmitted to the Commission full, complete, and accurate minutes of all meetings required to be filed with the Commission; and

5. The development and utilization of open-ended provisions that permit the unilateral implementation of GRIs and/or a PSS by TSA members in their service contracts with NVOCCs, without genuine further negotiation, while waiving or not requiring similar provisions in their service contracts with proprietary shippers.

The Commission has now determined to continue to pursue certain of these issues, together with related issues developed during this fact finding investigation, through further investigation and possible actions under sections 5, 6, 8, 10, 11, 12 and 15 of the 1984 Act, as appropriate. The Commission has further determined to extend the period under review to include the 2003–2004 service contract season and, in particular, the impact of any 2003 general rate increase and peak season surcharge on proprietary shippers and NVOCCs. To facilitate such investigation, the Commission is continuing this fact finding proceeding to assist in developing the most current evidence of the activities of TSA and its members in the eastbound transpacific trades, as related to the following issues, among others:

1. The extent and degree to which TSA members may have violated section 10(b)(13) of the 1984 Act by disclosing confidential shipper information related to individual service contracts, including the identity of the shipper signatories.

2. Whether and to what extent TSA members may have violated sections 10(a)(2) and/or 10(a)(3) of the 1984 Act by systematically removing tonnage from the transpacific trades, individually, or through carrier alliances, following detailed discussions and exchanges of information on capacity reduction within TSA.

3. Whether and to what extent TSA's failure to file minutes of meetings of senior executives held in conjunction with Presidents, Owners, and Revenue Policy Committee meetings, as well as its failure to file full and complete minutes of other meetings, may have resulted in violations of the Commission's minute filing regulations at 46 CFR 535.706(a) and (b).

4. Whether and to what extent TSA and/or its members have engaged in unjustly discriminatory practices in the matter of rates and charges with respect to NVOCCs as a class in violation of section 10(c)(7) of the 1984 Act.

5. Whether and to what extent TSA and/or its members have unduly or unreasonably prejudiced or disadvantaged NVOCCs as a class in violation of section 10(c)(8) of the 1984 Act.

6. Whether TSA and/or its members have engaged in practices which actively discourage members from taking independent rate actions, contrary to the Congressional policy, embodied in sections 5(c)(1) and (3) of the 1984 Act and its legislative history, to foster individual, confidential service contracts to offset the anticompetitive impact of rate fixing agreements.

7. Whether and to what extent, the TSA agreement and/or other related agreements to which TSA or its members are parties, have produced, or are likely to produce, by a reduction in competition, an unreasonable

decrease in transportation service or an unreasonable increase in transportation cost, as described in section 6(g) of the 1984 Act.

In addition, the Commission is designating Vern W. Hill, Director, and George A. Quadrino, Attorney, Bureau of Enforcement, as the Investigative Officers for the continued phase of this proceeding. Mssrs. Hill and Quadrino will have all of the powers formerly delegated to Commissioner Brennan to pursue the issues set forth above.

Interested persons are invited and encouraged to contact the Investigative Officers named herein, at (202) 523–5783 (Phone) or (202) 523–5785 (Fax), should they wish to provide testimony or evidence, or to contribute in any other manner to the development of a complete factual record in this proceeding.

Therefore, it is ordered, that pursuant to sections 5, 6, 8, 10, 11, 12 and 15 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1705, 1707, 1709, 1710, 1711 and 1714, and part 502, subpart R of Title 46 of the Code of Federal Regulations, 46 CFR 502.281, *et seq.*, this nonadjudicatory investigation into practices of the ocean common carriers listed in Appendix A in the eastbound Transpacific trades is continued in order to develop the issues set forth above and to provide a basis for any subsequent regulatory, adjudicatory or injunctive action by the Commission;

It is further ordered, that the Investigative Officers shall be Vern W. Hill, Esq., Director, and George A. Quadrino, Attorney, Bureau of Enforcement, of the Commission. The Investigative Officers shall be assisted by staff members as may be assigned by the Commission's Executive Director and shall have full authority to hold public or non-public sessions, to resort to all compulsory process authorized by law (including the issuance of subpoenas *ad testificandum* and *duces tecum*), to administer oaths, to require reports, and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission;

It is further ordered, that the Investigative Officers shall issue a report of findings and recommendations no later than December 2, 2003, and interim reports if it appears that more immediate Commission action is necessary, such reports to remain confidential unless and until the Commission provides otherwise;

It is further ordered, That this proceeding shall be discontinued upon acceptance of the final report of findings and recommendations by the Commission, unless otherwise ordered by the Commission; and

It is further ordered, That notice of this Order be published in the **Federal Register**.

By the Commission.

Bryant L. VanBrakle,

Secretary.

Appendix A

1. American President Lines ("APL")
2. A.P. Moller Maersk-Sealand
3. CMA CGM, S.A.
4. Cosco Container Lines Ltd.
5. Evergreen Marine Corp.
6. Hanjin Shipping Company, Ltd.
7. Hapag-Lloyd Container Linie, GmbH
8. Hyundai Merchant Marine Co., Ltd.
9. Kawasaki Kisen Kaisha, LTD.
10. Mitsui O.S.K. Lines, Ltd.
11. Nippon Yusen Kaisha ("NYK")
12. Orient Overseas Container Line, Ltd.
13. P&O Nedlloyd, B.V.
14. P&O Nedlloyd, LTD.
15. Yang Ming Marine Transport Corp.

[FR Doc. 03–14219 Filed 6–4–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Mercantile Bankshares Corporation, Baltimore, Maryland; to merge with F&M Bancorp, Frederick, Maryland, and thereby indirectly acquire Farmers & Merchants Bank, Frederick, Maryland.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Continental Bancorporation, Salt Lake City, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Continental Bank, Salt Lake City, Utah (in organization).

Board of Governors of the Federal Reserve System, May 30, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–14115 Filed 6–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, whose membership represents interests of consumers, communities, and the financial services industry. New members will be selected for three–year terms that will begin in January 2004. The Board expects to announce the selection of new members by year–end 2003.

DATE: Nominations must be received by August 15, 2003. *NOMINATIONS NOT RECEIVED BY AUGUST 15, MAY NOT BE CONSIDERED.*

ADDRESSES: Nominations, including a résumé for each nominee, must be received by August 15, 2003. Electronic nominations are preferred. The appropriate form can be accessed at: *http://www.federalreserve.gov/forms/cacnominationform.cfm*

If electronic submission is not feasible, the nominations can be mailed (not sent by facsimile) to Sandra F. Braunstein, Senior Associate Director,

Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Ann Bistay, Secretary of the Council, Division of Consumer and Community Affairs, (202) 452–6470, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of the Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer–related matters. The Council by law represents the interests both of consumers and of the financial services industry (15 USC 1691(b)). Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three–year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 2004, to replace members whose terms expire in December 2003; the Board expects to announce its appointment of new members by year–end. Nomination letters should include:

- a résumé;
- information about past and present positions held by the nominee;
- a description of special knowledge, interests or experience related to community reinvestment, consumer protection regulations, consumer credit, or other consumer financial services;
- full name, title, organization name, organization description for both the nominee and the nominator;
- current address, telephone and fax numbers for both the nominee and the nominator; and
- positions held in community organizations, and on councils, and boards.

Individuals may nominate themselves.

The Board is interested in candidates who have familiarity with consumer financial services, community reinvestment, and consumer protection regulations, and who are willing to express their viewpoints. Candidates do not have to be experts on all levels of consumer financial services or community reinvestment, but they should possess some basic knowledge of the area. They must be able and willing to make the necessary time commitment to participate in conference calls, and prepare for and attend meetings three times a year (usually for two days, including committee meetings), held at the Board's offices in Washington, D.C. The Board pays travel expenses, lodging, and a nominal honorarium.

In making the appointments, the Board will seek to complement the background of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board may consider prior years' nominees and does not limit consideration to individuals nominated by the public when making its selection.

Council members whose terms end as of December 31, 2003, are:

Anthony Abbate
President and Chief Executive Officer
Interchange Bank
Saddle Brook, New Jersey

Manuel Casanova, Jr.
Executive Vice President
International Bank of Commerce
Brownsville, Texas

Constance Chamberlin
President/CEO
Housing Opportunities Made Equal
Richmond, Virginia

Earl Jarolimek
Vice President/Corporate Compliance Officer
Community First Bankshares
Fargo, North Dakota

J. Patrick Liddy
Director of Compliance
Fifth Third Bancorp
Cincinnati, Ohio

Oscar Marquis
Attorney
Hunton and Williams
Park Ridge, Illinois

Ronald Reiter
Supervising Deputy Attorney General
California Department of Justice
San Francisco, California

Elizabeth Renuart
Staff Attorney
National Consumer Law Center
Boston, Massachusetts

Council members whose terms continue through 2004 and 2005 are:

Janie Barerra
President and Chief Executive Officer
ACCION Texas
San Antonio, Texas

Kenneth Bordelon
Chief Executive Officer
E Federal Credit Union
Baton Rouge, Louisiana

Susan Bredehoft
Senior Vice President/Compliance Risk Management
Commerce Bank, N.A.
Cherry Hill, New Jersey

Robin Coffey
Vice President
Harris Trust and Savings Bank
Chicago, Illinois

Dan Dixon
Group Senior Vice President
World Savings Bank, FSB
Washington, District of Columbia

Thomas FitzGibbon
Senior Vice President
MB Financial Bank, N.A.
Chicago, Illinois

James Garner
Senior Vice President and General Counsel
North America Consumer Finance for Citigroup
Baltimore, Maryland

R. Charles Gatson
Vice President
Midtown Community Development Corporation
Kansas City, Missouri

Larry Hawkins
President and Chief Executive Officer
Unity National Bank
Houston, Texas

James King
President and Chief Executive Officer
Community Redevelopment Group
Cincinnati, Ohio

Ruhi Maker
Senior Attorney
Public Interest
Law Office of Rochester
Rochester, New York

Patricia McCoy

Professor of Law
Department of Economics
Cambridge, Massachusetts

Elsie Meeks
Executive Director
First Nations Oweesta Corporation
Kyle, South Dakota

Mark Pinsky
President and Chief Executive Officer
National Community Capital Association
Philadelphia, Pennsylvania

Debra Reyes
President
Neighborhood Lending Partners, Inc.
Tampa, Florida

Benson Roberts
Vice President for Policy
Local Initiatives Support Corporation
Washington, District of Columbia

Benjamin Robinson
Senior Vice President, Strategy
Management Executive
Bank of America
Charlotte, North Carolina

Agnes Bundy Scanlan
Managing Director and Chief Privacy Officer
FleetBoston Financial
Boston, Massachusetts

Diane Thompson
Supervising Attorney
Land of Lincoln Legal Assistance Foundation, Inc.
East St. Louis, Illinois

Hubert Van Tol
Co—Director
Fairness in Rural Lending
Sparta, Wisconsin

Clint Walker
General Counsel/Chief Administrative Officer
Juniper Bank
Wilmington, Delaware

Board of Governors of the Federal Reserve System, May 30, 2003.

Jennifer J. Johnson
Secretary of the Board
[FR Doc. 03–14114 Filed 6–4–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EDT), June 16, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of minutes of the May 12, 2003, Board member meeting.
2. Executive Director's report.
3. Semiannual Report of status of audit recommendations.
4. Status of new record keeping system.

Parts Closed to the Public

5. Discussion of litigation matters.
6. Discussion of personnel matters.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Thomas K. Emswiler,
Associate General Counsel, Federal Retirement Thrift Investment Board.
[FR Doc. 03–14358 Filed 6–3–03; 3:29 p.m.]
BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 03084]

A Pilot Program To Educate Vulnerable Populations About Fish Advisories in Michigan; Notice of Availability of Funds

Application Deadline: July 21, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 104(i)(1)(E) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)(1)(E) and (15)). The Catalog of Federal Domestic Assistance number is 93.208.

B. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2003 funds for a grant program for A Pilot Program to Educate Vulnerable Populations about Fish Advisories in Michigan. This program addresses the "Healthy People 2010" focus area(s) of Educational and Community-Based Programs, Environmental Health, and Maternal, Infant, and Child Health.

The purpose of the program is to conduct community-based research to assess the knowledge of and adherence to fish health advisories in vulnerable populations who reside in the Upper Peninsula of the state of Michigan. These vulnerable populations would include such populations as American Indians, sport and subsistence anglers, pregnant women, young children, and the elderly.

The Upper Peninsula area has a specific need for health education about fish advisories. Many residents fall in the vulnerable groups of reproductive-age men and women, sport and subsistence anglers and their families, and minorities, including the various tribal groups in the Upper Peninsula. In addition, many of the residents depend heavily on sport fish as a subsistence food. Because the population is spread out over a large and often remote area, the process of educating people there is difficult.

ATSDR encourages collaborative research efforts among potential applicants as well as the inclusion of community members and community organizations as partners in this pilot program.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Agency for Toxic Substances and Disease Registry (ATSDR): (1) Develop and provide reliable, understandable information for affected communities, tribes, and stakeholders, and (2) Build and enhance effective partnerships.

C. Eligible Applicants

Eligible applicants are political subdivisions of the state of Michigan, including federally recognized Indian tribal governments and tribal organizations. State organizations, including State universities, State colleges, and State research institutions, must affirmatively establish that they meet the State's legislative definition of a State entity or political subdivision to be considered an eligible applicant.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $300,000 is available in FY 2003 to fund two awards. It is expected that the award will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of ATSDR grant funds, must perform a substantive role in carrying out project activities, and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds. However, the equipment proposed should be appropriate and reasonable for the research activity to be conducted. Property may be acquired only when authorized in the grant. The grantee, as part of the application process, should provide a justification of need to acquire property, the description, and the cost purchase versus lease. At the completion of the project, the equipment must be returned to ATSDR.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

The funding preference is a state entity or political subdivision with a close working relationship with tribal governments and tribal organizations as evidenced by letters of support.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following priority areas of research which include:

1. Identifying the barriers (including specific cultural practices) to following current fish consumption advisories and fish preparation guidelines among vulnerable populations.

2. Engaging vulnerable community members and institutions in identifying more effective communication channels for fish advisories that recognize and work within existing cultural practices.

3. Designing new targeted fish advisory interventions incorporating effective communication channels, dissemination methods, and community programs.

4. Implementing and assessing the effectiveness of pilot program messages, communications channels, and community-based educational programs in increasing the effectiveness of fish advisories among vulnerable populations.

5. Sharing the results of the pilot program for broader replication in the Great Lakes region.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter of intent will be used to determine level of interest in the announcement, and should include the following information: (1) Investigator's name and affiliation, (2) brief description of the research project, and (3) estimated cost.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of: (1) Proposed research, (2) Objectives, (3) Methods and procedures, (4) Three-Year Timetable for research activities, (5) Proposed personnel, and (6) Budget.

G. Submission and Deadline

Letter of Intent (LOI) Submission:

On or before June 25, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS–398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Follow the instructions in the Errata sheet (posted on the CDC web site) for PHS–398. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time July 21, 2003. Submit the application to: Technical Information Management-PA#03084, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified priority areas of research of the grant. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by ATSDR will evaluate each application against the following criteria:

1. Proposed Research—60 percent

The extent to which the applicant's project addresses:

a. The scientific merit of the hypothesis of the proposed project, including the originality of the approach and the feasibility, adequacy, and rationale of the design (the design of the study should ensure statistical validity for comparison with other research projects).

b. The technical merit of the methods and procedures (analytic procedures should be state of the art), including the degree to which the project can be expected to yield results that meet the program objective as described in the Purpose section of this announcement.

c. The proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured.

d. The proposed mechanism to be utilized as a resource to address community concerns and opinion, and create lines of communication.

e. The prooposed method to disseminate the study results to State and local public health officials, tribal governments, Indian Health Service, community residents, and to other concerned individuals and organizations.

f. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Program Personnel—30 percent

The extent to which the proposal has described:

a. The qualifications, experience, and commitment of the Principal Investigator, and his/her ability to devote adequate time and effort to provide effective leadership.

b. The competence of associate investigators to accomplish the proposed study, their commitment, and time devoted to the study.

3. Applicant Capability—10 percent

Description of the adequacy and commitment of the institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

4. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

5. Human Subjects—(Not Scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

(a) An Interim progress report, due June 15th. The progress report will serve as your non-competing continuation application, and must contain the following elements:

(1) Current Budget Period Activities Objectives.

(2) Current Budget Period Financial Progress.

(3) New Budget Period Program Proposed Activity Objectives.

(4) Detailed Line-Item Budget and Justification.

(5) Additional Requested Information.

(b) Financial status report, due no later than 90 days, after the end of the budget period.

(c) Final financial and performance reports, due no later than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements *
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobby Restrictions
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements

For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

* OMB Clearance under the Paperwork Reduction Act is not required for this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Ms. Edna Green, Grant Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2743, E-mail address: *ECG4@cdc.gov*.

For program technical assistance, contact: Dr. Heraline E. Hicks, Research Implementation Branch, Division of Toxicology, 1600 Clifton Road, NE., Mail Stop E29, Atlanta, Georgia 30333, Telephone: (404) 498–0717, E-mail address: *HEH2@cdc.gov*.

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14129 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 03079]

Exposure to Tremolite Asbestos in Vermiculite Ore; Notice of Availability of Funds

Application Deadline: July 21, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 104(i)(1)(E), (6), (7), (14) and (15) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604 (i)(1)(e), (6), (7), (14) and (15)). The Catalog of Federal Domestic Assistance number is 93.161.

B. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program to conduct site-specific health activities due to exposure to tremolite asbestos in vermiculite ore. This program addresses the "Healthy People 2010" focus area of Environmental Health. The purpose of the program is to conduct site-specific health activities related to human exposure to contaminated vermiculite ore at sites identified by the Environmental Protection Agency (EPA) as receiving and/or processing ore from the mine in Libby, Montana.

Measurable outcomes of the program will be in alignment with the following performance goals for ATSDR:

1. Evaluate human health risks from toxic sites and take action in a timely and responsive public health manner.

2. Ascertain the relationship between exposure to toxic substances and disease.

C. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents or instrumentalities. State organizations, including State universities, must establish that they meet their respective State legislature's definition of a State entity or political subdivision to be considered an eligible applicant.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $250,000 is available in FY 2003 to fund approximately one to four awards. It is expected that the awards will range from $10,000 to $250,000 ($10,000 per site evaluated for the conduct of health statistics reviews; $100,000 for mesothelioma surveillance; and a maximum of $250,000 for epidemiologic investigations.) It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of ATSDR grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Funds may not be used to purchase equipment.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preference

For the mesothelioma surveillance, preference will be given to states with at least 100 cases of mesothelioma per year and at least eight sites that received the asbestos contaminated ore.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and ATSDR will be responsible for the activities listed in 2. ATSDR Activities.

1. Recipient Activities

a. Health Statistics Reviews

Analyze existing health outcome data of select asbestos-related diseases. Mortality data will be the most readily available data for asbestos-related diseases such as mesothelioma, lung cancer, and asbestosis, although cancer registry data should be utilized where available. Using disease rates by site, determine if there is any excess in disease that would require additional follow-up in years two and three.

b. Epidemiologic Investigations

After demonstrating an increase of asbestos related disease at a specific site (*e.g,* through a health statistics review), develop a protocol, conduct the investigation and prepare a final report of the study. This protocol and report will undergo scientific peer review as required by ATSDR.

c. Mesothelioma Surveillance

Determine if a particular site which received Libby ore is contributing to the mesothelioma burden in the state. (Please see Attachment 1 of this announcement as posted on the CDC Web site for information about vermiculite ore from Libby, Montana). Identify cases of mesothelioma in the State and interview the cases and next-of-kin. Provide information to ATSDR to combine with other State information. Prepare a final report of the project. This report will undergo scientific peer review as required by ATSDR.

d. Provide proof, by citing a State code or regulation or other State pronouncement under authority of law, that medical information obtained pursuant to the agreement will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

e. If a demonstrated excess of disease is found, develop a mechanism for ongoing interaction with, and education of the affected community.

2. ATSDR Activities

a. Health Statistics Review

(1) Provide a standard protocol to use to analyze existing health outcome data of select asbestos-related diseases.

(2) Provide scientific and epidemiologic assistance.

b. Epidemiologic Investigations

Provide consultation and assist in monitoring the data; participate in the study analysis and collaborate in interpreting the study findings.

c. Mesothelioma Surveillance

(1) Provide a standard protocol and questionnaire to be used to trace and interview cases of mesothelioma, and analyze the risk of environmental exposure to asbestos contaminated vermiculite ore from Libby, MT, and link it to the cases of mesothelioma.

(2) Provide scientific and epidemiologic assistance.

d. Conduct technical and peer review

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages, double spaced, printed on one side, with one inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time July 21, 2003. Submit the application to: Technical Information Management—PA#03079, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by ATSDR will evaluate each application against the following criteria:

1. Proposed Program (50 percent)

The criteria will include the extent to which the application addresses (a) the approach, feasibility, adequacy, and rationale of the proposed project design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective, and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (c) the proposed project timeline, including clearly established project objectives towards which progress can and will be measured; (d) the proposed community involvement strategy; (e) the proposed method to disseminate the results to State and local public health officials, community residents, and other concerned individuals and organizations; and (f) the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. Program Personnel (30 percent)

The criteria will include the extent to which the application has described (a) the qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership; and (b) the competence of associates to accomplish the proposed activity, their commitment, and the time they will devote.

3. Applicant Capability and Coordination Efforts (20 percent)

The extent to which the application has described (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study and (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community.

4. Program Budget—(not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

5. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II of the program announcement, as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and

associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Edna Green, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2743, E-mail Address: *ecg4@cdc.gov.*

For program technical assistance, contact Kevin Horton, Epidemiologist, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Building 4, Suite 2300, MS E–31, Atlanta, GA 30305, Telephone: (404) 498–0571, E-mail Address: *Dhorton@cdc.gov.* Or: Maggie Warren, Public Health Advisor, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd., NE., MS E–31, Atlanta, GA 30333, Telephone (404) 498–0546, E-mail Address: *mcs9@cdc.gov.*

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14127 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04002]

Cooperative Agreement for Assessing Folic Acid Knowledge and Behaviors; Notice of Availability of Funds

Application Deadline: August 4, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317C of the Public Health Service Act, (2 U.S.C. 241 and 247b-4 of the PHS Act, as amended). The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for the assessment of knowledge of the relationship between folic acid consumption and the prevention of spina bifida and anencephaly and the broad dissemination of findings for educational purposes. This program addresses the "Healthy People 2010" focus area of Maternal, Infant, and Child Health.

The purpose of this program is to provide for the evaluation of the effectiveness of public health programs to prevent birth defects through (1) an assessment of the current state of knowledge among reproductive-age women and their health care providers relative to folic acid consumption and the prevention of spina bifida and anencephaly; and, (2) the broad dissemination of findings to audiences who can use the findings for educational purposes.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center on Birth Defects and Developmental Disabilities (NCBDDD): Increase the consumption of folic acid among women of reproductive age to prevent serious birth defects.

C. Eligible Applicants

Assistance will be provided only to applicants that are well-established national, non-profit organizations with experience in: (1) Conducting birth defects prevention research; (2) conducting science-based educational outreach activities; and, (3) communicating research findings effectively to national, regional, state, and local level media outlets in coordination with partners.

To be eligible, applicants must:

1. Demonstrate that the organization's mission is explicitly committed to the prevention of birth defects. This may be demonstrated by submission of the charter, articles of incorporation, or other governing documents.

2. Demonstrate that the organization is a nonprofit and recognized as tax exempt under Section 501(C)(3) of the Internal Revenue Code. This may be demonstrated through inclusion of your Internal Revenue Service determination letter.

3. Demonstrate the organization has the capacity and experience providing health education to women who are at risk of having a Neural Tube Defects (NTD)-affected pregnancy. This may be demonstrated through letters of support.

4. Demonstrate that the organization has a national membership and a national network of local organizations. This may be done through a letter from the organization's leadership which describes the national network.

This information should be placed directly behind the face page (first page) of your application. Applications that do not include the above information will be determined as non responsive and will be returned without review.

Note: Title 2 of the United States Code Section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $180,000 is available in FY 04 to fund approximately one award. It is expected that the award will begin on or about December 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Conduct studies of women of reproductive age (18 to 45) to measure their awareness, knowledge, and behaviors related to folic acid, pregnancy, and birth defects' prevention.

b. Conduct studies to measure the awareness, knowledge, and practices of health care professionals and others who interact with women of reproductive age in health care/health education settings related to their knowledge of folic acid and birth defects prevention.

c. Develop surveys/studies of women of reproductive age.

d. Evaluate the results of surveys to determine if changes are occurring.

e. Publish the results of each survey and comparison analyses of the surveys in peer reviewed publications such as Teratology, Morbidity and Mortality Weekly Report (MMWR), etc.

f. Coordinate and collaborate with partners, including the National Center

on Birth Defects and Developmental Disabilities (NCBDDD), to ensure effective dissemination of survey results to key audiences.

g. Use survey findings to encourage the development of new and/or enhanced birth defects prevention programs.

2. CDC Activities

a. Provide technical and scientific consultation and assistance for the implementation aspects of this project.

b. Provide technical and scientific consultation as needed in evaluating the indicators of changes in knowledge, attitude and behaviors of the general public, women who are at risk, and health care professionals.

c. Provide assistance in coordinating the release of survey findings with key partners so that wide dissemination occurs among key audiences.

d. Provide technical and scientific assistance for the evaluation and dissemination of the findings.

e. Provide technical and scientific assistance for the development of surveys/studies of women of reproductive age.

F. Content

Letter of Intent (LOI)

A letter of intent (LOI) is requested for this program. The LOI should identify the program announcement number and the proposed project director. The LOI should be no more than three pages, doubled spaced, printed on one side, with one-inch margins, and unreduced font. It should describe the intent of the proposed intervention, the target population, and describe those activities and collaborations already in place to fully meet the requirements of the announcement. The LOI will be used to determine the level of interest in the announcement, and assist CDC in the planning for the conduct of the application review process.

Application

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The program plan should address activities to be conducted over the entire five year project period. The narrative should be no more than 30 pages, double spaced, printed on one side, with one-inch margins, and unreduced font. The narrative should consist of, at a minimum, the following elements:

1. Understanding of the Project.
2. Technical Approach.
3. Organizational Capacity.
4. Budget.
5. Human Subjects.

G. Submission and Deadline

Letter of Intent (LOI)

On or before July 7, 2003, submit the LOI to the Public Health Analyst identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS Form 5161–1 (OMB Number 0920–0428). Forms can be found at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at 770–488–2700. Application forms can be mailed to you.

Application Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time August 4, 2003. Submit the application to: Technical Information Management—PA #04002, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Forms may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of Intent and applications will be considered as meeting the deadline if they are received before 4:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be returned. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various tasks of the cooperative agreement. Measures of effectiveness must relate to the performance goal as stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. It is suggested that applications be organized to be compatible with the evaluation scoring criteria, as that is the process by which the review committee will assess the quality of the applications.

1. Organizational Capacity—(50 Points)

The extent to which the applicant has described:

a. The qualifications and commitment of the organization to birth defects prevention.

b. The qualifications and commitment of the professional staff.

c. The allocation of time and effort of key project staff to agreed upon project activities.

d. Previous experience (of both the organization and the proposed staff) conducting survey research and disseminating research findings to multiple audiences to develop and/or improve educational efforts.

2. Understanding of the Project—(30 Points)

The applicant's understanding of the requirements, intent, and objectives for a successful project including:

a. The extent to which the applicant outlines a methodologically sound approach to conducting survey research activities.

b. The extent to which the applicant describes a plan for widely disseminating research findings to the public that is coordinated with NCBDDD and other key partners.

c. The extent to which the applicant describes a plan for using survey research findings to improve birth defects prevention educational efforts.

d. The extent to which the applicant describes processes that facilitate

cooperation among partners and other funded agencies to standardize research and communication activities.

3. Technical Approach—(20 Points)

a. The extent to which the applicant describes its plan for carrying out the overall project, including study management, data collection, data analysis, and dissemination activities.

b. The extent to which the applicant describes ways they will monitor/evaluate implementation of their overall project plan (including research and dissemination activities).

c. The extent to which the applicant addresses the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences, when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Budget (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the grant funds.

5. Human Subjects

Does the applicant adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects. Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your noncompeting continuation application and must include the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement as posted on the CDC Internet address.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirement
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management assistance, contact: Sheryl L. Heard, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2723, E-mail address: *slh3@cdc.gov*.

For program technical assistance, contact: Stephanie Henry, Public Health Analyst, Division of Birth Defects and Developmental Disabilities, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., Mailstop F–45, Atlanta, GA 30341–3724, Telephone: (770) 488–7167, E-mail address: *sxh1@cdc.gov*.

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14124 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03065]

Building Capacity for Population-Based Surveillance of Autism Spectrum Disorders and Other Developmental Disabilities; Notice of Availability of Funds-Amendment

A notice announcing the availability of Fiscal Year 2003 funds to fund cooperative agreements to population-based surveillance of autism spectrum disorders and other developmental disabilities was published in the **Federal Register** on May 19, 2003, Volume 68, Number 96, pages 27073–27078. The notice is amended as follows: On page 27074, under Section D., Funding, Availability of Funds, line 9, change "three years" to "two years".

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14125 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03097]

Minority Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Research Initiative To Build Capacity in Black and Hispanic Communities and Among Researchers Who Conduct HIV/AIDS Epidemiologic and Prevention Research in These Communities; Notice of Availability of Funds

Application Deadline: August 4, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 274b(k)(2)), as amended. The

Catalog of Federal Domestic Assistance number is 93.943.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program called the Minority HIV/AIDS Research Initiative (MARI) that is funded by the Minority AIDS Initiative (MAI). The MARI program has been established to build capacity for HIV epidemiologic and prevention research in Black and Hispanic communities and to promote the independent research careers of HIV/AIDS investigators working in these communities. In addition, MARI aims to engage in capacity building among researchers at Historically Black Colleges and Universities, Hispanic Serving Institutions and Hispanic Serving Health Professions Schools as stipulated in Federally promulgated Executive Orders 13256 and 13230, respectively. You may reference these Executive Orders at the following Web Sites: *http://www.whitehouse.gov/news/releases/2001/10/20011012–10.html* and *http://www.whitehouse.gov/news/releases/2002/02/20020212–3.html*

This initiative addresses the "Healthy People 2010" focus area of HIV as well as the CDC's HIV prevention strategic plan through 2005. The overarching national goal stated in the CDC's HIV prevention strategic plan is to reduce the number of new HIV infections in the U.S. by 50 percent by 2005 by focusing on eliminating racial and ethnic disparities in new HIV infections. The CDC 2001 year-end HIV/AIDS surveillance report, which outlines the racial disparities in HIV/AIDS, reveals that Blacks and Hispanics together represented 57 percent of reported AIDS cases and 62 percent of reported HIV cases in 2001. Furthermore, of the new HIV cases in 2001, 58 percent of Black and Hispanic men and approximately 40 percent of Black and Hispanic women had unknown or unreported risk upon presentation for HIV testing. These statistics highlight the urgent need for HIV epidemiologic and prevention research in Black and Hispanic populations that are at-risk for HIV infection.

The goals of the MARI program are to:

(1) To build HIV prevention research capacity in Black and Hispanic communities in which insufficient research has been conducted by partnering with and developing new investigators from these communities to address pertinent research questions.

(2) To engage in career development and provide research opportunities for new investigators from Black and Hispanic communities through collaboration with the Division of HIV/AIDS Prevention at CDC. This will be achieved by encouraging these scientists to develop independent research skills needed to gain experience in HIV epidemiologic and prevention research, to present the results of their research at national conferences and to publish their results in peer-reviewed journals.

(3) Develop and conduct HIV epidemiologic prevention research, in the form of limited case-control, cross-sectional or qualitative projects that have public health relevance to Black and Hispanic communities.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP):

(1) Decrease the number of persons at high risk for acquiring or transmitting HIV infection;

(2) Increase the proportion of HIV-infected people who know they are infected;

(3) Increase the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services; and

(4) Strengthen the capacity to develop and implement effective HIV prevention interventions.

Given the goals of MARI and the CDC's HIV strategic plan, this program announcement calls for epidemiologic and prevention research that will advance scientific knowledge about HIV transmission, testing and treatment patterns, as well as social and environmental factors that influence risk behaviors in Black and Hispanic communities. This announcement specifically invites applications addressing a variety of scientific research topics outlined below in sections "I" and "II".

Section I

Participation of Minorities in Government-Sponsored Research

The participation of communities of color in HIV vaccine research is critical to ensuring that HIV vaccine candidates are effective across diverse racial and ethnic groups and that all groups have equal access to eventual vaccines. Community-based studies are needed to understand facilitators and barriers related to participation in government-sponsored research, which may include examination of the following: (1) Perceptions of AIDS in relationship to other community health issues, (2) community and individual attitudes of research related to HIV/AIDS, particularly vaccine trials, (3) the relationship between socioeconomic status, stigma, and disenfranchisement to research involvement, (4) strategies for enhancing community partnerships in the support and conduct of research, and (5) the historical context of government-sponsored research in minority communities such as the Tuskegee Syphilis Study.

Voluntary HIV Testing and Counseling of Young Men Who Have Sex with Men (MSM)

Recent data indicate that up to 90 percent of young MSM of color who are infected with HIV are unaware of their seropositive status. Other studies indicate that HIV+ men who become aware of their status substantially reduce their sexual risk behaviors. Studies are needed to increase HIV testing among young MSM of color who are at risk for transmitting or contracting HIV and to determine motivating factors in the desire to seek HIV testing. Of particular interest are studies that test different types of persuasive communications to promote HIV testing in this population.

Prevalence of Intravenous Drug Use (IDU) Related HIV in the Southeast

The epidemiology of the HIV among intravenous drug users has been well defined in the United States, with the exception of the Southeast region. Epidemiologic and surveillance studies are needed to assess the prevalence, incidence and risk factors for HIV infection among Southeastern U.S. intravenous drug users. In addition, data are needed to quantify the seroprevalence of Hepatitis B and C and attendant risks for acquisition of these diseases in southern populations.

Missed Opportunities for Prevention of Perinatal Transmission

Perinatal transmission in the U.S. has been drastically reduced since 1993. However, greater than 75 percent of babies with HIV continue to be born to Black and Hispanic mothers. Elimination of perinatal transmission can only be achieved by reducing missed opportunities that occur among these women and by addressing issues associated with failures of prevention efforts. Reasons for these missed opportunities and prevention failures vary and warrant investigation. Studies are needed to understand why prevention failures occur among Black and Hispanic women and infants who access the required services and to address the reasons that these mothers and infants may not access prevention

services required to reduce perinatal transmission.

Section II

Behavioral, Psychosocial, and Cultural Determinants of HIV Risk Behavior

The majority of HIV prevention research in the U.S. has been conducted in gay, white male populations. Consequently, many of the current prevention interventions have been informed and developed based on data from this population. Qualitative and quantitative studies of Black and Hispanic populations are needed to understand the unique psychological, social, and cultural factors that influence HIV-related knowledge, attitudes, perceptions and behaviors in these minority populations. Studies are needed to understand a wide-range of issues including but not limited to perceptions of risk, injection drug use, sexual risk-taking, response to HIV prevention messages, decisions to seek HIV testing and counseling, and decisions to seek HIV care and related treatment. Specific areas of interest include:

(1) Effect of social, community (including religious influences), and family dynamics on attitudes, knowledge, risk perceptions, and willingness to seek HIV testing.

(2) The role of gender and sexual identity and their relationship to HIV attitudes and risk behaviors.

(3) How social, economic, and cultural environments influence attitudes about HIV, response to prevention messages, and behavior change.

(4) The role of social and sexual networks in HIV transmission.

(5) Pilot studies to assess explanations for disparities in HIV rates in minority populations.

(6) Identification of factors associated with sexual- and drug-risk behavior in persons of color who have tested positive for HIV.

Treatment Adherence

Studies are needed to understand many aspects of treatment adherence in Black and Hispanic HIV-infected patients such as (but not limited to), its relationship to mental illness, patient/provider concordance and/or relationships, pill burden and structural barriers impacting adherence.

Biological Disparities

Ethnicity may play a role in the biological and immunological responses to HIV, as well as the responses to treatment and therapy for opportunistic infections. Studies are needed to determine the role of immunology, virology and the host response(s) in any of these areas.

C. Eligible Applicants

- Applications may be submitted by:
- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Technical schools
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

The primary investigator from the applying entity must also meet and be able to demonstrate the following additional requirements:

(1) Possession of a research or a health-professional masters or doctorate-level degree from an accredited school/program;

(2) Have never been a primary investigator on a National Institute of Health (NIH) R–01 award for $250,000 or greater;

(3) Be knowledgeable about HIV/AIDS epidemiology and prevention, as well as have basic but minimal research experience in or related to the field of HIV/AIDS;

(4) Have a documented history of working in Black and Hispanic communities;

(5) Have documented linkages to Black and Hispanic communities that are impacted by HIV;

(6) Have the ability to establish effective and well-defined working relationships with community advisory boards, community-based organizations or similar entities which will ensure appropriateness of proposed research and implementation of the proposed activities. The investigator must demonstrate efforts to develop this relationship by submitting letters of support or equivalent statement(s); and

(7) Demonstrate willingness to partner with HIV epidemiologic and prevention researchers at CDC to ensure timely development of protocols and study instruments, submission of protocols to required human subjects review boards, conduct of investigations and to analyze, present and publish study results.

Documentation of the above requirements must be included in the application. This includes, but is not limited to letters indicating involvement in HIV/AIDS research or HIV/AIDS-related publications, curriculum vitas and/or letters of support.

Applications are encouraged from organizations that serve predominantly racial and ethnic minority populations that are disproportionately impacted by HIV/AIDS or those who are representative of the minority communities targeted in this program announcement.

D. Funding

Availability of Funds

Approximately $1.4 million is available in FY 2003, to fund approximately six to ten awards. Up to five awards may be granted for each section "I" and "II". It is expected that the average award will be $200,000, ranging from $75,000 to $300,000. The awards will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of one to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Priority

Priority will be given to:

(1) Projects that demonstrate strong community partnerships and access to predominantly Black and Hispanic communities that are disproportionately affected by the HIV/AIDS epidemic.

(2) Projects that are cross-sectional or pilot in nature and that will require one to three years of funding to ensure the availability of funding for a greater number of applicants.

Funding Preferences

Preference will be given to applicants that:

(1) Have the ability to implement culturally and linguistically competent methodology within the study design;

(2) Have a history of service to Black and Hispanic communities;

(3) Are indigenous to the targeted population; and

(4) Have linkages to the targeted population.

Funding decisions will attempt to achieve regional diversity. Preference will be given to proposals addressing HIV prevention needs in Black and Hispanic communities with the highest rates of HIV. In addition, preference will be given to proposals targeting areas with increasing rates of HIV such as the Southeast.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities in 1. Recipient Activities and CDC will be responsible for the activities listed in 2. CDC Activities:

1. Recipient Activities

a. Collaborate with CDC researchers and community-based organizations or similar community liaisons for duration of project period on several activities such as development of data collection instruments, specimen collection protocols, and data management procedures.

b. Identify, recruit, obtain informed consent form, and enroll an adequate number of study participants as determined by the study protocols and the program requirements.

c. Follow study participants as determined by the study protocols.

d. Establish procedures to maintain the rights and confidentiality of all study participants.

e. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocols

f. Present and publish research findings

g. Participate in conference calls with CDC project officer(s) and research team

h. Attend initial and annual meetings with other MARI-funded grantees to promote research dissemination and networking among investigators.

2. CDC Activities

a. Provide technical assistance in the design and conduct of the research.

b. Facilitate and assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist in designing a data management system.

d. Assist in performance of selected laboratory tests.

e. Assist in the analysis of research data information and the presentation and publication of research findings.

f. Conduct site visits to ensure that venues are properly selected, collaborations outlined in proposals are true and that the community is involved in the research activities, and that investigators are complying with the research protocol.

g. Conduct initial and annual meetings of MARI-funded investigators to facilitate the exchange of research progress among recipients and to offer additional technical expertise for the conduct of research.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than one page, single-spaced or two pages double-spaced. Your letter of intent will be used to assess the number of applications to anticipate, plan the review process more effectively and efficiently, and determine the level of interest in the MARI goals and objectives.

Your letter of intent should include the following information: Name, address and affiliation of the primary investigator, a brief description of the scope and intent of the proposed research, any plans/provisions to collaborate with community agencies.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and 12-point font.

The narrative at a minimum should include a plan, objectives, methods, evaluation, budget and timeline.

The program plan should address activities to be conducted over the entire one to three-year project period. The budget must cover the first one-year budget period.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 15, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 398 (OMB Number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet (posted on the CDC Web site) for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time and Address

The application must be received by 4 p.m. Eastern Time August 4, 2003. Submit the application to: Technical Information Management—PA# 03097, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the

various identified objectives of MARI or cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

(1) Description and Justification of Research Plan, Objectives and Methodology (35 points)

a. Applicability and relevance of study objectives to Black and Hispanic communities.

b. Integration of culturally competent and relevant study methodology for Black and Hispanic communities.

c. Study questions address gaps in the HIV/AIDS research literature or build on the findings of previously conducted research in Black and Hispanic populations.

d. Applicant's understanding of research objectives as evidenced by the quality of the proposed research plan and specific study design and methods.

e. Feasibility of plan to sample, recruit and enroll study participants in a culturally appropriate manner and design study instruments that are culturally appropriate to Black and Hispanic populations.

f. Plan to ensure confidentiality of participants.

(2) Familiarity with and access to Black and Hispanic communities most adversely and disproportionately affected by the HIV/AIDS epidemic (30 points)

a. Experience conducting research and working in Black and Hispanic communities.

b. Ability of the investigator to identify with Black and/or Hispanic populations at-risk for HIV.

c. Extent of applicant's knowledge of issues faced by Black and/or Hispanic communities affected by HIV.

d. Demonstrable ability to recruit study population and obtain valid data through the use of culturally appropriate methods and instruments.

(3) Demonstration of community collaboration during study design, recruitment and project implementation. (20 points)

a. Evidence of plan for establishing a partnership with at least one community organization to consult on all aspects of conducting the study and to link participants with prevention and medical services as needed.

b. Evidence that plans for recruitment and outreach for study participants will include establishing partnerships with communities.

c. Feasibility of plans to involve the study population, their advocates, or service providers in the development of research activities and to inform them of research results.

(4) Demonstration of Capability to Conduct Research (15 points)

a. Applicant's ability to carry out the proposed research as demonstrated by the experience of the principal investigator and the proposed research team and organizational setting.

b. Demonstration of epidemiologic, behavioral, clinical, laboratory, administrative, and management expertise needed to conduct the proposed research.

c. Demonstration that principal investigator and staff have experience working with the targeted population of study participants.

Budget (reviewed, but not scored)

Extent to which budget is reasonable, itemized, clearly justified and within funding limits of this program announcement.

Human subjects: (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with Community(ies) and recognition of mutual benefits.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*.

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Carlos Smiley, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2722, e-mail address: *Csmiley1@cdc.gov*.

For program technical assistance, contact: Lisa K. Fitzpatrick, MD, MPH, Division of HIV/AIDS Prevention, Centers for Disease Control and Prevention, 1600 Clifton Rd. #E–45, Atlanta, GA 30333, 404–639–5166.

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14128 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03114]

Improve State and Local Health Information and Data Systems; Notice of Availability of Funds

Application Deadline: July 21, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) of the Public Health Service Act, 42 U.S.C. 241(a), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program to improve the capability of state and local health information and data systems to monitor and improve the health of U.S. populations and their communities. This program addresses the "Healthy People 2010" focus area of Public Health Infrastructure.

The purpose of the program is to better enable state and local health departments to regularly and systematically collect, assemble, analyze, and disseminate information on the health of their populations and communities. Further background may be found in the 1988 Institute of Medicine report "The Future of Public Health," which described the three core functions of public health: assessment, policy development, and assurance. As part of the assessment function, every public health agency should regularly and systematically collect, assemble, analyze, and make available information on the health of the community, including statistics on health status, community health needs, and epidemiologic and other studies of health problems.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Epidemiology Program Office (EPO):

1. Maximize the distribution and use of scientific information and prevention messages through modern communication technology.

2. Encourage state health departments to develop efficient and comprehensive public health information and surveillance systems by promoting the use of the Internet and by focusing on development of standards for communications and data elements.

3. Implement accessible training programs to provide an effective work force for staffing state and local health departments, laboratories, and ministries of health in developing countries.

C. Eligible Applicants

Assistance will be provided only to national non-profit organizations. Eligible national organizations must have affiliate offices and local, state, or regional membership constituencies in a minimum of 10 states and territories. Affiliate offices and local, state, or regional membership constituencies may not apply in lieu of, or on behalf of, their national office. No other applications are solicited. Limiting assistance to national organizations is necessary to produce the maximum possible enhancement, given available resources, of the assessment capacities of state and local health departments throughout the nation.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $200,000 is available in FY 2003 to fund approximately two awards. It is expected that the average award will be $100,000, ranging from $50,000 to $150,000. It is expected that the awards will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

No matching funds are required for this program.

Funding Preferences

Funding preference may be given to organizations whose primary mission is to support state and local health agencies.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Establish and maintain activities which support health information and data systems for state and local health departments.

b. Implement projects and activities with specific, measurable, and feasible goals, objectives, and timelines. Evaluate the effectiveness of the activities related to this program including possible indicators of success.

c. Participate in the annual CDC Assessment Initiative Conference each budget year of the project period for the purpose of sharing best practices learned from the planned activities.

d. Disseminate project-related information and findings through a variety of methods.

e. Implement an operational plan for one or more of the following activities:

(1) Data and Statistical Standards: Develop guidelines to facilitate the implementation of data and statistical specifications and standards in health information systems by state and local health agencies. These specifications and standards should take advantage of existing national and international data and information standards (*e.g.*, products of the Public Health Data Standards Consortium), and work already done in the public and private sectors.

(2) Technical Assistance: Develop a plan to address the technical needs of state and local health departments in such areas as methods of linking or matching data; methods of managing and storing data; methods of analyzing data; methods of querying or otherwise accessing data; methods of displaying and disseminating information; and methods of ensuring the integrity and security of data, the confidentiality of data about individual persons, and compliance with the privacy and security standards of the Health Insurance Portability and Accountability Act. Identify the most common requests for information that state and local health agencies receive, assess information and service needs, and provide direct technical assistance to requesting agencies.

(3) National Health Information Systems Training: In conjunction with various partners develop a national plan to address the changing training needs of state and local health departments in the area of health information systems; develop new training, as appropriate, to address emerging topics (*e.g.*, the "Guide for Public Health Agencies Developing, Adopting, or Purchasing Interactive Web-based Data Dissemination Systems"); and identify other training opportunities for state and local health agency staff.

2. CDC Activities

a. Coordinate with national, state, and local health information and data agencies, as well as other relevant organizations, in developing programs which will enable state and local health departments to regularly and systematically collect, assemble, analyze, and disseminate information on the health of their populations and communities.

b. Provide guidance related to program planning, implementation, and evaluation; assessment of program objectives; use of indicators; and dissemination of successful strategies, experiences, and evaluation reports.

c. Plan and conduct the annual CDC Assessment Initiative Conference to address issues and program activities related to this cooperative agreement.

d. Assist in the evaluation of program activities.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 35 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of:

1. Executive Summary

Provide a concise, two-page summary that clearly states the health information and data systems needs being addressed and describes the organization's eligibility, including (a) its status as a national organization; (b) the number and membership of affiliate offices; and (c) the experience and capacity of the organization to work with state and local health departments. The summary should also include the major proposed goals, objectives, and activities for the project, and describe how anticipated project outcomes will interface with other relevant public health systems.

2. Background and Need

a. Describe the organization's background and experience in assessing and addressing the needs related to health information and data systems.

b. Describe the need for the specific activities proposed in the project plan.

c. Describe the criteria that were used to select the project and the alternative approaches that were considered.

3. Operational Plan

a. Goals: List goals that specifically relate to program requirements that indicate where the program will be at the end of the projected three-year project period.

b. Objectives: List objectives that are specific, measurable, and feasible to be accomplished during the first 12-month budget period. The objectives should relate directly to the project goals and recipient activities.

c. Activities: Describe in narrative form, and display on a timetable, specific activities that are related to each first-year objective. Indicate when each activity will occur as well as when preparations for activities will occur. Indicate who will be responsible for each activity. The program plan should briefly address activities to be conducted over the entire three-year project period.

d. Milestones: List major milestones that will be accomplished during years two and three.

e. Dissemination: Describe how project materials and accomplishments will be shared with others. Identify appropriate audiences for this information.

4. Evaluation

Describe a plan to evaluate the project's effectiveness in meeting its goals and objectives. Describe the type of evaluation that will be used (process, outcome, or both). Specify the evaluation question(s) to be answered, evaluation measures (quantitative measures of effectiveness that are used to measure the intended outcome of a goal or objective) to be obtained, the type(s) of analyses to be performed, to whom they will be reported, and how the evaluation will be used to improve the program. The plan should indicate major steps in the evaluation and who will be responsible for each step.

5. Ability to Carry Out the Proposed Project

a. Describe the organization's constituents and affiliates as follows: type of constituency; number of constituents and affiliates; location of constituents and affiliates; how the constituency can influence and work with health information and data systems.

b. Describe the organization's current and previous experience related to the proposed program activities; current and previous coordination with other national organizations and partners; and activities related to building alliances, networks, or coalitions.

c. Describe the organization's structure and how it supports health information and data systems. Submit a copy of the applicant's organizational chart.

d. Identify the proposed project staff and describe their qualifications and experience in areas relevant to the project's focus. Submit a curriculum vitae (limited to two pages) for each professional staff member named in the proposal, and job descriptions for existing and proposed positions.

e. Describe the purposes of proposed collaborations and the agencies and organizations with which collaboration will be conducted. If other organizations will participate in proposed activities, provide the name(s) of the organization(s), and state who in each organization will coordinate the activity. For each organization listed, provide a letter from them that acknowledges their specific role and describes their capacity to fulfill it. Do not include letters of support from organizations that will not have specific roles in the project.

6. Budget and Accompanying Justification

Provide a detailed budget narrative and line-item justification of all operating expenses. The budget should be consistent with the stated objectives and planned activities of the project. Budget requests should include funding for two staff members to make one two-day trip for a planning meeting and one three-day trip for the annual CDC Assessment Initiative Conference. (Base cost estimates on travel to Atlanta, Georgia.)

7. Appendix

Attach an appendix containing organizational chart(s), curricula vitae, job descriptions, and letters of support from proposed collaborating organizations.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number

0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4:00 p.m. Eastern Time July 21, 2003. Submit the application to: Technical Information Management—PA#03114, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Note: For the purposes of this cooperative agreement, "measures of effectiveness" are defined as the "evaluation measures" discussed with the Evaluation Plan criteria.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Operational Plan (40 Points)

a. The extent to which the applicant describes three-year project goals that specifically relate to program requirements.

b. The extent to which the first-year objectives are specific, measurable, feasible, and relate directly to the project goals and recipient activities.

c. The extent to which the applicant describes specific activities that are related to each first-year objective, with timelines and responsible persons for each activity.

d. The extent to which the applicant describes reasonable milestones to be accomplished during years two and three.

e. The extent to which the applicant describes how project materials and accomplishments will be shared with others.

2. Ability to Carry Out the Proposed Plan (30 Points)

a. The extent to which the applicant describes the organization's ability to access and influence state and local health agencies through a network of affiliates, constituents, or members.

b. The extent to which the applicant describes current and previous experience administering or coordinating health-related, public health, or community-based data or information programs in conjunction with other national organizations and partners.

c. The extent to which the applicant's organizational structure; the qualifications, experience, and responsibilities of proposed staff; and available physical facilities and information technology resources demonstrate the ability to successfully carry out the project.

d. The extent to which the applicant describes proposed collaborative activities and provides evidence of the support, commitment, and capacity of proposed collaborating organizations.

3. Background and Need (15 Points)

a. The extent to which the applicant demonstrates an understanding of the needs of state and local health agencies with respect to population-based health information and data systems, and provides evidence of previous experience in addressing these needs.

b. The extent to which the applicant demonstrates the need for the specific activities proposed in the project plan.

c. The extent to which the applicant describes sound criteria for selecting the proposed project over possible alternatives.

4. Evaluation Plan (15 Points)

The extent to which the applicant presents an evaluation plan, with reasonable evaluation measures (*i.e.*, required "measures of effectiveness"), to measure the achievement of program objectives and monitor the implementation of proposed activities.

5. Budget Justification (not scored)

The extent to which the proposed budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the program announcement, as posted on the CDC web site.

AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the

CDC Web site, Internet address: *http://www.cdc.gov*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Mattie B. Jackson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2696, E-mail address: *MJackson2@cdc.gov*.

For program technical assistance, contact: Timothy A. Green, Ph.D., Chief, Applied Sciences Branch, Division of Public Health Surveillance and Informatics, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–74, Atlanta, GA 30341–3717, Telephone: 770–488–8378, E-mail address: *TGreen@cdc.gov*.

Dated: May 30, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14126 Filed 6–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Advisory Committee on Children and Terrorism: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: National Advisory Committee on Children and Terrorism (NACCT).

Time and Date: 10:30 a.m.—11:30 p.m., June 5, 2003.

Place: The conference call will originate at the Office of Terrorism Preparedness and Emergency Response (OTPER), in Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The committee is charged with advising the Secretary, Health and Human Services, on (a) the preparedness of the health care system to respond to bioterrorism as it relates to children; (b) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and (c) changes, if necessary, to the National Strategic Stockpile under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to meet the emergency health security of children.

Matters to be Discussed: The National Advisory Committee on Children and Terrorism will convene by conference call to discuss the draft report to the Secretary.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the meeting.

Supplementary Information: This conference call is scheduled to begin at 10:30 a.m., Eastern Standard Time. To participate in the conference call, please dial 1–888–455–9652 and enter conference code 25687. Leader name: Dr. Victor Balaban. You will then be automatically connected to the call.

Contact Person for More Information: Victor Balaban, Office of Terrorism Preparedness and Emergency Response, CDC, 1600 Clifton Road, NE, (D–44), Atlanta, Georgia 30333, telephone 404/639–7428, fax 404/639–7977. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 2, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14260 Filed 6–3–03; 11:56 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Multi-site Evaluation of Foster Youth Programs.

OMB No.: New Collection.

Description: The Foster Care Independence Act of 1999 (Public Law 106–169) mandates evaluations of promising Independent Living Programs administered by state and local child welfare agencies. The Administration for Children and Families proposes an evaluation of four Independent Living Programs (ILP) over a five year period using a randomized experimental design. Youth ages 14–21 years receiving ILP services and their caseworkers will be interviewed at three points during the evaluation period. Program administrators, staff, and supplementary youth will also participate in interviews and focus groups will be conducted at each program site.

Respondents: Youth, caseworkers, and program administrators, and staff.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth survey	1,400	1	1.5	2,100
Caseworker survey	2,800	1	.5	1,400
Program site visits, administrators, staff, youth	300	1	1.0	300
Estimated Total Annual Burden Hours				3,800

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk

Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov.*

Dated: June 2, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14152 Filed 6–4–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Head Start Family and Child Experiences Survey (FACES) and Quality Research Centers.

OMB No.: Revision of a currently approved collection (OMB No. 0970–0151).

Description: The Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to collect data on a new cohort for the Head Start Family and Child Experiences Survey (FACES). This study is being conducted under contract with Westat, Inc. (with Xtria, LCC and the CDM Group as their subcontractors) (contract #GS23F8144H; order #03Y00318101D) to collect information on Head Start performance measures.

FACES will involve four waves of data collection. The first wave will occur in Fall 2003. Data will be collected on a sample of approximately 2,600 children and families from about 260 classrooms across 70 programs. Data collection will include assessments of Head Start children, interviews with their parents, and ratings by their Head Start teachers. Further, site visitors will interview Head Start teachers and make observations of the types and quality of classroom activities.

The second wave, which will be a repeat of the Fall 2003 data collection, will occur in Spring 2004 when the sample children are at the end of their first year of Head Start.

The third wave will occur in Spring 2005, and will involve follow-up with children who at this time are either comleting a second year in Head Start, or completing kindergarten. For those children who are still attending Head Start, data collection will follow the same procedures as in Spring 2004. For those children attending kindergarten, data collection will include assessments of Head Start children, an "update" survey of the information collected from the parent interview, and ratings of the children's academic progress and school adjustment by kindergarten teachers.

The fourth wave of data collection will occur in Spring 2006. Children who attended kindergarten the previous year will not be included in this wave. The procedures for this effort will be the same as for kindergartners in Spring 2005.

For the Head Start Quality Research Centers, 100 children in eight sites will be followed during each of two program years, 2003–2004 and 2004–2005. FACES procedures will be carried out, including child assessments, parent and teacher interviews, and observations of types and quality of classroom activities.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which requires periodic assessments of Head Start's quality and effectiveness.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

Annual Burden Estimates

Estimated Response Burden for Respondents to the Head Start Family and Child Experiences Survey (FACES 2003)—Fall 2003, Spring 2004, Spring 2005, Spring 2006.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2003)				
Head Start Parent Interview	2,600	1	1.00	2,600
Head Start Child Assessment	2,600	1	0.66	1,716
Teacher Child Rating	260	10	0.25	650
Program Director Interview	70	1	1.00	70
Center Director Interview	130	1	1.00	130
Education Coordinator Interview	130	1	0.75	98
Teacher Interview	260	1	1.00	260
Year 2 (2004)				
Head Start Parent Interview	2,210	1	0.75	1,658
Head Start Child Assessment	2,210	1	0.66	1,459
Teacher Child Rating	260	8	0.25	520
Family Service Coordinator Interview	130	1	0.75	173
Year 3 (2005)				
Head Start Parent Interview	730	1	0.75	548
Head Start Child Assessment	730	1	0.66	482
Teacher Child Rating	85	6	0.25	128
Kindergarten Parent Interview	1,480	1	0.75	1,110
Kindergarten Child Assessment	1,480	1	0.75	1,110
Kindergarten Teacher Questionnaire	1,480	1	0.50	740
Year 4 (2006)				
Kindergarten Parent Interview	740	1	0.75	555
Kindergarten Child Assessment	740	1	0.75	555
Kindergarten Teacher Questionnaire	740	1	0.50	370
Estimated Total Annual Burden Hours				14,932

Estimated Response Burden for Respondents to the Head Start Quality Research Centers (FACES QRC 2003)—Fall 2003, Spring 2004, Spring 2005.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2003)				
Head Start Parent Interview	800	1	1.00	800
Head Start Child Assessment	800	1	0.66	528
Teacher Child Rating	80	10	0.25	20
Teacher Interview	80	1	1.00	80
Year 2 (2004)				
Head Start Parent Interview	1,480	1	1.00	1,480
Head Start Child Assessment	1,480	1	0.66	977
Teacher Child Rating	160	8	0.25	320
Year 3 (2005)				
Head Start Parent Interview	680	1	1.00	680
Head Start Child Assessment	680	1	0.66	449
Teacher Child Rating	180	6	0.25	270
Estimated Total Annual Burden Hours				5,604

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 2, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14153 Filed 6–4–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0079]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer and Producer Surveys on Economic Issues

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the information collection by July 7, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB. Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Consumer and Producer Surveys on Economic Issues (OMB Control Number 0910–0478)—Extension

Under section 903(d)(2) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research relating to regulated articles and to collect information relating to responsibilities of the agency. Executive Order 12866, the Regulatory Flexibility Act (RFA), and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) direct Federal agencies to conduct regulatory impact analysis, and to consider flexible regulatory approaches. In order to perform the mandatory analysis, it is often necessary to survey regulated producers to determine existing practices and the changes in those practices likely under various policy options, both consumers and manufacturers to explore attitudes towards policy proposals, and industry experts to solicit expert opinion. FDA is seeking OMB clearance to conduct future surveys to implement Executive Order 12866, RFA, and SBREFA. Participation in the surveys will be voluntary. This request covers regulated entities, such as food processors, dietary supplement manufacturers, health professionals, or other experts and consumers.

FDA will use the information gathered from these surveys to identify current business practices, expert opinion, and consumer or manufacturer attitudes towards existing or proposed policy. FDA projects approximately 2 to 6 surveys per year, with a sample of between 10 and 1,000 respondents each

for mail and telephone surveys, and a sample of up to 3,000 respondents for cable or Internet surveys.

In the **Federal Register** of March 12, 2003 (68 FR 11867), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the upper bound burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Responses	Total Hours
Mail questionnaire	1,000	1	1,000	3	3,000
Phone Survey	1,000	1	1,000	.5	500
Internet or Cable Survey	3,000	1	3,000	1	3,000
Total					6,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the expected number of respondents necessary to obtain a statistically significant stratification of the average to large size industries—including small business entities covered by FDA regulations—and consumers of regulated products.

Dated: May 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14105 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0202]

Agency Information Collection Activities; Proposed Collection; Comment Request; Assessment of Public Perceptions and Knowledge of Clinical Trials and Informed Consent Human Subject Protection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on a proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey of U.S. consumers' knowledge and attitudes about clinical research and informed consent in clinical research.

DATES: Submit written or electronic comments on the collection of information by August 4, 2003.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collections of information set forth in this document.

With respect to each of the following collections of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Assessment of Public Perceptions and Knowledge of Clinical Trials and Informed Consent

FDA regulates clinical research of products subject to section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and title 21 of the Code of Federal Regulations (21 CFR) to ensure that products approved for marketing are safe and effective for use. FDA is also charged with ensuring protection of the rights and welfare of human subjects participating in clinical research. Matters involving human subject protection during clinical drug trials are evaluated within the Division of Scientific Investigations in FDA's Center for Drug Evaluation and Research.

FDA regulations describe the requirements for informed consent of study subjects in clinical research in part 50 (21 CFR part 50). Part 50 requires that, to protect clinical research subjects, subjects must be adequately informed before they consent to participate in clinical research. The informed consent process, which is an essential part of human subject protection in clinical trials, is a process of information exchange: A person who is considering participating in clinical

research learns about the research. makes an educated decision about participating, and is provided with additional information on a continuing basis, as needed, so as to remain adequately informed throughout participation in the study.

Examination of the available medical literature provides little information on the extent to which persons who may consider participating in FDA regulated clinical research understand clinical research or the informed consent process. We (FDA) propose to perform a survey, the goal of which is to gain information about the general public's perceptions and knowledge about clinical research and informed consent. To accomplish this goal, a sample of the general public will be asked to answer a questionnaire in a mall-intercept survey.

Seven hundred and fifty adult males and females (over the age of 18) who come from varied socioeconomic, ethnic, and educational backgrounds will be recruited for participation. A sample of nine subjects will be interviewed in a 30-minute pretest that will be used to help refine the questionnaire as needed, based on feedback from the pretest participants. Thereafter, the remaining subjects will participate in 15-minute interviews conducted at appropriate facilities in three geographically distributed shopping malls in the United States: Northeast, Midwest, and West.

Individuals who appear to be age appropriate will be approached by recruiters in public areas of the shopping malls. The recruiters will be clearly identified with name badges or other identification showing their affiliation with the study contractor. The recruiter will briefly explain the purpose of the study and ask the individuals if they are interested in participating in the interview. Those who agree to participate will be interviewed.

The survey questionnaire that will be used is available for review upon request.

Results of the proposed research will be used to help design a plan to educate U.S. consumers about clinical research, human subject protection, and the role of the informed consent process in clinical trials. It is expected that future consumer education programs will enhance protection for future research subjects by making subjects better informed about the clinical research process, their rights in clinical research, and the importance of the informed consent process to their protection.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
9 (pre-test)	1	9	0.5	4.5
741 (consumer survey)	1	741	0.25	185.25
Total				189.75

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14216 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Notification From Industry Organizations Interested in Participating in Selection Process for Nonvoting Industry Representatives on Public Advisory Committees and Request for Nominations for Nonvoting Industry Representatives on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on its public advisory committees for the Center for Drug Evaluation and Research (CDER) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on CDER's public advisory committees. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to the FDA by July 7, 2003 for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA by July 7, 2003.

ADDRESSES: All letters of interest and nominations should be submitted in writing to Igor Cerny (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Igor Cerny, Advisors and Consultants Staff (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001.

SUPPLEMENTARY INFORMATION: Section 120 of the FDA Modernization Act of 1997 (FDAMA) (21 U.S.C. 355) requires that newly formed FDA advisory committees include representatives from the drug manufacturing industries. Although not required for existing committees, to keep within the spirit of FDAMA, the agency intends to add nonvoting industry representatives to all CDER advisory committees identified in the following paragraphs.

I. CDER Advisory Committees

1. Advisory Committee for Pharmaceutical Science

Advises on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases.

2. Advisory Committee for Reproductive Health Drugs

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in obstetrics, gynecology, and contraception.

3. Anesthetic and Life Support Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

4. Anti-Infective Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

5. Anti-Viral Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), HIV-related illnesses, and other viral, fungal, and mycobacterial infections.

6. Arthritis Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

7. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational and human drug products for use in the treatment of cardiovascular and renal disorders.

8. Dermatologic and Ophthalmic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human of dermatologic and ophthalmic disorders.

9. Drug Safety and Risk Management Advisory Committee (formerly Drug Abuse Advisory Committee)

Advises the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered by the Department of Health and Human Services and the Department of Justice with the regard to safety, efficacy, and abuse potential, risk management, risk communication and quantitative evaluation of spontaneous reports, and recommends actions to be taken by the Food and Drug Administration with regard to marketing, investigation and control of such drugs or other substances.

10. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

11. Gastrointestinal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal disorders.

12. Nonprescription Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of the over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

13. Oncologic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for the use in the treatment of cancer.

14. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic disease.

15. Psychopharmacologic Drug Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

16. Pulmonary-Allergy Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (*see* **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document. Within the subsequent 15 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for a particular committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner of Food and Drugs will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. A current curriculum vitae and the name of the committee of interest should be sent to the FDA contact person. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for that committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees, and therefore, encourages nominations for appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from drug manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–14215 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Representatives of Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting industry

representatives to serve on certain device panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and for those that will or may occur through July 31, 2004.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups, as well as nominations from small businesses that manufacture medical devices subject to the regulations.

DATES: Nominations for vacancies listed in this notice should be received by July 7, 2003.

ADDRESSES: All nominations and curricula vitae (which includes nominee's office address, telephone number and e-mail address) for industry representatives should be submitted in writing to Kathleen L. Walker, Office of Systems and Management (HFZ–17), CDRH, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: *klw@cdrh.fda.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for nonvoting members representing industry interests for the vacancies listed as follows:

Medical Devices Panels	Approximate Date Representative Is Needed
Clinical Chemistry and Clinical Toxicology	Mar. 1, 2004
Gastroenterology and Urology	Jan. 1, 2004
General and Plastic Surgery	Sept. 1, 2003
Hematology and Pathology	Mar. 1, 2004
Microbiology	Mar. 1, 2004
Molecular and Clinical Genetics	June 1, 2004
Radiological	Feb. 1, 2004

I. Functions

The functions of the medical device panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food and Drugs regarding recommended classification or reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act (the act)); (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

II. Industry Representation

Section 520(f)(3) of the act (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include as members one nonvoting representative of interests of the medical device manufacturing industry.

III. Nomination Procedure

Any organization in the medical device manufacturing industry (industry interests) wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industry representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vita of each nominee. The term of office is up to 4 years, depending on the appointment date.

IV. Selection Procedure

Regarding nominations for members representing the interests of industry, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–14213 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee, the National Mammography Quality Assurance Advisory Committee, the Device Good Manufacturing Practice Advisory Committee, and the Technical Electronic Products Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur through August 31, 2004.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: Send all nominations and curricula vitae to:

1. For the device panels: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022, e-mail: *NJP@CDRH.FDA.GOV*.

2. *For the National Mammography Quality Assurance Advisory Committee, excluding consumer representatives*: Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, e-mail: *CAF@CDRH.FDA.GOV*.

3. *For health professional, industry representatives and government representatives for the Device Good Manufacturing Practice Advisory Committee*: Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, e-mail: *SMK@CDRH.FDA.GOV*.

4: *For government representatives and industry representatives for the Technical Electronic Product Radiation Safety Standards Committee*: Richard V. Kaczmarek, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, *RVK@CDRH.FDA.GOV*.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: *KLW@CDRH.FDA.GOV*.

SUPPLEMENTARY INFORMATION:

I. Vacancies

FDA is requesting nominations of voting members for vacancies listed as follows:

1. *Anesthesiology and Respiratory Therapy Devices Panel*: Four vacancies immediately, one vacancy occurring November 30, 2003; anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilatory support, pharmacology, physiology, or the effects and complications of anesthesia.

2. *Circulatory System Devices Panel*: Three vacancies occurring June 30, 2004; interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.

3. *Clinical Chemistry and Clinical Toxicology Devices Panel*: Three vacancies occurring February 28, 2004; doctors of medicine or philosophy with experience in clinical chemistry, clinical toxicology, clinical pathology, and/or clinical laboratory medicine.

4. *Dental Products Panel*: Two vacancies immediately, three vacancies occurring October 31, 2003; dentists, engineers and scientists who have expertise in the areas of lasers, temporomandibular joint implants and/or endodontics; or experts in tissue engineering and/or bone physiology relative to the oral and maxillofacial area.

5. *General and Plastic Surgery Devices Panel*: Four vacancies immediately, one vacancy occurring August 31, 2003; general surgeons, plastic surgeons, thoracic surgeons, abdominal surgeons, pelvic surgeons and reconstructive surgeons, biomaterials experts, laser experts, wound healing experts, or endoscopic surgery experts.

6. *Hematology and Pathology Devices Panel*: Three vacancies immediately; hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular biologists with special interests in development of predictive and prognostic biomarkers.

7. *Immunology Devices Panel*: Three vacancies occurring February 28, 2004; persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.

8. *Molecular and Clinical Genetics Devices Panel*: Four vacancies occurring May 31, 2004; experts in human genetics and in the clinical management of patients with genetic disorders, *e.g.*, pediatricians, obstetricians, neonatologists. The agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics as well as ancillary fields of study will be considered.

9. *Obstetrics and Gynecology Devices Panel*: One vacancy occurring January 31, 2004; experts in perinatology, embryology, reproductive endocrinology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, post-operative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; expert in gynecology in the older patient; experts in diagnostic (optical) spectroscopy.

10. *Ophthalmic Devices Panel*: One vacancy occurring October 31, 2003; ophthalmologists specializing in cataract and refractive surgery, vitreo-retinal surgery, pediatric ophthalmology, and the treatment of glaucoma; in addition to vision scientists, electrophysiologists, and optometrists.

11. *Orthopaedic and Rehabilitation Devices Panel*: Two vacancies occurring August 31, 2004; doctors of medicine or philosophy with experience in tissue engineering, calcification or biomaterials; orthopedic surgeons experienced with prosthetic ligament devices, joint implants, or spinal instrumentation; physical therapists experienced in spinal cord injuries, neurophysiology, electrotherapy, and joint biomechanics; rheumatologists; or biomedical engineers.

12. *Radiological Devices Panel*: One vacancy immediately, two vacancies occurring January 31, 2004; statistician with biomedical expertise including the design of clinical trials, ROC (receiver operating characteristic) analysis, diagnostic test evaluation, and data testing.

13. *National Mammography Quality Assurance Advisory Committee*: Three vacancies occurring January 31, 2004; physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.

14. *Device Good Manufacturing Practice Advisory Committee*: six vacancies occurring immediately; three government representatives, two industry representatives, and one health professional.

15. *Technical Electronic Product Radiation Safety Standards Committee*: Four vacancies immediately, one government representative and three industry representatives; three vacancies occurring December 31, 2003, two government representatives and one industry representative.

II. Functions

A. Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (the act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) Advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories, (2) advises on any possible risks to health

associated with the use of devices, (3) advises on formulation of product development protocols, (4) reviews premarket approval applications for medical devices, (5) reviews guidelines and guidance documents, (6) recommends exemption of certain devices from the application of portions of the act, (7) advises on the necessity to ban a device, and (8) responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

B. National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities, (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program, (3) developing regulations with respect to sanctions, (4) developing procedures for monitoring compliance with standards, (5) establishing a mechanism to investigate consumer complaints, (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities, (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas, (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999, and (9) determining the costs and benefits of compliance with these requirements.

C. Device Good Manufacturing Practice Advisory Committee

The functions of the committee are to review proposed regulations for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for manufacture, packaging, storage, installation, and servicing of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Section 520 of the act (21 U.S.C. 360j), as amended, provides that the Device Good Manufacturing Practice Advisory Committee shall be composed of nine members as follows: (1) Three of the members shall be appointed from persons who are officers or employees of any Federal, State. or local government; (2) two shall be representatives of interests of the device manufacturing industry; (3) two shall be representatives of the interests of physicians and other health professionals; and (4) two shall be representatives of the interests of the general public.

D. Technical Electronic Product Radiation Safety Standards Committee

The function of the committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Section 534(f) of the act, as amended by the Safe Medical Devices Act of 1990 (21 U.S.C. 360kk(f)), provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

III. Qualifications

A. Panels of the Medical Devices Advisory Committee

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

B. National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography and individuals identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

C. Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership as a government representative or health professional should have knowledge of or expertise in any one or more of the following areas: quality assurance concerning the design, manufacture, and use of medical devices. To be eligible for selection as a representative of the general public or industry, nominees should possess appropriate qualifications to understand and contribute to the committee's work. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

D. Technical Electronic Product Radiation Safety Standards Committee

Persons nominated must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

IV. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations shall include complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: May 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–14210 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 9, 2003, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Dornette Spell-LeSane, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *spelllesaned@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–366, CRESTOR (rosuvastatin calcium) tablets, AstraZeneca Pharmaceuticals LP, agent for iPR Pharmaceuticals, Inc., for the proposed indication of treatment of hypercholesterolemia and mixed dyslipidemia.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 1, 2003. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 1, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dornette Spell-LeSane at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–14214 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0203]

Innovative Systems for Delivery of Drugs and Biologics: Scientific, Clinical, and Regulatory Challenges Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop and request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss innovative systems for delivery of drugs and biologics. The purpose of this workshop is to serve as a forum for the academic and clinical communities, industry, consumer and patient advocacy groups, and FDA to discuss the latest scientific and clinical developments for these products, as well as any regulatory concerns and challenges. FDA hopes to facilitate the development of new technology by addressing and clarifying regulatory uncertainty and by increasing the predictability of product development. This project is a part of the Commissioner of the Food and Drug Administration's initiative entitled "Improving Innovation in Medical Technology: Beyond 2002." For reference, the white paper describing the entire initiative is available at *http://www.fda.gov/bbs/topics/NEWS/2003/NEW00867.html*. The input received at the workshop and from written comments will be considered in drafting guidance or other information for industry.

Date and Time: The public workshop will be held on July 8, 2003, from 8 a.m. to 5:30 p.m.

Addresses: The public workshop will be held at the Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814, 301–897–9400, FAX 301–897–0192. Submit written or electronic comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: *FDADockets@oc.fda.gov*. Additional information about the meeting and directions to the facility are available on the Internet at: *http://www.fda.gov/cdrh/meetings/070803.html*.

Contact Person: Cynthia Benson, Center for Devices and Radiological Health (HFZ–3), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–7989, e-mail: *cmh@cdrh.fda.gov*.

Agenda: At the workshop, FDA will hear presentations and receive comments from stakeholders likely to be affected by FDA policies or procedures regarding the review and approval of innovative medical products. Stakeholders include, but are not limited to device, drug, and biological product manufacturers; members of the academic and clinical communities; and consumer and patient advocacy groups.

Registration: Preregistration is required by July 1, 2003, and will be accepted on a first-come, first-served basis; however, notwithstanding attendance at the workshop, interested persons are encouraged to provide comments (see the *Request for Comments* section of this document). There will be no onsite registration. FDA is pleased to provide the opportunity for interested persons to listen from a remote location to the live proceedings of the public workshop. In order to ensure that a sufficient number of call-in lines are available, please register to listen to the meeting at *http://www.fda.gov/cdrh/meetings/070803.html*. Persons without Internet access may call 1-888-203-6161. The registration deadline is July 1, 2003. For technical reasons, persons wishing to make an oral presentation at the public workshop must do so in person. Those who wish to make presentations should submit written notification including: (1) The specific issue related to the topic you intend to address; (2) the names and addresses of all individuals that will participate in your presentation; (3) the approximate amount of time your presentation will require; and (4) two copies of all presentation materials to Cynthia Benson by June 27, 2003. Presentations will be limited to the topics outlined in the **SUPPLEMENTARY INFORMATION** section of this document and, depending on the number of speakers, FDA may limit the time allotted for each presentation. If you need special accommodations due to a disability, please contact Anne Marie Williams at 301–594–1283 at least 7 days in advance.

Request for Comments: Regardless of attendance at the workshop, interested persons may submit written or electronic comments to the Dockets Management Branch (see the *Addresses* section of this document). You should annotate and organize your comments to identify the specific issues to which they refer. Submit two paper copies of any mailed comments. Individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. The comments that FDA receives will be made available at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Transcripts: Following the workshop, transcripts will be available for review at the Dockets Management Branch (see the *Addresses* section of this document).

SUPPLEMENTARY INFORMATION: FDA believes that innovative and novel medical technologies have the potential to greatly improve the public health in many different areas. By addressing and clarifying regulatory uncertainty, the agency believes that the development of these technologies will be expedited and the predictability in product development will be increased, thus allowing more of these products to reach the marketplace in a timely manner. As part of a broad effort to increase the development of novel medical technologies, FDA is seeking information on how to expedite the review and approval of innovative devices for the delivery of drugs and biologics. For this effort, these products will be broadly defined. We are including any combination of drug and device or biologic and device products in which the two components work together to have a desired effect on the patient. Some examples of the innovative products to be included in this effort are:

- Novel, specialized catheters to permit localized delivery of drugs or biologics (*e.g.*, chemotherapeutic agents, thrombolytics, cells/biologics);
- Lasers or other energy delivery devices for delivery or enhancement of drug or biologic effectiveness (*e.g.*, electroporetic or laser systems to enhance the transport of drugs to the target site);
- Device/drug or device/biologic combinations that permit new routes of administration for drugs (*e.g.*, devices for inhalation of drugs formerly administered intravenously);
- Devices that activate drugs in the body (*e.g.*, photodynamic therapy);
- Drug-eluting stents designed to prevent restenosis; and
- Orthopedic repair products containing bone morphogenic proteins or other cytokines.

The lead for review of the products to be discussed in the workshop may be in any of the FDA medical products centers (the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health, *i.e.*, CDER, CBER or CDRH) and the products may reach the market through several different regulatory pathways (*e.g.*, investigational device exemption/premarket approval applications (IDE/PMA), investigational new drug application (IND/NDA), IND/biological license application (BLA), IDE/510(k), or a combination of these). This workshop is being held to provide a forum for the academic and clinical communities, industry, consumer and patient advocacy groups and FDA to discuss the latest scientific and clinical developments for these products as well as any regulatory concerns and challenges. In addition to increasing our understanding of the latest technological developments in this field, FDA is seeking input to specifically address the following:

1. What are the most critical challenges in developing and bringing to market a novel, innovative technology for delivery of drugs or biologics?
2. Which areas are most important for the agency to provide guidance to developers of these novel products?
3. How can the agency best collaborate with industry, academia, other government agencies, and other scientific bodies in this area of rapidly evolving technology?

The agency hopes to use the information from the workshop to guide the future development of guidance documents, memoranda of understanding, or other position papers.

Dated: May 27, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–14209 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0168]

Current Status of Useful Written Prescription Drug Information for Consumers: Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the current status of the private sector's efforts to provide useful written prescription drug information to consumers. Public Law 104–180 adopted a goal that useful written information would be distributed to 75 percent of individuals receiving new prescriptions by the year 2000. An FDA-commissioned study of

written information disseminated during 2001 with four widely-used prescription drugs reported the average "usefulness" of the information was only about 50 percent. The statute's goal for 2006 is that 95 percent of individuals receiving new prescriptions would receive useful written information. FDA is soliciting comments on and convening a public meeting to discuss what steps can be taken to improve the usefulness of such written prescription drug information in order to meet the year 2006 goal. FDA is posing four specific questions, and the agency is interested in responses to these questions and any other pertinent information stakeholders would like to share.

Date and Time: The public meeting will be held on July 31, 2003, from 9 a.m. to 5 p.m. Registration to speak at the meeting must be received by June 30, 2003. Written or electronic comments will be accepted to the docket until September 2, 2003.

Location: The public meeting will be held at the National Transportation Safety Board Boardroom and Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594. (Phone: 202–314–6421; Metro: L'Enfant Plaza station on the green, yellow, blue, and orange lines). *See*: *http://www.ntsb.gov/events/newlocation.htm*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

For Information Regarding This Notice Contact: Christine Bechtel, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5458, email *bechtelc@cder.fda.gov*. If you need special accommodations due to a disability, please inform the contact person.

Registration and Requests for Oral Presentation: No registration is required if you only plan to attend the meeting. Seating will be on a first-come, first-served basis. If you wish to make an oral presentation during the open public comment period of the meeting, you must register to speak at the meeting by submitting your name, title, business affiliation, address, telephone number, fax number, and e-mail address and you must specify on your registration that you wish to make a presentation. You must also submit the following: (1) A written statement for each question addressed, (2) the names and addresses of all who plan to participate, and (3) the approximate time requested to make your presentation. Individuals who register to make an oral presentation will be notified of the scheduled time for their presentation prior to the meeting. Depending on the number of presentations, FDA may have to limit the time allotted for each presentation. All participants are encouraged to attend the entire day. Presenters must submit two hard copies of each presentation given.

For Registration Information Contact: Christine Bechtel, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5458, email *bechtelc@cder.fda.gov*. Electronic registration for this meeting is available at: *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*, or, registration requests and materials can be sent to Christine Bechtel.

SUPPLEMENTARY INFORMATION:

I. Background

Access to useful written patient information is an important aspect of helping to ensure appropriate use of prescription medicines, thereby preventing serious personal injury and avoiding excess costs to consumers and the health care system. FDA telephone surveys have shown that the rate of distribution of written prescription drug information has increased over the past 20 years.

Historically, written patient information has either been required by regulation for particular prescription drug products or product classes, or has been distributed on a voluntary basis by the manufacturer. Since 1968, FDA has occasionally required that prescription drug labeling written specifically for patients in nontechnical language be distributed to patients whenever certain prescription drugs, or classes of prescription drugs, are dispensed. In the 1970s, FDA began evaluating the usefulness of patient labeling for prescription drug products generally, and published a proposed rule to require written patient information for prescription drugs in 1979 (44 FR 40016, July 6, 1979). In 1980, FDA published a final rule establishing requirements and procedures for the preparation and distribution of FDA-approved patient labeling for a large number of prescription drugs (45 FR 60754, September 12, 1980). FDA revoked those regulations in 1982 based, in part, on assurances by the private sector that the goals of the final rule would be met (47 FR 39147, September 7, 1982). A decision was made to allow voluntary private sector initiatives to proceed before a determination was made whether to impose a mandatory program.

In 1995, FDA published a proposed rule entitled "Prescription Drug Product Labeling; Medication Guide Requirements" that would have required manufacturers to prepare and distribute "Medication Guides" to accompany a limited number of prescription drug products that posed a serious or significant public health concern, and set forth the requirements for the Medication Guide program (the 1995 proposed rule) (60 FR 44182, August 24, 1995). FDA's proposed goal for prescription drugs that did not require Medication Guides was that, by the year 2000, at least 75 percent of people receiving new prescriptions would receive useful written patient information, and that by 2006, 95 percent of people who receive new prescriptions would also receive useful written patient information. The 1995 proposed rule set criteria by which written information would be judged to determine whether it was "useful" and should therefore count toward accomplishment of the target goals. FDA defined "useful" as written in nontechnical language and containing a summary of the most important information about the drug. FDA also specified that the usefulness of written patient information would be evaluated according to its scientific accuracy, consistency with a standard format, nonpromotional tone and content, specificity, comprehensiveness, understandable language, and legibility.

On August 6, 1996, as FDA was reviewing the public comments on the 1995 proposed rule, Public Law 104–180 that adopted goals consistent with the 1995 proposed rule for the distribution of useful written patient information by the private sector, was enacted. The legislation also required that, no later than 30 days after its enactment, the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) would request that national organizations representing health care professionals, consumer organizations, voluntary health agencies, the pharmaceutical industry, drug wholesalers, patient drug information database companies, and other relevant parties collaborate to develop a long-range comprehensive action plan (Action Plan) to achieve goals consistent with the goals of the 1995 proposed rule. Required elements of the Action Plan included: an assessment of the effectiveness of the current private-sector approaches to providing consumer medication information; the development of guidelines for providing effective

consumer medication information consistent with the findings of such assessment; the identification of components necessary to ensure the transmittal of useful information to the public expected to use the product, including the criteria identified in the 1995 proposed rule; and the development of a mechanism to periodically assess the quality of prescription information and the frequency with which it is provided to consumers.

Under subsection (d) of section 601 of Public Law 104–180, FDA could not implement the portion of the proposed rule, or any other regulation or guideline, that specified a uniform, FDA-approved content or format for written information voluntarily provided to consumers about prescription drugs, if private sector organizations met the requirements of the long-range Action Plan within the timeframe provided by the law.

The law also required DHHS to review the status of the private sector initiatives designed to achieve the goals of the action plan by January 1, 2001. Public Law 104–180 required that if 75 percent of individuals receiving new prescriptions did not receive useful written information by the year 2000, the limitation in subsection (d) of section 601 would not apply and the Secretary was required to seek public comment on other initiatives that could meet the goals.

Initially following the enactment of Public Law 104–180, the Secretary asked the Keystone Center to convene a Steering Committee to collaboratively develop the Action Plan. The Action Plan accepted by the Secretary in January 1997 reiterated the target goals specified in Public Law 104–180. The Action Plan endorsed the criteria specified in Public Law 104–180 for defining the usefulness of medication information. Specifically, the Action Plan stated that such materials should be: (1) Scientifically accurate; (2) unbiased in content and tone; (3) sufficiently specific and comprehensive; (4) presented in an understandable and legible format that is readily comprehensible to consumers; (5) timely and up to date; and (6) useful, that is, enables the consumer to use the medicine properly and appropriately, receive the maximum benefit, and avoid harm. [The Action Plan, including descriptions of the criteria, is available on the Internet at *http://www.keystone.org*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after the document publishes in the **Federal Register**.)

Consistent with Public Law 104–180, the Action Plan called for the development of a mechanism to periodically assess the quality of written prescription information provided to patients. To test a methodology for collecting patient information materials and assessing their usefulness, FDA contracted with the National Association of Boards of Pharmacy (NABP). The contract called for the selection of several State Boards of Pharmacy, which would arrange for collecting, from a sample of State pharmacies, written materials given to patients when new prescriptions for three commonly prescribed drugs were filled. The contract also called for the development of an expert panel to create evaluation materials to assess the usefulness of the information through application of the Action Plan criteria. The written prescription drug information was collected in 1999, and the final report from the pilot study was completed in December 1999 and presented by FDA at a public workshop on February 29-March 1, 2000.

In 2001, FDA commissioned NABP to subcontract a national study to assess the usefulness of written prescription drug information being distributed to patients. A professional shopper firm was hired to bring prescriptions for four widely prescribed drugs in different drug classes to 384 pharmacies selected in a statistically random fashion from a national list. All written materials received with the prescriptions were sent to an expert panel for evaluation against the criteria endorsed by the Action Plan. The results of the study were announced in 2002. The evaluation found that, on average, 89 percent of patients received some form of written medication information. However, the expert panel found that the average "usefulness" of the information was only about 50 percent. The report of the evaluation is available at *http://www.fda.gov/cder/reports/prescriptioninfo/default.htm*.

The report findings were presented at an FDA Drug Safety and Risk Management Advisory Committee (the Advisory Committee) meeting on July 17, 2002. The Advisory Committee recommended that FDA take a more active role in advising and encouraging the private sector to meet the 2006 goal. FDA accords the recommendations of all advisory committees significant weight, but such recommendations are not binding on the agency. A transcript of FDA's Drug Safety and Risk Management Advisory Committee meeting on July 17, 2002, is available at *http://www.fda.gov/ohrms/dockets/ac/02/transcripts/3874T1.htm*.

II. Scope of Discussion

In view of the facts described in section I of this document, FDA is soliciting comments on several issues and is convening this public meeting on July 31, 2003, to discuss the current status of the private sector's efforts to provide useful written prescription drug information to consumers. Interested persons are invited to submit comments to the docket and to attend the public meeting and present their views. Issues that we are asking interested parties to address in their comments, at the public meeting, or both, are as follows:

1. What steps is the private sector taking to improve the usefulness of the written information patients receive with prescription drugs and to meet the Year 2006 goal?

2. What barriers exist for the private sector to meet the Year 2006 goal, and what plans exist to overcome these barriers?

3. What should the role of FDA be in assuring full implementation of the Action Plan to meet the Year 2006 goal?

4. What other initiatives should FDA consider for providing patients with useful written information about prescription drugs as endorsed by Public Law 104–180? Such initiatives could include the possibility of FDA requiring manufacturers to provide authorized dispensers with the means to distribute useful written information approved by FDA.

III. Comments

Interested persons may submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written or electronic comments on or before September 2, 2003. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document. Submit electronic comments by September 2, 2003, to *fdadockets@oc.fda.gov* or at *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. You should annotate and organize your comments to identify the specific questions to which they refer. Comments to the docket can be reviewed in the Dockets Management Branch, Monday through Friday between 9 a.m. and 4 p.m. or on the Internet at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm* (select docket # 03N–0168).

IV. Transcripts

You may request a copy of the transcript in writing from the Freedom of Information Office (HFI–35), Food

and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 days after the meeting at a cost of 10 cents per page. You may also examine the transcript Monday through Friday between 9 a.m. and 4 p.m. in the Dockets Management Branch or on the Internet at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm* (select docket # 03N–0168). The transcript will be available 4–6 weeks after the meeting.

V. Electronic Access

Persons with access to the Internet may obtain a copy of the commissioned study report at *http://www.fda.gov/cder/reports/prescriptioninfo/default.htm*, the Action Plan at *http://www.keystone.org*, and a transcript of FDA's July 17, 2002, Drug Safety and Risk Management Advisory Committee meeting at *http://www.fda.gov/ohrms/dockets/ac/02/transcripts/3874T1.htm*.

Dated: May 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14212 Filed 6–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0359]

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for fiscal year (FY) 2004. As part of its annual planning, budgeting, and resource allocation process, CFSAN is reviewing its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Submit written or electronic comments by August 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Donald J. Carrington, Center for Food Safety and Applied Nutrition (HFS–666), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1697, or e-mail: *Dcarring@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 10, 2003, CFSAN released a document entitled "2003 CFSAN Program Priorities." The document, a copy of which is available on CFSAN's Web site (*www.cfsan.fda.gov*), constitutes the center's priority work plan for FY 2003, i.e., October 1, 2002, through September 30, 2003. (Copies also are available from the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.) The 2003 work plan is based on input we received from our stakeholders as well as input generated internally. Throughout the priority-setting process, we focus on one central question: "Where do we do the most good for consumers?"

The FY 2003 work plan focuses heavily on ensuring the security of our country's food supply as a primary goal. With the enactment in June 2002 of the Public Health Security and Bioterrorism Preparedness and Response Act (Public Law 107–188), much of our effort during the current fiscal year will focus on issuing the necessary regulations to implement this statute. We will also continue to enhance our level of emergency preparedness, particularly our laboratory preparedness.

The FY 2003 work plan continues to place a high priority on food safety, food additives, and dietary supplements, and also highlights our desire to revitalize our nutrition program. In December 2002, FDA announced a major initiative to enhance "Consumer Health Information for Better Nutrition." Accordingly, this year's plan includes the steps needed to implement that initiative, including increased enforcement against unsubstantiated claims on food and dietary supplement products.

Outside of these priorities, the FY 2003 work plan identifies eight other program areas and cross-cutting areas that need emphasis: (1) Cosmetics; (2) enhancing the science base; (3) international activities; (4) food biotechnology; (5) enhancing internal processes; (6) focused economic-based regulations; (7) equal employment opportunity/diversity initiatives; and (8) management initiatives.

The FY 2003 work plan contains two lists of activities—the "A-list" and the "B-list." Our goal is to fully complete at least 90 percent of the 145 "A-list" activities by the end of the fiscal year, September 30, 2003. Activities on the "B-list" are those we plan to make progress on, but may not complete, before the end of the fiscal year.

CFSAN intends to issue a mid-year progress report on what program priority activities already have been completed to date in FY 2003 as well as any adjustments in the work plan (i.e., additions or deletions) for the balance of the fiscal year.

CFSAN has responsibility for many important ongoing activities that are not identified in the work plan. For example, the center's base programs in data collection, research, and enforcement are important and ongoing. Rather, the work plan addresses primarily those initiatives representing something new or different that we need to address in 2003 as well as priority initiatives that are being continued from the 2002 work plan. In addition, the work plan does not address the myriad of unanticipated issues that often require a substantial investment of CFSAN resources (e.g., response to outbreaks of foodborne illness).

II. 2004 CFSAN Program Priorities

FDA is requesting comments concerning the establishment of program priorities in CFSAN for FY 2004, and the input will be used to develop CFSAN's 2004, work plan. The work plan will set forth the center's program priorities for October 1, 2003, through September 30, 2004. FDA intends to make the 2004 work plan available in the fall of 2003.

The format of the 2004 work plan will be similar to last year's work plan. FDA expects there will be considerable continuity and followthrough between the 2003 and 2004 work plans. For example, new initiatives aimed at increasing the security of our country's food supply and revitalizing our nutrition program will continue to be a high priority in FY 2004.

FDA is in the process of developing a major strategic plan and has identified the following five top priority areas for the agency: (1) A strong FDA; (2) efficient risk management; (3) patient and consumer safety; (4) better informed consumers; and (5) counter-terrorism. Action items implementing the strategic plan will be incorporated into CFSAN's priorities for FY 2004.

As noted in the previous paragraphs, many of the "B-list" activities are 2-year projects that we are positioning to be candidates for the "A-list" next year.

FDA requests comments on which "B-list" activities should be elevated to the "A-list" for completion in 2004. Finally, as noted, FDA requests comments on new program areas or activities that should be added as a high priority for FY 2004.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14106 Filed 6–4–03; 8:45 am]

BILLING CODE 4106–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)—Revision

Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

In response to the statutory mandate of section 340B(a)(5)(C) to develop audit guidelines and because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA Pharmacy Affairs Branch (PAB) has developed a dispute resolution process for manufacturers and covered entities as well as manufacturer guidelines for audit of covered entities.

Audit Guidelines

A manufacturer will be permitted to conduct an audit only when there is reasonable cause to believe a violation of section 340B(a)(5)(A) or (B) has occurred. The manufacturer must notify the covered entity in writing when it believes the covered entity has violated the provisions of section 340B. If the problem cannot be resolved, the manufacturer must then submit an audit work plan describing the audit and evidence in support of the reasonable cause standard to the HRSA PAB for review. The office will review the documentation to determine if reasonable cause exist. Once the audit is completed, the manufacturer will submit copies of the audit report to the HRSA PAB for review and resolution of the findings, as appropriate. The manufacturer will also submit an informational copy of the audit report to the HHS Office of Inspector General.

Dispute Resolution Guidelines

Because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA PAB has developed an informal dispute resolution process which can be used if an entity or manufacturer is believed to be in violation of section 340B. Prior to filing a request for resolution of a dispute with the HRSA PAB, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of a good faith attempt to resolve the dispute. If the dispute is not resolved and dispute resolution is desired, a party must submit a written request for a review of the dispute to the HRSA PAB. A committee appointed to review the documentation will send a letter to the party alleged to have committed a violation. The party will be asked to provide a response to or a rebuttal of the allegations.

To date, there have been no requests for audits, but two disputes have reached the level where a committee review may be needed. As a result, the estimates of annualized hour burden for audits and disputes have been reduced to the level shown in the table below.

Reporting requirement	Number of respondents	Responses per respondent	Total responses	Hours/ response	Total burden hours
AUDITS					
Audit Notification of Entity [1]	2	1	2	4	8
Audit Workplan [1]	1	1	1	8	8
Audit Report [1]	1	1	1	1	1

Reporting requirement	Number of respondents	Responses per respondent	Total responses	Hours/ response	Total burden hours
Entity Response	0	0	0	0	0
DISPUTE RESOLUTION					
Mediation Request	2	4	8	10	80
Rebuttal	2	1	2	16	32
Total	8	1.8	14	9.2	129

[1] Prepared by the manufacturer.

Recordkeeping requirement	Number of recordkeepers	Hours of recordkeeping	Total burden
Dispute records	10	.5	5

The total burden is 134 hours.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 30, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–14217 Filed 6–4–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Care for the Homeless Program User/Visit Surveys—NEW

The Bureau of Primary Health Care (BPHC) of HRSA is planning to conduct User/Visit Surveys of the Health Care for Homeless Program (HCHP). The purpose of this study is to conduct nationally representative surveys, which have the following components: (1) A personal interview survey of HCHP site users; and (2) a record-based study of visits to HCHP sites.

The HCHP is the Federal program with the sole responsibility for addressing the critical primary health care needs of homeless individuals. The HCHP is administered by the BPHC. The BPHC is interested in knowing more about the general and specific characteristics of the HCHP users and their visits to the HCHP sites. As a consequence, a personal interview survey (User Survey) will be administered to a nationally representative sample of HCHP users and a representative sample of medical visits of HCHP sites (Visit Survey) will be examined as well.

These surveys are designed and intended to be primary sources of information on the health and visits of the HCHP users. The information will provide policy makers with a better understanding of the services that HCHP users are receiving at HCHP sites and how well these sites are meeting the needs of HCHP users.

Data from the surveys will provide quantitative information on the homeless population served by the HCHP, specifically: (a) Sociodemographic characteristics, (b) health care access and utilization, (c) health status and morbidity, (d) health care experiences and risk behaviors, (e) content of medical encounters, (f) preventive care, and (g) and living conditions. These surveys will provide data useful to the HCHP and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993.

The estimated burden on respondents and HCHP site staff is as follows:

Form	Number of respondents	Responses per respondent	Total response	Hours per response	Total burden hour
Grantee Recruitment	30 grantees	1	30	1	30
Grantee Sampling Methods	30 grantees	1	30	3	90
User Survey	1,020 users	1	1,020	1	1,020
Visit Survey	1,020 visits	1	1,020	.25	255
Total	2,070		2,070		1,395

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eyte, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax number 202–395–6974.

Dated: May 30, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–14218 Filed 6–4–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

United States Secret Service

Notice of Proposed Information Collection

ACTION: Notice of Proposed Information Collection.

SUMMARY: The U.S. Department of Homeland Security, Office of the Chief Information Officer, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1995. Currently, the U.S. Secret Service, within the U.S. Department of Homeland Security is soliciting comments concerning the SSF 86A, Supplemental Investigative Data.

DATES: Interested persons are invited to submit comments on ore before August 4, 2003.

ADDRESSES: Direct all written comments to United States Secret Service, Recruitment and Personnel Security Division, Attn: Robin DeProspero, Personnel Security Branch, 950 H St., NW., Washington, DC 20373–5824, Suite 3800, 202/406–5433. Individuals who use a telecommunications device for the deaf (TDD) may either call the Federal Information Relay Service (FIRS) at 1–800–877–8339 or call directly (TTY) 202–406–5390.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to: United States Secret Service, Recruitment and Personnel Security Division, Attn: Althea Washington, Personnel Security Branch, 950 H Street, NW., Washington, DC 20373–5824. Telephone number: (202) 406–9403.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires each Federal agency to provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The notice for this proposed information collection contains the following: (1) The name of the component of the U.S. Department of Homeland Security; (2) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (3) OMB Control Number, if applicable; (4) Title; (5) Summary of the collection; (6) Description of the need for, and proposed use of, the information; (7) Respondents and frequency of collection; and (8) Reporting and/or Recordkeeping burden. The Department of Homeland Security invites public comment.

The Department of Homeland Security is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, including whether the information will have practical utility; (2) is the estimate of burden for this information collection accurate; (3) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (4) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Abstract: Respondents are all Secret Service applicants. These applicants, if approved for hire, will require a Top Secret Clearance, and possible SCI Access. Responses to questions on the SSF 86A yields information necessary for the adjudication for eligibility of the clearance, as well as ensuring that the applicant meets all internal agency requirements.

United States Secret Service

Title: Supplemental Investigative Data.

OMB Control Number: 1620–0001.

Form Number: SSF 86A.

Frequency: Occasionally.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Reporting and Recordkeeping Hour Burden:

Responses: 10,000.

Burden Hours: 30,000.

Dated: May 30, 2003.

Adam Becker,

Branch Chief—Policy Analysis and Records Systems Branch U.S. Secret Service, U.S. Department of Homeland Security.

[FR Doc. 03–14083 Filed 6–4–03; 8:45 am]

BILLING CODE 4810–42–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–27]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0533) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including

number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market).

OMB Approval Number: 2502–0533.

Form Numbers: HUD–9624, HUD–9625.

Description of the Need for the Information and Its Proposed Use: The Mark-to-Market Program is authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997. The information collection is used to determine the eligibility of FHA-insured multifamily properties for participation in the Mark-to-Market program and the terms on which participation should occur. The program reduces Section 8 rents to market and restructures debt as necessary. The purpose of the program is to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance, including project-based assistance, and minimizing the adverse effect on the FHA insurance funds.

Respondents: Business or other for-profit, Not-for-Profit Institutions.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	438		1		288		125,947

Total Estimated Burden Hours: 125,947.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–14084 Filed 6–4–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–28]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Insurance Benefits Claims

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0415) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Insurance Benefits Claims.

OMB Approval Number: 2502–0415.

Form Numbers: HUD–2742, 2744–A, 2744–B, 2744–C, 2744–D, and 2744–E.

Description of the Need for the Information and Its Proposed Use: When terms of a multifamily contract are breached or when a mortgagee meets conditions stated within the multifamily contact for an automated assignment, the holder of the mortgage may file for insurance benefits. The information requested in the Multifamily Insurance Benefits Claim is necessary to determine insurance benefits to which a claimant mortgagee may be entitled under 12 U.S.C. 1713(g) and Title II, Section 207(g) of the National Housing Act.

Respondents: Individuals or households, Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	118		1		3.5		411

Total Estimated Burden Hours: 411.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–14085 Filed 6–4–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–29]

Notice of Submission of Proposed Information Collection to OMB: A Study of the Effectiveness of the Milwaukee Lead Hazard Control Ordinance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2539–0017) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: A Study of the Effectiveness of the Milwaukee Lead Hazard Control Ordinance.

OMB Approval Number: 2539–0017.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Despite dramatic reductions in blood-lead levels over the pass 15 years, lead poisoning continues to be significant health risk for young children. The Third National Health and Nutrition Examination Survey suggests that the greatest risk exists for children under the age of two. The development of a viable national strategy for the primary prevention of lead poisoning in these young children is a difficult task. The City of Milwaukee has enacted an ordinance requiring owners of pre-1950 rental properties in two target neighborhoods to carry out specified essential maintenance practices and standard treatments by April 30, 2000. The purpose of this information collection activity is to evaluate the feasibility, costs, and effectiveness (in terms of reducing residential dust-lead levels and preventing elevated blood-lead levels in children under two years of age) of the comprehensive primary prevention program being conducted in the two target Milwaukee neighborhoods. The collection information will be used as vital input for developing a viable national strategy for the primary prevention of childhood lead poisoning.

This information collection will involve conducting brief on-site interviews of tenants, conducting visual inspections of rental units, collecting dust-wipe samples for lead analysis from selected floor and window sill locations, and obtaining bold-samples from study subjects. If appropriate, the results of this information collection will be used to improve existing HUD guidance for primary prevention lead-hazard control activities.

Respondents: Individuals or households; State, Local Government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,250	449		0.34		421

Total Estimated Burden Hours: 421.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–14086 Filed 6–4–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We (U.S. Fish and Wildlife Service) solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before July 7, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–043628

Applicant: Institute for Applied Technology, Corvallis, Oregon.

The permittee requests an amendment to collect seeds of *Erigeron decumbens* var. *decumbens* (Willamette daisy) in conjunction with research in Polk, Benton, and Lane Counties, Oregon for the purpose of enhancing its survival.

Permit No. TE–025733

Applicant: Dynamac Corporation, Corvallis, Oregon.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the Oregon chub (*Oregonichthys crameri*), the White River spinedace (*Lepidomeda albivallis*), the shortnose sucker (*Chasmistes brevirostris*), and the Lost River sucker (*Deltistes luxatus*) in conjunction with surveys in Oregon and Nye County, Nevada for the purpose of enhancing their survival.

Permit No. TE–022230

Applicant: Jeff Kidd, Perris, California.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the Arroyo toad (*Bufo californicus*) in conjunction with surveys in California for the purpose of enhancing its survival.

Permit No. TE–065988

Applicant: Peninsula Open Space Trust, Menlo Park, California.

The applicant requests a permit to take (harass by survey, capture, handle, transport, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with habitat manipulation in San Mateo County, California for the purpose of enhancing its survival.

Permit No. TE–071098

Applicant: North Coast Resource Management, Calpella, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the Sonoma County District Population Segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–018078

Applicant: Hawaii Volcanoes National Park, Hawaii National Park, Hawaii.

The permittee requests an amendment to remove/reduce to possession *Argyroxiphium kauense* (Mauna Loa silversword), *Argyroxiphium sandwicense* ssp. *sandwicense* ('Ahinahina), *Hibiscadelphus giffardianus* (hau kuahiwi), *Ischaemum byrone* (Hilo ischaemum), *Melicope zahlbruckneri* (alani), *Neraudia ovata* (no common name), *Nothecestrum breviforum* ('aiea), *Plantago hawaiensis* (kuahiwi laukahi), *Pleomele hawaiiensis* (hala pepe), *Portulaca sclerocarpa* (po'e), *Pritchardia affinis* (lo'ulu), *Sesbania tomentosa* ('ohai), and *Sicyos alba* ('anunu) in conjunction with captive propagation and outplanting throughout the range of the species in Hawaii for the purpose of enhancing their survival.

Permit No. TE–071433

Applicant: Stephanie Dunbar, Honolulu, Hawaii.

The applicant requests a permit to remove/reduce to possession *Plantago princeps* var. *princeps*, *Plantago princeps* var. *anomala*, *Plantago princeps* var. *laxiflora*, *Plantago princeps* var. *longibracteata*, and *Plantago hawaiensis* (all of which have the same common name kuahiwi laukahi) in conjunction with research studies throughout the range of the species in Hawaii for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: May 23, 2003.

David J. Wesley,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–14130 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–Ps

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on this permit application must be received on or before July 7, 2003.

ADDRESSES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional Permits Coordinator, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Permit Number TE056081–1

Applicant: EnviroScience, Inc., Stow, Ohio.

The applicant requests a permit to take (capture and release) listed unionid mussel species throughout Kentucky. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE070773

Applicant: Genevieve Spanjer. Toronto, Ontario, Canada.

The applicant requests a permit to take (capture, handle, and harass) the Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), Ozark big-eared bat (*Corynorhinus townsendii ingens*) and Virginia big-eared bat (*C. t. viginianus*)

in the States of Alabama, Georgia, Indiana, Kentucky, New York, Ohio, Tennessee, Vermont, Virginia, and West Virginia. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE070779

Applicant: Daniel A. Maltese, Pittsburgh, Pennsylvania.

The applicant requests a permit to take (capture, handle, and harass) the Indiana bat (*Myotis sodalis*) in Ohio. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE070782

Applicant: Barbara J. Barton, Ypsilanti, Michigan.

The applicant requests a permit to take Mitchell's satyr (*Neonympha mitchellii mitchellii*) in Michigan. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE071066

Applicant: Bat Conservation and Management, Inc., Carlisle, Pennsylvania.

The applicant requests a permit to take (capture, handle, and harass) the Indiana bat (*Myotis sodalis*) in Iowa. The scientific research is aimed at enhancement of survival of the species in the wild.

Documents and other information submitted with this application are available for review by any party who requests a copy from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov*, telephone (612) 713–5343, or FAX (612) 713–5292. 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. Please refer to the respective permit numbers when submitting comments.

Dated: May 7, 2003.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–14131 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance of a Permit for Endangered Species.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted with this application 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: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the date below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
065981	Matson's Laboratory, LLC	68 FR 2069; January 15, 2003	May 7, 2003.

Dated: May 16, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–14149 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 7, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–067587

Applicant: Patricia Szczys, University of Massachusetts-Boston, Boston, MA.

The applicant requests a permit to export DNA taken from blood sampled from wild roseate terns (*Sterna dougallii*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

PRT–072069

Applicant: Wesley Carl Bates, Columbus, OH.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–072073

Applicant: James H. Zindl, Sussex, WI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–072106

Applicant: William R. Meyers, Chattanooga, TN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–071899

Applicant: Branko A.Terkovich, Mendham, NJ.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Mellville Sound polar bear population in Canada for personal use.

PRT–072002

Applicant: Michael J. Vandemaele, Mattawan, MI.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Mellville Sound polar bear population in Canada for personal use.

PRT–072004

Applicant: Alfred E. Delgreco, E. Patchogue, NY.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Mellville Sound polar bear population in Canada for personal use.

PRT–072007

Applicant: Felix G. Widlacki, Orland, IL.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–072044

Applicant: Scott Garrett Olds, Grangeville, ID.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal use.

PRT–072088

Applicant: Thomas H. Essex, Falmouth, VA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 16, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–14150 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 7, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority. telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–072379

Applicant: Lynn C. Thompson, Ventura, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa. for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or

marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–072135.

Applicant: Paul M. Vial, Fresno, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Mark D. Nuessle, Scottsdale, AZ

PRT–072138.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Michael B. Thomas, Atlanta, GA

PRT–072240.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Scott S. Snyder, McCook, NE

PRT–072383.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: May 23, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–14151 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of Incidental Take Permits Associated With a Habitat Conservation Plan for East Contra Costa County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, we, the U.S. Fish and Wildlife Service (Service) are advising the public that we intend to gather information necessary to prepare, in coordination with the East Contra Costa County Habitat Conservation Plan Association (Association), a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) on the East Contra Costa County Habitat Conservation Plan (Plan), which is being prepared in conjunction with a Natural Community Conservation Plan. The Plan is being prepared under Section 10 (a)(1)(B) of the Federal Endangered Species Act of 1973, as amended, (ESA); whereas the Natural Community Conservation Plan is being prepared under the State of California's Natural Community Conservation Planning Act. The Association intends to request an ESA permit for 7 species federally listed as threatened or endangered and 18 unlisted species that may become listed during the term of the permit. The permit is needed to authorize take of listed species that could occur as a result of activities implemented under the Plan.

We provide this notice to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. We invite written comments from interested parties to ensure that the full range of issues related to the permit request are identified.

DATES: Written comments should be received on or before August 4, 2003. Public meetings will be held on: July 17, 2003, 3:30 p.m. to 5:30 p.m, and 7 p.m. to 8:30 p.m., Pittsburg, CA.

ADDRESSES: The public meetings will be held at: Pittsburg City Hall, 65 Civic Drive, Pittsburg, CA, 94565. Information, written comments, or questions related to the preparation of the EIS/EIR and the NEPA process should be submitted to Sheila Larsen, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen, Fish and Wildlife Biologist, at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Sheila Larsen as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit the "take" of a species listed as endangered or threatened. Take is defined under the ESA as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.32 and 50 CFR 17.22.

We anticipate that the Association will request an ESA incidental take permit. The Association is a Joint Powers Authority consisting of seven member agencies: Contra Costa County; cities of Brentwood, Clayton, Oakley, and Pittsburg; Contra Costa Water District; and East Bay Regional Park District.

Currently, 26 species are proposed for coverage under the Plan. These include the federally listed endangered San Joaquin kit fox (*Vulpes macrotus mutica*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), the threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*), giant garter snake

(*Thamnophis gigas*), California red-legged frog (*Rana aurora draytonii*), vernal pool fairy shrimp (*Branchinecta lynchi*), and the proposed California tiger salamander (*Ambystoma californiense*), and their habitats. The 18 unlisted species proposed to be covered under the Plan include the Townsend's western big-eared bat (*Corynorhinus townsendii townsendii*), tricolored blackbird (*Agelaius tricolor*), golden eagle (*Aquila chrysaetos*), western burrowing owl (*Athene cunicularia hypugea*), Swainson's hawk (*Buteo swainsoni*), silvery legless lizard (*Anniella pulchra pulchra*), foothill yellow-legged frog (*Rana boylii*), midvalley fairy shrimp (*Branchinecta mesovalliensis*), Mount Diablo manzanita (*Arctostaphylos auriculata*), brittlescale (*Atriplex depressa*), San Joaquin spearscale (*Atriplex joaquiniana*), big tarplant (*Blepharizonia plumosa*), Mount Diablo fairy lantern (*Calochortus pulchellus*), recurved larkspur (*Delphinium recurvatum*), Diablo helianthella (*Helianthella castanea*), Brewer's dwarf flax (*Hesperolinin breweri*), showy madia (*Madia radiata*), and adobe navarretia (*Navarretia nigelliformis* spp. *nigelliformis*). Species may be added or deleted during the course of Plan development based on further analysis, new information, agency consultation, and public comment.

The Plan area consists of approximately 170,000 acres in East Contra Costa County, California, including watersheds that drain the eastern flanks of Mount Diablo. The boundaries of the Plan area are generally defined by the Alameda-Contra Costa county line, the San Joaquin-Contra Costa county line, the Sacramento-Contra Costa county line, the Solano-Contra Costa county line, and the eastern flanks of Mount Diablo and adjacent foothills in the Diablo Range. Excluded areas include current and historic tidal areas, the City of Antioch, the community of Discovery Bay, and the Clifton Court Forebay.

Implementation activities that may be covered under the Plan include urban development and associated infrastructure, and County and/or city projects related to road maintenance/construction, water delivery infrastructure, flood control, sanitary systems, and recreational opportunities. Under the Plan, the effects of covered activities are expected to be minimized and mitigated through participation in a conservation program, which will be fully described in the Plan. The focus of a conservation program is to provide long-term protection of covered species by protecting biological communities in the Plan area. The Plan is also a Natural Community Conservation Plan, therefore it will provide protection at an ecosystem level while accommodating compatible land use and economic growth.

Components of a conservation program are now under consideration by the Service and Association. These components will likely include: Avoidance and minimization measures, monitoring, adaptive management, research, and mitigation measures consisting of preservation, restoration and enhancement of habitat.

Environmental Impact Statement/ Report

The Association and the Service have selected Jones & Stokes to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with NEPA and the California Environmental Quality Act (CEQA). Although Jones & Stokes will prepare the EIS/EIR, the Service will be responsible for the scope and content of the document for NEPA purposes, and the County will be responsible for the scope and content of the document for CEQA purposes.

The EIS/EIR will consider the proposed action, the issuance of an incidental take permit, no action (no permit), and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. We anticipate that several alternatives will be developed, which may vary by the level of conservation, impacts caused by the proposed activities, permit area, covered species, or a combination of these factors.

The EIS/EIR will also identify potentially significant impacts on biological resources, land use, air quality, water quality, mineral resources, water resources, economics, and other environmental resource issues that could occur directly or indirectly with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS/EIR will identify mitigation measures where feasible to reduce these impacts to a level below significance.

Environmental review of the EIS/EIR will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. We are publishing this notice in accordance with Section 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. More specifically, we provide this notice: (1) To describe the proposed action and possible alternatives; (2) to advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) to announce the initiation of a public scoping period; and (4) to obtain suggestions and information on the scope of issues to be included in the EIS/EIR. The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. We invite written comments from interested parties to ensure that the full range of issues related to the permit request are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: May 23, 2003.

D. Kenneth McDermond,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–14109 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of Incidental Take Permits Associated With a Habitat Conservation Plan for Solano County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, we, the U.S. Fish and Wildlife Service (USFWS) are advising the public that we intend to gather information necessary to prepare, in coordination with the National Marine Fisheries Service (NMFS), as a cooperating agency, and the Solano County Water Agency, a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) on the Solano Habitat Conservation Plan (Plan), which is being prepared in conjunction with a Natural Community Conservation Plan. The Plan is being prepared under Section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, as amended, (ESA); whereas the Natural Community Conservation Plan is being prepared under the State of California's Natural Community Conservation Planning Act.

Solano County Water Agency, six of its eight member agencies, and

Reclamation District No. 2068 (collectively, the Applicants) intend to request ESA permits from the USFWS and NMFS (collectively, the Services) for 76 species that are federally listed as threatened or endangered or that may become federally listed during the term of the permits. The permits are needed to authorize take of listed species that could occur as a result of activities implemented under the Plan.

We provide this notice to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. We invite written comments from interested parties to ensure that the full range of issues related to the permit requests are identified.

DATES: Written comments should be received on or before July 7, 2003. Public meetings will be held on:

1. June 12, 2003, 7 p.m. to 9 p.m., Fairfield, CA.

2. June 16, 2003, 7 p.m. to 9 p.m., Vacaville, CA.

ADDRESSES: The public meeting locations are:

1. Fairfield—Fairfield City Council Chambers, 1000 Webster Street, Fairfield, CA 94533.

2. Vacaville—Ulatis Cultural Center, 1000 Ulatis Drive, Vacaville, CA 95687.

Information, written comments, or questions related to preparation of the EIS/EIR and the NEPA process should be submitted to Deblyn Mead, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; FAX (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Deblyn Mead, Fish and Wildlife Biologist, Conservation Planning, at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact Deblyn Mead as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the meetings. Information regarding this proposed action is available in alternative formats upon request.

Related Documents

Persons wishing to obtain background materials on the proposed Plan should contact David Okita, General Manager, Solano County Water Agency, 508 Elmira Road, Vacaville, CA 95867 at (707) 451–2904. Information is also available on the Solano County Water Agency Web page at *http://www.scwa2.com.*

Background

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on ESA section 10(a)(1)(B) permit applications expected from the Applicants. Therefore, the Services are seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect unlisted animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out otherwise lawful activity. USFWS regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22. NMFS regulations governing permits for threatened and endangered species of salmonids that may be covered in the Plan are promulgated in 50 CFR 222.22.

In 1999, the Bureau of Reclamation renewed its Solano Project Water Service Contract with Solano County Water Agency for the continued delivery of 192,350 acre-feet of water per year to 7 public agencies within Solano County (City of Vacaville, City of Fairfield, City of Suisun City, City of Vallejo, Solano Irrigation District, Maine Prairie Water District, and the California Medical Facility/California State Prison, Vacaville) and the University of California at Davis, which is located partially in Yolo County, for a 25-year period. The water is to be used by these contracting agencies within Solano County Water Agency's contract service area for agricultural, municipal and industrial purposes. The USFWS completed its formal consultation on the water service contract renewal and issued a biological opinion on March 19, 1999. To ensure that implementation of the Solano Project Water Service Contract renewal was not likely to jeopardize the continued existence of federally listed species or result in destruction or adverse modification of designated critical habitat, the Solano County Water Agency and its member agencies that contract for Solano Project water committed to completion of the Plan as part of their proposed project on which the USFWS consulted.

We anticipate that the Applicants will request ESA incidental take permits. The Applicants include the Solano County Water Agencies member agencies, with the exception of the University of California at Davis and the California Medical Facility/State Prison in Vacaville. The University of California at Davis is independently developing a separate habitat conservation plan. The California Medical Facility/State Prison in Vacaville will be included as part of the City of Vacaville's participation in the Plan. Reclamation District No. 2068, a public agency, has elected to participate in the Plan. Solano County may elect to participate in the Plan.

Currently, up to 76 species are proposed for coverage under the Plan. The Solano County Water Agency and its member agencies committed to covering 36 species in the biological opinion for the Solano Project Water Service Contract renewal. Of these 36 species, 17 are federally listed as threatened or endangered under the ESA (1 mammal, 1 bird, 1 reptile, 1 amphibian, 2 fish, 6 invertebrates, and 5 plants) and 19 are plant species that may become listed during the term of the permits. Also proposed to be covered under the Plan are 5 salmonid species, 4 of which are federally listed, one amphibian species that is a candidate for listing, and 34 species that are currently unlisted, but which may become listed during the term of the permits. Some of these species are listed as threatened or endangered under the California Endangered Species Act. Species may be added or deleted during the course of Plan development based on further analysis, new information, agency consultation, and public comment.

The Plan area includes approximately 576,927 acres and consists of all of Solano County and a small part of Yolo County. The Yolo County portion of the Plan area includes approximately 2,500 acres within Reclamation District No. 2068's service area and a portion of the riparian zone on the Yolo County side of Putah Creek.

The Plan area and the activities proposed to be covered by the Plan are organized into three zones. Zone 1 is proposed to consist of the planned growth areas of the cities. Proposed covered activities in this zone consist of residential, commercial, industrial, institutional, and recreational

development, as well as development of public infrastructure such as roads and utilities. Zone 2 is proposed to consist of the service areas of Solano Irrigation District, Maine Prairie Water District, Reclamation District No. 2068, and the Solano County Water Agency flood control channels. Proposed covered activities in this zone consist of the inclusion, expansion or annexation of service areas by these districts, and ongoing operation, maintenance, and construction of new irrigation, flood control, and drainage facilities. Zone 3 consists of the remainder of the Plan area within Solano and Yolo counties. Proposed covered activities in Zone 3 consist primarily of activities related to implementation of the Plan conservation measures including habitat management, habitat enhancement, and habitat restoration and construction, monitoring, scientific collection, and associated compatible activities on designated reserves, mitigation sites, mitigation banks and open space lands, and lands adjacent to conservation areas. Zone 3 may also include non-agricultural activities carried out by the cities on lands outside of their respective jurisdictional boundaries, such as construction, operation and maintenance of communication facilities, water supply reservoirs and recreational facilities management. Activities proposed to be covered in Yolo County, as part of Zone 3, are those activities related to Reclamation District No. 2068 and the potential implementation of conservation measures in the Putah Creek riparian zone.

Under the Plan, the effects of covered activities on the covered species are expected to be minimized and mitigated through participation in a conservation program, which will be fully described in the Plan. The focus of this conservation program is to provide long-term protection of covered species by protecting biological communities in the Plan area, thereby providing protection at an ecosystem level while accommodating compatible land use and economic growth.

Critical Habitat has been designated for one of the listed salmonid species, two other animal species, and a candidate salmonid species within the Plan area. Critical Habitat is proposed for several listed vernal pool invertebrate and vernal pool plant species proposed for coverage in the Plan.

Components of a conservation program are now under consideration by the Services and the Applicants. These components will likely include: Avoidance and minimization measures, monitoring, adaptive management, research, and mitigation measures consisting of preservation, restoration and enhancement of habitat.

Environmental Impact Statement/ Report

The Solano County Water Agency and the Services have selected CH2M Hill to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with NEPA and the California Environmental Quality Act (CEQA). Although CH2M Hill will prepare the EIS/EIR, the USFWS will be responsible for the scope and content of the document for NEPA purposes, and the Solano County Water Agency will be responsible for the scope and content of the document for CEQA purposes.

The EIS/EIR will consider the proposed action (issuance of section 10(a)(1)(B) ESA permits), no action (no permit), and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. It is anticipated that several alternatives will be developed, which may vary by the level of conservation, impacts caused by the proposed activities, permit area, covered species, or a combination of these factors.

The EIS/EIR will also identify potentially significant impacts on biological resources, land use planning (land use development patterns), air quality, water quality, mineral resources, water resources, economics, and other environmental issues that could occur directly or indirectly with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS/EIR will identify mitigation measures where feasible to reduce these impacts to a level below significance.

Environmental review of the EIS/EIR will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.,*) its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. We are publishing this notice in accordance with Section 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS/EIR and the alternatives to be considered. More specifically, we provide this notice: (1) To describe the proposed action and possible alternatives; (2) to advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) to announce the initiation of a public scoping period; and (4) to obtain suggestions and information on the scope of issues to be included in the EIS/EIR. The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. We invite written comments from interested parties to ensure that the full range of issues related to the permit requests are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: May 23, 2003.

D. Kenneth McDermond,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–14111 Filed 6–4–03; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–016]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: June 12, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1013 (Final)(Saccharin from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 25, 2003.)
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 2, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14333 Filed 6–3–03; 2:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of Information Collection Under Review: Extension of a Currently Approved Collection; Annuity Broker Qualification Declaration Form.

The Department of Justice (DOJ), Civil Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 49, page 12103 on March 13, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annuity Broker Qualification Declaration Form.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: none. Civil Division, Torts Branch, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Annuity Brokers. *Other:* None. The information collection requirement contained in this rule will be used to determine whether a broker meets the minimum qualifications to be listed as an annuity broker pursuant to section 11015(b) of Public Law 107–273.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to repond/reply:* It is estimated that 400 respondents will complete the application in approximately 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 400 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20503.

Dated: May 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14119 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on May 22, 2003, a proposed Amended Consent Decree in *United States* v. *Gopher State Ethanol, Inc.,* ("Gopher State"), Civil Action No. CV02–3793 JEL/RLE, was lodged with the United States District Court for the District of Minnesota.

In this action the United States asserted claims against the owners and operators of an ethanol dry mill in St. Paul, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act and regulations promulgated thereunder. The original Consent Decree with Gopher State was lodged on October 2, 2002. The public comment period closed on January 24, 2003. This Amended Consent Decree includes changes made to the settlement in response to comments received during the public comment period. The changes include additional limitations on Gopher State's "wet cake" production, a by-product of the ethanol manufacturing process used as animal feed, and the requirement to install an additional baghouse for further reductions of particulate matter emissions.

The Department of Justice will receive comments relating to the Gopher State Amended Consent Decree for a period of fifteen (15) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Gopher State Ethanol, Inc.,* D.J. Ref. 90–5–2–1–07784/8.

The Amended Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period the Amended Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 03–14100 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 22, 2003, a proposed Consent Decree (the "Decree") in *United States* v. *Lockheed Martin Corp.*, Civil Action No. CV03–1180–C was lodged with the United States District Court for the Western District of Washington.

In this action the United States sought injunctive relief and recovery of costs in connection with cleanup of hazardous substances located in the vicinity of Harbor Island, in Seattle, Washington. The Decree provides that Lockheed Martin will perform cleanup work and pay past and future costs incurred by the United States in connection with the cleanup.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Lockheed Martin Corp.*, D.J. Ref. 90–11–2–970/2.

The Decree may be examined at the Office of the United States Attorney, 601 Union Street, Suite 5100, Seattle, WA 98101–3903, and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $44.00 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $15.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14102 Filed 6–14–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement in *In Re Owens Corning* Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on May 20, 2003, a proposed Settlement Agreement was lodged with the United States Bankruptcy Court for the District of Delaware in *In re Owens Corning*, No. 00–03837 (Bankr. D. Del.). The Agreement between the United States on behalf of the Environmental Protection Agency, Department of Interior, and National Oceanic and Atmospheric Administration of the Department of Commerce, and Debtors Owens Corning and certain of its affiliates resolves CERCLA claims against the Debtors for the following forty hazardous waste sites, denominated as "Liquidated Sites" under the Agreement: the Amenia Town Landfill site in Amenia, New York; the Bayonne Barrel & Drum site in Newark, New Jersey; the Bessie Williams Landfill site in Copley, Ohio; the Bohaty Drum site in Medina, Ohio; the Bridgeport Rental and Oil Services (BROS) site in Logan Township, New Jersey; the Butterworth Landfill site in Grand Rapids, Michigan; the Caldwell Systems site in Caldwell County, North Carolina; the Casmalia Disposal site in Santa Barbara, California; the Chem-Dyne site in Hamilton, Ohio; the Conservation Chemical site in Gary, Indiana; the Distler Brickyard and Distler Farm sites in Hardin and Jefferson Counties, Kentucky; the Doepke-Holliday site in Johnson County, Kansas; the Double Eagle Refinery site in Oklahoma City, Oklahoma; the Erie Coatings and Chemicals, Inc. site in Erie, Michigan; the Fisher-Calo site in LaPorte County, Indiana; the French Limited, Inc. site near Crosby, Texas; the Great Lakes Container site in St. Louis, Missouri; the Gurley Pit site near Edmonson, Arkansas and the related South Eighth Street Landfill site near west Memphis, Arkansas; the Hayford Bridge Road site in St. Charles, Missouri; the Lipari Landfill site in Mantua Township, New Jersey; the Lowry Landfill site in Arapahoe County, Colorado; the Maxey Flats Disposal site in Hillsboro, Kentucky; the Memphis Container (Tri-State Drum) site in Memphis, Tennessee; the Mercer Drum site in Alexandria, Ohio; the Metro Container Drum site in Trainer, Pennsylvania; the Milt Adams/Approved Oil site in Denver, Colorado; the Operating Industries, Inc. Landfill site in Monterey Park, California; the Osage Metal Co. site in Kansas City, Kansas; Operable Unit 1 of the Peterson/Puritan, Inc. site in Lincoln and Cumberland, Rhode Island; the Petroleum Product site in Pembroke Park, Florida; the Rodale . Manufacturing site in Emmaus, Pennsylvania; the Rouse Steel Drum site in Duvall, Florida; the Seymour Recycling Corp. site near Seymour, Indiana; the Sixty-Eighth Street dump in Baltimore County, Maryland; the Strausburg Landfill in Newlin Township, Pennsylvania; the Tremont City Landfill site (barrel disposal area) in German Township, Ohio; the Tulalip Landfill site near Marysville, Washington; the Western Processing Company, Inc. site in Kent, Washington; the Wheeling Disposal site in Amazonia, Missouri; and the Zellwood Drum site in Orange County, Florida.

Under the Agreement, in addition to amounts previously paid, the Debtors have agreed to allowed claims in the total amount of $1,749,206. The Agreement also contains provisions pertaining to the treatment of three other categories of sites: Debtor-Owned Sites, Work and Work Consent Decree Sites, and Additional Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Owens Corning*, D.J. Ref. 90–11–2–07347. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreement may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE, and at the United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy

of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14099 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on May 23, 2003, a proposed consent decree in *United States* v. *R.E.P. Industries Inc. et al.*, Civil Action No. 03–CV–3255 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, in connection with the R.E.P. Industries property at the North Penn Area Six Superfund Site ("Site"), which consists of a contaminated groundwater plume and a number of separate parcels of property within and adjacent to the Borough of Lansdale, Montgomery County, Pennsylvania. The proposed consent decree will resolve the United States' claims against R.E.P. Industries Inc., Geraldine K. Penniman, and Richard E. Penniman ("Settling Defendants") in connection with the R.E.P. Industries property at the Site. Under the terms of the proposed consent decree, Settling Defendants will make a cash payment to the United States of $113,478.00 plus interest to address their liability for the Site and will receive a covenant not to sue by the United States with regard to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *R.E. Industries Inc., et al.*, D.J. Ref. 90–11–2–06024/14.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice website: *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14097 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *San Diego Baykeeper* v. *United States Department of Defense*, 02–CV–0499 lEG (AJB) (S.D. Cal.), was lodged with the United States District Court for the Southern District of California on May 16, 2003. The parties' settlement addresses alleged violations of the Clean Water Act at Marine Corps Base Camp Pendleton.

The proposed Consent Decree would require the Marine Corps to implement plans to upgrade its wastewater treatment facilities at Camp Pendleton to comply with the discharge requirements contained in its NPDES permits, to enhance its monitoring and reporting under those permits, and to reduce sanitary sewer overflows at the Base.

The United States Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Martha Mann, Attorney, United States Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *San Diego Baykeeper* v. *United States Department of Defense*, 02–CV–0499 lEG (AJB) (S.D. Cal.).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of California, 4290 Edward J. Schwartz Federal Building, 880 Front Street, San Diego, California, or at the following Web site: *http://www.usdoj.gov/enrd/open.html.*

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 03–14098 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 22, 2003, a proposed Consent Decree (the "Decree") in *United States* v. *Todd Pacific Shipyards Corp.*, Civil Action No. CV03–1179–Z was lodged with the United States District Court for the Western District of Washington.

In this action the United States sought injunctive relief and recovery of costs in connection with cleanup of hazardous substances located in the vicinity of Harbor Island, in Seattle, Washington. The Decree provides that Todd Pacific Shipyards Corp. will perform cleanup work and pay past and future costs incurred by the United States in connection with the cleanup.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Todd Pacific Shipyards Corp.*, D.J. Ref. 90–11–2–970/1.

The Decree may be examined at the Office of the United States Attorney, 601 Union Street, Suite 5100, Seattle, WA 98101–3903, and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Decree may also be obtained by

mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $42.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $13.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–14101 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day notice of information collection under review; Extension of currently approved collection; Local law enforcement block grants program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 4, 2003.

If you have additional comments, suggestions, or need a copy of the proposed information instrument with instructions or additional information, please contact Zephyr Fraser at 202–616–0416, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged and should address one or more of the following four points:

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

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

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

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

Overview of this information:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Local Law Enforcement Block Grants Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, and Tribal Governments. *Other:* None. Public Law 107–10 funds the Local Law Enforcement Block Grants Program. This program awards funds to local units of governments, states, and territories to reduce crime and improve public safety. Each eligible State and unit of local government electronically provides information to apply.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that no more than 3,274 respondents will apply, at approximately 10 responses each at 1 hour per response.

(6) *As estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the applications is 32,740 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: May 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14118 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Revision of a currently approved collection; 2003 survey of state and local law enforcement agencies.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 47, page 11582 on March 11, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* 2003 Survey of State and Local Law Enforcement Agencies.

(3) *The agency form number, if any, and the applicable components of the Department sponsoring the collection:* The form numbers will be updated from CJ–38L and CJ–38S to CJ–44L and CJ–44S, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* State, Local or Tribal. *Other:* None. This information collection is a sample survey of State and local law enforcement agencies. The information will provide statistics on agency personnel, budgets, equipment, and policies and procedures.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,065 respondents will complete a 2 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual burden hours to complete the data collection is 6,130.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14120 Filed 6–4–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 28, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Personal Protective Equipment (PPE) for Shipyard Employment.

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0215.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 665.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
Update or Revise hazard Assessment and Equipment Selection:			
Firms with 1–10 employees	65	0.25	16
Firms with 11–20 employees	18	0.33	6
Firms with 21–99 employees	29	0.40	12
Firms with 100–499 employees	14	0.73	10
Firms with 500–999 employees	6	1.25	7
Firms with 1,000 + employees	2	1.50	3
Verification that Hazard Assessment has been Performed:			
Maintain certification record for currently trained employees	68,265	0.02	1,365
Generate and maintain training documentation for new or retrained employees	6,827	0.05	341
Disclose training records to OSHA	9	0.03	1
Totals	75,234		1,761

Description: The collections of information in the standard are necessary for implementation of the requirements of the Standards. The Standards specify several paperwork requirements. The following sections describe the information-collection requirements, and who will use the information.

(A) *Hazard Assessment and Equipment Selection (1915.152(b)).*

Paragraph 1915.152(b) requires the employer to assess work activities to determine whether there are hazards present, or likely to be present, which necessitate the employee's use of PPE. If such hazards are present, or likely to be present, the employer must: (1) Select the type of PPE that will protect the affected employee from the hazards identified in the occupational-hazard assessment; (2) communicate selection decisions to affected employees; (3) select PPE that properly fits each affected employee; and (4) verify that the required occupational hazard assessment has been performed through a document that contains the following information: Occupation, the date(s) of the hazard assessment, and the name of the person performing the hazard assessment.

(B) *Verification That Hazard Assessment Has Been Performed (1915.152(e)(4)).* Paragraph 1915.152(e)(4) requires that the employer verify that each affected employee has received the PPE training through a document that contains the following information: Name of each employee trained, the date(s) of training, and the type of training the employee received.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–14141 Filed 6–4–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Senior Community Service Employment Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Procedures for Recapture and Reobligation of Unexpended Program Year Grant Funds.

SUMMARY: the Employment and Training Administration interprets Federal law requirements pertaining to the 2000 Amendments to the Older Americans Act (OAA), Pub. L. 106–501, for the administration of the Senior Community Service Employment Program (SCSEP) authorized under Title V of the Act. These interpretations are issued in Older Worker Bulletins transmitted to SCSEP grantees. The Older Worker Bulletin described below is published in the **Federal Register** in order to inform the public.

Older Worker bulletin No. 03–04 advises SCSEP grantees of the procedures for the recapture and reobligation of unexpended Program Year SCSEP grant funds, as authorized under section 515(c) of the OAA. The recaptured funds will retain their original fiscal identity—*e.g.*, recaptured Program Year 2001 funds will still be considered as Program Year 2001 funds when reobligated.

The Employment and Training Administration is authorized to reobligate such funds within two succeeding Program Years to be used for incentive grants technical assistance or grants or contracts for any other SCSEP program. The operating instructions in Older Worker bulletin No. 03–04 are issued to SCSEP grantees as guidance provided by the Employment and Training Administration in its role as administrator of Title V of the OAA.

Pending the issuance of regulations implementing the provisions of the 2000 Amendments to the OAA, the procedures in Older Worker Bulletin No. 03–04 constitute the controlling guidance for SCSEP grantees relative to this section of the Amendments.

Signed at Washington, DC this 27 day of May, 2003.

Emity Stover DeRocco,

Assistant Secretary of Labor.

Attachment: Older Worker Bulletin No. 03–04.

BILLING CODE 5001–08–M

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W
Washington, D.C. 20210

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION
	CORRESPONDENCE SYMBOL TDNO
	DATE MAY 22 2003

ADVISORY : Older Worker Bulletin No. 03-04

TO : All Senior Community Service Employment Program Grantees

FROM :

John R. Beverly, III
Administrator
Office of National Programs

Ria Moore Benedict
Chief
Division of Older Worker Programs

SUBJECT: Procedures for Recapture and Reobligation of Unexpended Program Year Senior Community Service Employment Program (SCSEP) Grant Funds

1. **REFERENCES:** 2000 Amendments to the Older Americans Act (OAA), P.L. 106-501.

2. **BACKGROUND:** Under section 515(c) of the OAA, the Department has the authority to recapture unexpended funds from SCSEP recipients at the end of the Program Year (PY) and reobligate such funds within the two succeeding PYs to be used for incentive grants, technical assistance or grants or contracts for any other SCSEP program.

3. **PROCEDURES:** The SCSEP grant closeout process will be used to identify and recapture unexpended funds for use in subsequent SCSEP grant cycles. The Department currently intends to recapture PY 2001 funds for use in PY 2003. Such funds may be used to support activities as authorized under section 515(c).

4. **ACTION REQUIRED:** The grant closeout procedures identified under 20 CFR 641.414 of the current regulations will govern this process, beginning with the now-expired PY 2001 SCSEP grants. All PY 2001 recipients who have not yet submitted their closeout packages must do so as soon as possible, consistent with the closeout procedures required at 29 CFR 97.50 (for States) and 29 CFR 95.71 (for non-profits). Failure to timely submit closeout packages is one of the grounds for finding a grantee non-responsible. The final Financial Status Report

(SF 269) should be simultaneously entered into the Sponsor Support System, so as to notify the Division of Older Workers Program staff of a closeout package submission at the same time as the Grant Officer's staff.

Upon receipt of all required closeout documents, the Department will notify the grantees of any financial discrepancies, and make appropriate adjustment to the available allotment. If there is a difference between payments received by the grantee from the Payment Management System (PMS) and costs incurred by the grantee, the grantee must refund to the Department the difference immediately upon completion of closeout documents. After Department/agency financial reconciliation, the PMS account will be closed accordingly. After the grant has been officially closed, later disallowances and adjustments, as authorized at 29 CFR 97.51 (for States) and 29 CFR 95.51 (for non-profits) may occur.

Grantee cooperation in expediting the completion and submittal of PY 2001 grant closeout packages is of critical import since recaptured PY 2001 funds will enable the Department to increase amounts for incentive grants, technical assistance or for other SCSEP programs.

5. **EFFECTIVE DATE:** Immediately.

6. **INQUIRIES:** Questions should be directed to your Federal Representative.

[FR Doc. 03–14142 Filed 6–4–03; 8:45 am]
BILLING CODE 5001–08–C

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employee Representatives' Status and Compensation Reports.
(2) *Form(s) submitted:* DC–2a, DC–2.
(3) *OMB Number:* 3220–0014.
(4) *Expiration date of current OMB clearance:* 7/31/2003.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Business or other for-profit.
(7) *Estimated annual number of respondents:* 65.
(8) *Total annual responses:* 65.
(9) *Total annual reporting hours:* 33.
(10) *Collection description:* Benefits are provided under the Railroad Retirement Act (RRA) for individuals who are employee representatives as defined in section 1 of the RRA. The collection obtains information regarding the status of such individuals and their compensation.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 03–14087 Filed 6–4–03; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26065]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 30, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant 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 24, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Merrill Lynch Emerging Markets Debt Fund, Inc. [File No. 811–7794]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 24, 2003, applicant transferred its assets to Merrill Lynch World Income Fund, Inc., based on net asset value. Expenses of $240,457 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Dates: The application was filed on May 6, 2003, and amended on May 21, 2003.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Hyperion 2002 Term Trust, Inc. [File No. 811–7070]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 2, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $747,500 incurred in connection with the liquidation were paid by applicant. American Stock Transfer & Trust Company is holding assets for unlocated shareholders. Any unclaimed assets will eventually escheat to the various states.

Filing Date: The application was filed on May 8, 2003.

Applicant's Address: One Liberty Plaza, 165 Broadway, 36th Floor, New York, NY 10006–1404.

Bergstrom Capital Corporation [File No. 811–1641]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 11, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $125,618 incurred in connection with the liquidation were paid by applicant. Applicant has retained cash in the amount of approximately $383,805, which is being held in a deposit account at its custodian, to cover outstanding accrued liabilities. Applicants expect any assets remaining after payment of all outstanding obligations will be distributed to shareholders of record on June 6, 2003.

Filing Dates: The application was filed on April 8, 2003, and amended on May 7, 2003.

Applicant's Address: 221 First Ave. West, Suite 320, Seattle, WA 98119–4224.

CTB Securities Trust Fund [File No. 811–10091]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant will continue to operate as an unregistered real estate investment trust in reliance on sections 3(c)(1), 3(c)(5), and/ or 3(c)(7) of the Act.

Filing Dates: The application was filed on March 14, 2003, and amended on May 8, 2003.

Applicant's Address: 22939 Hawthorne Boulevard, Torrance, CA 90505.

Kenilworth Fund, Inc. [File No. 811–7620]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 30, 2002, applicant transferred its assets to AHA Diversified Equity Fund, based on net asset value. Expenses of $30,253 incurred in connection with the reorganization were paid by applicant and Institutional Portfolio Services, Ltd., applicant's investment adviser.

Filing Dates: The application was filed on February 28, 2003, and amended on May 9, 2003.

Applicant's Address: 21 S. Clark St., Suite 2594, Chicago, IL 60603.

Montgomery Partners Absolute Return Fund LLC [File No. 811–10595]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and has fewer than one hundred investors. Applicant will operate in reliance on section 3(c)(1) of the Act until its illiquid assets can be liquidated.

Filing Dates: The application was filed on March 28, 2003, and amended on April 29, 2003.

Applicant's Address: 101 California St., 34th Floor, San Francisco, CA 94111.

Merrill Lynch KECALP L.P. 1986 [File No. 811–4387]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 22, 1999, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $64,091 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on December 22, 2000, and amended on May 2, 2003.

Applicant's Address: 4 World Financial Center, 23rd Floor, New York, New York 10080.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14169 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47950]

Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 11Aa3–2(f) Thereunder Extending a De Minimis Exemption for Transactions In Certain Exchange-Traded Funds From the Trade-Through Provisions of the Intermarket Trading System

May 30, 2003.

Effective September 4, 2002, the Commission granted a nine-month *de mininis* exemption to the provisions of the Intermarket Trading System Plan ("ITS Plan"),[1] a national market system plan,[2] governing intermarket trade-

[1] The self-regulatory organizations ("SROs") participating in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, the "participants"). *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

[2] Securities Exchange Act of 1934 ("Act") Rule 11Aa3–2(d), 17 CFR 240.11Aa3–2(d), promulgated under Section 11A, 15 U.S.C. 78k–1, of the Act requires each self-regulatory organization ("SRO") to comply with, and enforce compliance by its members and their associated persons with, the terms of any effective national market system plan of which it is a sponsor or participant. Rule 11Aa3–2(f), 17 CFR 240.11Aa3–2(f), under the Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any SRO, member of an SRO, or specified security from the requirement of the rule if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

throughs.[3] This order extends this *de minimis* exemption.

The ITS Plan system is an order routing network designed to facilitate intermarket trading in exchange-listed securities among participating SROs based on current quotation information emanating from their markets. Quotations in exchange-listed securities are collected and disseminated by the Consolidated Quote System ("CQS"), which is governed by a national market system plan that the Commission has approved pursuant to Rule 11Aa3–2 under the Act.[4] Under the ITS Plan, a member of a participating SRO may access the best bid or offer displayed in CQS by another Participant by sending an order (a "commitment to trade") through ITS to that Participant. Exchange members participate in ITS through facilities provided by their respective exchanges. NASD members participate in ITS through a facility of the Nasdaq Stock Market ("Nasdaq") known as the Computer Assisted Execution System ("CAES"). Market makers and electronic communications networks ("ECNs") that are members of the NASD and seek to display their quotes in exchange-listed securities through Nasdaq must register with the NASD as ITS/CAES Market Makers.[5]

The Commission's August 2002 order granted a *de minimis* exemption from compliance with Section 8(d)(i) of the ITS Plan with respect to three specific exchange-traded funds ("ETFs"), the Nasdaq-100 Index ETF ("QQQ"), the Dow Jones Industrial Average ETF ("DIA"), and the Standard & Poor's 500 Index ETF ("SPY").[6] Section 8(d)(i) of the ITS Plan provides that participants should not purchase or sell any security that trades on the ITS Plan system at a price that is worse than the price at which that security is otherwise being offered on the ITS Plan system.[7] By its terms, the Commission's order exempts from the trade-through provisions of the ITS Plan any transactions in the three ETFs that are effected at prices at or within three cents away from the best bid and offer quoted in the CQS for a period of nine months, which ends on June 4, 2003.

The three cent *de minimis* exemption allows ITS participants and their members to execute transactions, through automated execution or otherwise, without attempting to access the quotes of other participants when the expected price improvement would not be significant. In providing the three cent *de minimis* exemption, the Commission believed that, on balance, exempting the specified transactions from the ITS trade-through provisions would provide investors increased liquidity and expand the choice of execution venues, while limiting the possibility that investors would receive significantly inferior prices.

The Commission granted the three cent *de minimis* exemption on a temporary, nine-month basis, in order to gather the data necessary to study the effects of an exemption from the ITS trade-through provisions and the desirability of extending the exemption. The Commission is currently assessing trading data associated with the *de minimis* exemption, and over the next nine-months intends to consider whether to adopt the *de minimis* exemption on a permanent basis, to adopt some other alternative solution, or to allow the exemption to expire.

In view of the foregoing, the Commission believes that an extension of the *de minimis* exemption for an additional nine-month period is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. The Commission emphasizes, as it did in its August 2002 order, that the *de minimis* exemption does not relieve brokers and dealers of their best execution obligations under the federal securities laws and SRO rules.

Accordingly, *it is ordered*, pursuant to Section 11A of the Act and Rule 11Aa3–2(f) thereunder,[8] that participants of the ITS Plan and their members are hereby exempt from Section 8(d) of the ITS Plan during the period covered by this Order with respect to transactions in QQQs, DIAs, and SPYs that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This Order extends the *de minimis* exemption from June 4, 2003 through March 4, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14113 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See generally* Securities Exchange Act Release No. 46428, 67 FR 56607 (September 4, 2002).

[4] 17 CFR 240.11Aa3–2.

[5] *See* Securities Exchange Act Release No. 42536 (March 16, 2000), 65 FR 15401 (March 22, 2000). Market Makers and ECNs are required to provide their best-priced quotations and customer limit orders in certain exchange-listed and Nasdaq securities to an SRO for public display under Commission Rule 11Ac1–1 and Regulation ATS. 17 CFR 240.11Ac1–1 and 242.301(b)(3).

[6] The Commission limited the *de minimis* exemption to the three securities because they share certain characteristics that may make immediate execution of their shares highly desirable to certain investors. In particular, trading in the three ETFs is highly liquid and market participants may value an immediate execution at a displayed price more than the opportunity to obtain a slightly better price.

[7] Each ITS participant has adopted a trade-through rule substantially similar to the rule of the ITS Plan. *See* ITS Plan, Section 8(d)(ii); *See, e.g.*, NYSE Rule 15A, NASD Rule 5262.

[8] 17 CFR 240.11Aa3–2(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47948; File No. SR–CBOE–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Reinstate the Imposition of a Marketing Fee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2003, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to reinstate a marketing fee, which it previously had suspended effective October 1, 2001, to be imposed on certain transactions of market-makers, including Designated Primary Market Makers ("DPMs"), for the purpose of attracting order flow to the CBOE. The fee will be imposed at a rate of $.40 per contract on market-maker transactions, including those of DPMs, in all classes of options in which a DPM has been appointed. The marketing fee will be effective as of June 1, 2003. The text of the proposed rule change is available at the CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for its proposal and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective August 1, 2001, the CBOE suspended its $.40 per contract marketing fee that was used by the appropriate DPM to attract order flow to the CBOE.[4] The CBOE previously had established its marketing fee effective as of July 1, 2000.[5] At the time the CBOE suspended the assessment of the marketing fee, it expressly noted that it reserved the right to reinstate the marketing fee at a future date if it deemed appropriate, and that it might establish a pre-contract fee different from the former $.40 per contract marketing fee. At the time the CBOE suspended its marketing fee, both the American Stock Exchange and the Philadelphia Stock Exchange also suspended their marketing fee programs. Two other options exchanges (the Pacific Exchange and the International Securities Exchange) continued to impose a marketing fee program for the purpose of attracting order flow to those exchanges. The Philadelphia Stock Exchange has since reinstated its marketing fee program. The CBOE believes that these programs operate to the competitive disadvantage of the CBOE.

The CBOE states that it has determined to reinstate its marketing fee program in a modified form, effective June 1, 2003. The fee will be imposed at a rate of $.40 per contract on market-maker transactions, including those of DPMs, in all classes of options in which a DPM has been appointed as described below. According to the CBOE, this program, like the CBOE's prior marketing fee program, provides for the equitable allocation of a reasonable fee among the CBOE members and is designed to enable the CBOE to compete with other markets in attracting options order flow in multiply traded options from firms that include payment as a factor in their order routing decisions in designated classes of options. However, the CBOE has slightly modified its marketing fee program with the goal of imposing the fee only with respect to those market-maker transactions involving customer orders from firms that accept payment for their orders. Accordingly, the marketing fee will be assessed only on market-maker transactions involving customers of firms that accept payment pursuant to agreements with DPMs.

The CBOE states that it will not have any role with respect to the negotiations between DPMs and payment accepting firms. Rather, the CBOE proposes to pass through to market-makers and DPMs the fee to be collected. In those classes for which a DPM has advised the CBOE that it has negotiated with a payment accepting firm to pay for that firm's order flow, the CBOE will provide administrative support for the program. Specifically, the CBOE asserts that it will keep track of the number of qualified orders each payment accepting firm directs to the CBOE, and make the necessary debits and credits to the accounts of the DPMs, market-makers, and the payment accepting firms to reflect the payments that are to be made. The CBOE represents that all of the funds generated by the fee will be used only to pay the firms for the order flow sent to the CBOE.

The CBOE believes that $.40 per contract is an equitable allocation of a reasonable fee among CBOE members. The CBOE states that it has designed this program to enable it to compete with other markets in attracting options order flow in multiply traded options. If a DPM advises the CBOE that it has negotiated a lower amount, the CBOE will refund to market-makers and DPMs the excess fee collected.

The CBOE states that the marketing fee will be assessed only on transactions of market-makers (including DPMs) resulting from orders for 200 contracts or less from customers of payment accepting firms. In the CBOE's view, because the marketing fee will be passed through only to those market-makers' transactions resulting from orders from customers of a payment accepting firm that the DPM has independently negotiated with to pay for that firm's order flow, there will be a direct and fair correlation between those members who pay the costs of the marketing program funded by the fee and those who receive the benefits of the program.

The CBOE represents that after the marketing fee has been in effect for three months, the members of a particular trading crowd may determine not to participate in this marketing fee program pursuant to the procedures that the CBOE is proposing in a new Interpretation .12 to CBOE Rule 8.7. These procedures are described in a separate proposed rule change, SR–CBOE–2003–20, that the CBOE has filed with the Commission.[6] The CBOE is proposing to institute these procedures as a pilot program, which is to expire one year after the Commission approval.

According to the CBOE, it is important to note that although market-maker transactions resulting from customer orders from firms that do not accept payment for their orders are not subject to the fee, CBOE market-makers will have no way of identifying prior to execution whether a particular order is from a payment-accepting firm, or from a firm that does not accept payment for their order flow.

In connection with any program involving payment for order flow that may be funded by the CBOE's proposed marketing fee, the CBOE will issue appropriate regulatory or educational circulars to its members that emphasize the disclosure and best execution obligations of members who may accept such payment.

2. Statutory Basis

The CBOE believes that because this marketing fee will serve to enhance the competitiveness of the CBOE and its members, this proposal is consistent with and furthers the objectives of the Act, including specifically section 6(b)(5) thereof,[7] which requires the rules of exchanges to be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and section 11A(a)(1) thereof,[8] which reflects the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers and among exchange markets. The CBOE also believes that the proposed rule change

[4] *See* Exchange Act Release No. 44717 (August 16, 2001), 66 FR 44655 (August 24, 2001), (SR–CBOE–2001–43).

[5] *See* Exchange Act Release No. 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000), (SR–CBOE–00–28).

[6] Contemporaneous with the filing of this proposed rule change, CBOE filed SR–CBOE–2003–20, which sets forth the procedures by which a trading crowd may manifest its intention that it does not want to participate in the CBOE's marketing fee program. The CBOE has requested accelerated approval of this proposed rule change as a pilot program.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

is consistent with section 6(b) of the Act,[9] and furthers the objectives of section 6(b)(4) of the Act[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CBOE, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and subparagraph (f) of Rule 19b–4 thereunder.[12] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2003–19 and should be submitted by June 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14171 Filed 6–4–03; 8:45 am]

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(3)(a).

[12] 17 CFR 240.19b–4.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47941; File No. SR–CSE–2003–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to an Extension of an Existing Pilot Amending CSE Rule 12.6, Customer Priority, To Require Designated Dealers to Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

May 29, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2003, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change for a pilot period through December 1, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the termination date of the pilot that amends CSE Rule 12.6, Customer Priority, by adding new Interpretation .02, which requires a CSE Designated Dealer ("Specialist") to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order.[3] Under the pilot rule, the Specialist is required to better a customer limit order at the national best bid or offer ("NBBO") by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. The Exchange is requesting an extension of the pilot, and the exemption letters associated therewith.[4] The proposed extension of the pilot requires no changes to the Initial Pilot rule text, which is available at the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 12.6[5] by adding an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) ("Initial Pilot"); 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) ("Pilot Extension"); and 46929 (November 27, 2002), 67 FR 72711 (December 6, 2002) ("Second Extension").

[4] *See* letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), Commission, to Jeffrey T. Brown, General Counsel, CSE (July 26, 2002) ("Initial Exemption Letter") in response to letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (November 27, 2001) ("Initial Exemption Request"); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, General Counsel, CSE (September 25, 2002) (amending and extending the Initial Exemption Letter) ("Amended Exemption Letter") in response to letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (September 18, 2002) ("Amended Exemption Request"); letter from Alden S. Adkins, Associate Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (November 27, 2002) ("Second Exemption Extension Letter") in response to letter from Jeffrey T. Brown, Senior Vice President & General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (November 20, 2002) ("Second Exemption Request").

[5] CSE Rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for

Continued

interpretation to the rule covering the trading of securities in subpenny increments.[6] New Interpretation .02 to the Rule will require a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or by at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.[7]

The purpose of the new Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or marketable limit orders. Notwithstanding the fact that a Specialist may price-improve incoming orders by providing prices superior to that of customer limit orders it holds, customers should have a reasonable expectation to have their orders filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order prices (not the customers' quoted prices) it holds.

its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such a member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

[6] In conjunction with this proposed rule change, the CSE has requested that the Commission extend the relief provided by the Second Exemption Extension Letter pursuant to Rules 11Ac1–1(e) (17 CFR 240.11Ac1–1(e)), 11Ac1–2(g) (17 CFR 240.11Ac1–2(g)) and 11Ac1–4(d) (17 CFR 240.11Ac1–4(d)) to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. *See* letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (May 19, 2003) ("Third Exemption Request"). Concurrent with the instant accelerated approval, the Commission has granted the Third Exemption Request. *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (May 29, 2003) (extending the Second Exemption Extension Letter) ("Third Exemption Extension Letter").

[7] Interpretation .01 to Rule 12.6 provides that "[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[8] in general, and section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange requests that this rule be approved on a pilot basis through December 1, 2003, to be co-extensive with the conditional temporary exemptive relief granted concurrently by the Commission in the Third Exemption Extension Letter.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2003–05 and should be submitted by June 26, 2003.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[10] and, in particular section 6(b)(5) of the Act.[11] As discussed above, through the Third Exemption Extension Letter, the Division has extended the relief granted by the Second Exemption Extension Letter. The Commission believes that the proposed rule change should provide protection to customer limit orders in the subpenny trading environment by helping to ensure that such orders will continue to have access to market liquidity ahead of Exchange Specialists in appropriate circumstances.

The Commission finds good cause for approving the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to provide uninterrupted protection to customer limit orders in subpenny increments in Nasdaq securities and listed securities.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CSE–2003–05) is hereby approved on an accelerated basis for a pilot period through December 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14170 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

[10] In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47943; File No. SR–NASD–2003–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq Application of the Primex Auction System

May 29, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 23, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Nasdaq under section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the rule immediately effective upon filing with the Commission. Nasdaq plans to begin assessing fees pursuant to the revised fee schedule beginning on June 1, 2003. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(r) to modify the fee schedule for the Nasdaq Application of the Primex Auction System ("Primex"). Nasdaq will make the new fees effective June 1, 2003.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics* and proposed deletions are in [brackets.]

* * * * *

Rule 7010(r). Nasdaq Application of the Primex Auction System

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

(1) [No change.]

(2) Monthly Access fees.

Software:

Workstation license or unique logon:	Per workstation logon:
Stations/logons 1	*No charge if firm uses a dedicated circuit*
Stations/logons 2–11	*$100*
Stations/logons 11 and above.	*$50*
[Stations/logons 1–10	$200
Stations/logons 11–25	$100
Stations/logons 26 and above.]	$50

Proprietary interface license:	Per license:
API specification	$500
FIX (customized protocol)	$500
Network:	
Dedicated line:	Per line:
256K	$1,781
64K with non-guaranteed 256K. burst capacity	$1,564
56K	$712
Installation/Unistall	$1,000 per Nasdaq Staff site visit

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The amendments modify NASD Rule 7010(r), which establishes the fee schedule for Primex. Specifically, the amendments reduce the monthly access fee for workstation logons so that the first workstation per firm is free, workstations 2 to 11 are charged $100 and workstations 11 and up are charged $50.

While the fee schedule for Primex was filed initially in December 2001, the prices for the fee schedule were determined in 2000.[6] Nasdaq represents that since that time transaction prices in the overall market have decreased and, as a result, the Primex fee schedule is no longer competitive. This proposal responds to the developments in the market and reduces the workstation fee.

Customers choosing to connect to the Primex Auction System have several options including programming their own interface using Computer to Computer Interface (CTCI), Application Programming Interface (API) or FIX (a customized protocol), or using the Primex workstation available over a dedicated network.

Since Primex was launched in December 2001, the monthly charges for the Primex workstation logons have been as follows:

Workstation logons 1–10 (per firm)—$200

Workstation logons 11–25 (per firm)—$100

Workstation logons 26 and up—$50

Since the product launch, firms have complained that the workstation charges are too high and a disincentive for participation in the system. Primex's current transaction charge structure is based on the interaction of orders and Predefined Relative Indications (PRIs) residing in the system. Although there are currently 40,000 to 50,000 orders flowing through the system on a daily basis, PRI submission has remained limited. The workstation is a user-friendly and easy way to submit PRIs into the system, and Primex and Nasdaq staff believe that the proposed reduction in logon charges will encourage more use of the workstation and PRIs.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Eleni Constantine, Office of General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 22, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made typographical corrections to the rule text originally submitted in the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on May 23, 2003, the date Nasdaq filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[6] *See* Securities Exchange Act Release No. 45285 (Jan. 15, 2002), 67 FR 3521 (Jan. 24, 2002) (SR–NASD–2001–93). In this filing, which established the original fee schedule for Primex, Nasdaq indicated it would not charge any fees during the initial few months Primex was operating, and that it would notify members through a Head Trader Alert when it would begin assessing fees. Nasdaq began assessing fees on August 1, 2002 according to a revised fee schedule. Thus, fees were never charged under the original fee schedule. *See* Securities Exchange Act Release No. 46361 (August 15, 2002), 67 FR 54246 (August 21, 2002) (SR–NASD–2002–102).

with the provisions of section 15A of the Act,[7] in general and with section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable fees among members. The Nasdaq represents that the fee reduction recognizes the changes in pricing that have occurred in the market and are designed to make the fees for Primex competitive with other trading venues. In addition, the Nasdaq represents that the workstation fees will be charged consistently to all members that choose that particular connection option.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited not received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder[10] because it establishes or changes a due, fee, or other charge for use of a Nasdaq system. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change, as amended, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–84 and should be submitted by June 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14112 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47938; File No. SR–Phlx–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Elimination of the Prospectus Delivery Requirement

May 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2003, the Philadelphia Stock Exchange LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to eliminate all references in its rules to "prospectus" in connection with options trading, due to the fact that standardized options issued by The Options Clearing Corporation (the "OCC") have become exempt from the Securities Act of 1933 ("Securities Act") (except for its antifraud provisions) and from the registration provisions of the Act[4].

Phlx Rule 1029(b) requires that every member and member organization deliver a current OCC Prospectus to each customer on request (the "Prospectus Delivery Requirement"). The Exchange is proposing to delete Phlx Rule 1029(b) and renumber current Phlx Rule 1029(c) as Phlx Rule 1029(b). A conforming change is being made to the title of Phlx Rule 1029 and to Commentary .03 to eliminate references to a prospectus.

Other Phlx rules refer tangentially to the Prospectus Delivery Requirement, such as Phlx Rules 213 and 454 (each of which refer to exchange-traded options "covered by a prospectus") and Commentary .05 to Phlx Rule 1024 (which makes reference to Phlx Rule 1029).[5] The Exchange is proposing to delete references to a prospectus in each of these rules. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate all references to a "prospectus" in connection with options trading on the Exchange due to the fact that standardized options issued by the OCC have become exempt from the Securities Act (except for its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934, Securities Act Release No. 8171 and Securities Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003).

[5] Phlx Rule 784 refers to a prospectus in respect of "options." However, the Exchange represents that the rule is not applied to standardized options, so Phlx is not proposing to amend the language in Phlx Rule 784. Information about standardized options positions held by members and member organizations, that is also requested by Phlx Rule 784 in respect of options, is instead obtained by the Exchange pursuant to Phlx Rule 1003.

antifraud provisions)[6] and from the registration provisions of the Act.

On January 2, 2003, final Commission rules became effective regarding whether standardized options should be registered with the Commission under the Securities Act or the Act.[7] In this release, the Commission concluded that standardized options issued by registered clearing agencies, such as the OCC, and traded on a registered national securities exchange or a registered national securities association, shall be exempt from all provisions of the Securities Act (other than the anti-fraud provisions) and shall be exempt from the registration requirements of the Act.

Given this recent development, there is no longer a need for the delivery of OCC Prospectuses to options customers on request pursuant to Phlx Rule 1029(b). Other references to a "prospectus" in connection with options trading on the Exchange are no longer necessary. These changes do not affect the requirement that an Options Disclosure Document be delivered to customers of members and member organizations at the time such customer's account is approved to trade options.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(5) of the Act[10] in particular, in that it is designed to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

[6] On January 10, 2003, the OCC filed a post-effective amendment to its registration statement under the Securities Act to remove from registration all put and call options that remain unsold as of the date of the post-effective amendment.

[7] *See supra* note 4.

[8] *See* Phlx Rule 1029(a).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,[11] it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–22 and should be submitted by June 26, 2003.

[11] *See* e-mail from Mark Salvacion, Director and Counsel, Phlx, to Frank N. Genco, Attorney, Division of Market Regulation, Commission, dated April 30, 2003.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14172 Filed 6–4–03; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4379]

Culturally Significant Objects Imported for Exhibition Determinations: "Small Wonders: Dutch Still Lifes by Adriaen Coorte"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Small Wonders: Dutch Still Lifes by Adriaen Coorte," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about June 29, 2003, to on or about September 28, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 27, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–14183 Filed 6–4–03; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 106–398; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information including copies of the information collection proposed and supporting documentation should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee, 37402–2801; (423) 751–2523. Comments should be sent to the Agency Clearance Officer no later than August 4, 2003.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular Submission.

Title of Information Collection: Macro Opinion Benchmark.

Frequency of Use: On occasion.

Small Businesses or Organizations Affected: Yes.

Estimated Number of Annual Responses: 3000.

Estimated Total Annual Burden Hours: 550.

Estimated Annual Burden Hours Per Response: 11 minutes.

Need For and Use of Information: TVA is committed to strengthening relationships with its stakeholders. One way the TVA will accomplish this is by using the proposed public opinion research to understand, measure and manage positive and negative perceptions that stakeholders hold about TVA. This will enable TVA to develop and implement actions that will help TVA achieve excellence in stakeholder relations and communications processes for Valley residents.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–14132 Filed 6–4–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Murray Air, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2003–5–36) Dockets OST–03–14320 and OST–03–14321.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Murray Air, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity authorizing it to engage in interstate and foreign charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than June 18, 2003.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–03–14320 and OST–03–14321 and addressed to the Department of Transportation Dockets (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Serig, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4822.

Dated: May 30, 2003.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–14166 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135/EUROCAE Working Group 14: Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135/EUROCAE Working Group 14 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135/Eurocae Working Group 14: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held June 18–20, 2003 starting at 9 a.m.

ADDRESSES: The meeting will be held at Embry-Riddle University, Haas Commons—Bldg. #73, Prescott, AZ.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org,* (2) Jim Lyle at Embry Riddle; telephone (520) 708–3833; e-mail *lyallj@erau.edu.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- June 18–20:
  - Opening Plenary Session (Welcome and Introductory Remarks, Recognize Federal Representative, Approve Minutes of Previous Meeting)
  - Review Table of Changes
  - Determine if Sub-Group Breakout Meetings are required
  - Review Drafts of all Changed Sections
  - Review Schedule for DO–160E, Environmental Conditions and Test Procedures for Airborne Equipment.
  - Closing Plenary Session (Debrief of Subgroup Meetings, New/Unfinished Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–14163 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held June 23–27, 2003 starting at 9 a.m.

ADDRESSES: The meeting will be held at the Honeywell Learning Center, 14980 NE 31st Circle, Redmond, WA 98052

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rica.org;* (2) Honeywell Contact, Christophe Hamel; telephone 536–886–8336; fax 602–436–5575; e-mail *christophe.hamel@Honeywell.com.*

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 189/EUROCAE Working Group 53 meeting. The agenda will include:

- June 23:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/Approval of Meeting Agenda, Review/Approval of Meeting Minutes)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report
- June 24–26:
  - Sub-group Meetings
  - Review and resolve comments on PU–26 V3.0, Safety and Performance Requirements Standard for Initial Air Traffic Data Link Services in Continental Airspace (SPR IC)
  - Continue work on Safety and Performance Requirements Standard for Initial Air Traffic Data Link Services in Oceanic Airspace (SPR IO)
  - Continue Interoperability Work
- June 27:
  - Closing Plenary Session (Welcome and Introductory Remarks, Review/Approval of Meeting Agenda)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report and wrap-up

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, 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 28, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–14164 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed 1st Street Bridge Widening and Road Realignment project in the city and county of Los Angeles, California in accordance with the National Environmental Policy Act of 1969 (NEPA).

FOR FURTHER INFORMATION CONTACT: Cesar Perez, Senior Transportation Engineer, Federal Highway Administration, 980 Ninth St., Suite 400, Sacramento, CA, Telephone: (916) 498–5860.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Caltrans, will prepare an EIS on a proposal to widen the 1st Street Bridge and realign 1st Street in the city and county of Los Angeles, California. The proposed improvements would involve construction over the Los Angeles River between Vignes Street and Clarence Street for a distance of approximately 1.25 miles (1.6 kilometers).

The study will determine the type of facility required to meet the transportation needs of this traffic corridor. Existing and proposed industrial, commercial and residential development along the 1st Street corridor is expected to induce traffic demand in excess of the capacity of the existing east-west transportation corridor. The proposed EIS will discuss the sufficiency rating of the bridge in terms of its functional serviceability and the realignment 1st Street to accommodate construction of the Metropolitan Transportation Authority (MTA) Los Angeles Eastside Corridor Light Rail Transit (LRT) line in the median, while maintaining the existing four traffic lanes and adding shoulders on the bridge. Also included in the proposal is the realignment and lowering of local streets at Santa Fe Avenue and Myers Street meet vertical and horizontal clearance requirements. Alternatives under consideration include (1) no-build; (20 widen bridge on the north side; and (3) construct a separate structure on the north side of existing bridge.

The public information program and project development team meetings will continue throughout the design and environmental process. There will be ongoing project development team meetings that involve concerned parties such as the city of Los Angeles and the Metropolitan Transportation Agency (MTA). The draft EIS will be available for public and agency review and comment. A public hearing will be held to discuss alternatives and impacts of the proposed action. Public notice will given for the time and place of the public hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant concerns are identified, comments and are invited from all interested parties. Comments or questions about this proposed action and the EIS should be directed to FHWA at the address indicated herein.

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

Issued: May 30, 2003.

Cesar E. Perez,

Senior Transportation Engineer.

[FR Doc. 03–14137 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Nicollet, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 14 from State Highway 15, just east of New Ulm, to County Road 6 near North

Mankato, a distance of approximately 22 miles, in Nicollet County, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Mark Scheidel, Project Manager, Minnesota Department of Transportation—District 7, 501 South Victory Drive, PO Box 4039, Mankato, Minnesota 56002–4039, Telephone (507) 389–6149; (800) 627–3529 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an EIS on a proposal to reconstruct TH 14 from State Highway 15, just east of New Ulm, to County Road 6 near North Mankato, a distance of approximately 22 miles, in Nicollet County, Minnesota. The proposed action is being considered to address future transportation demand, safety problems, and geometric design issues. The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build and (2) variations of four-lane urban design and four-lane rural design "Build" alternatives involving reconstruction and capacity expansion of TH 14 along the existing highway corridor, including individual or combined bypass alignments north of Courtland and south of Nicollet.

The "Trunk Highway 14 West Interregional Corridor North Mankato to New Ulm Scoping Document/Draft Scoping Decision Document" was published in March 2003. A press release was published to inform the public of the document's availability. Copies of the scoping document were distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document was provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting was also held during the comment period. Public notice was given for the time and place of the meeting. The scoping comment period closed on May 2, 2003. At the time of publication of the scoping document, there was uncertainty as to the immediate completion of an EIS for this project due to a lack of funding. However, funding has been identified and, therefore, a Draft EIS will be prepared based on the outcome of and closely following the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: May 27, 2003.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 03–14187 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–15154; Notice 1]

General Motors North America, Receipt of Application for a Decision of Inconsequential Noncompliance

General Motors North America (GM), has determined that certain 2003 model year Silverado/Sierra pickup trucks, Tahoe/Suburban/Escalade sport utility vehicles, and Savanna/Express vans do not comply with either S5.3.3(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 105, or S5.5.3 of FMVSS No. 135, whichever standard is applicable based on gross vehicle weight rating.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for a determination that the noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

A total of approximately 251,000 vehicles are involved. Specifically, the red "BRAKE" telltale, if illuminated, will be extinguished for the duration of an Antilock Brake System (ABS) activation event that involves the front wheels. Stated briefly, the "BRAKE" telltale will not be illuminated while ABS is modulating the front brakes.

GM considers the momentary deactivation of the "BRAKE" telltale while ABS is cycling to be inconsequential to motor vehicle safety for the following reasons:

The owner's manual of the noncompliant vehicles includes the following text regarding the "BRAKE" telltale:

> If the light comes on while you are driving, pull off the road and stop carefully. You may notice that the pedal is harder to push. Or, the pedal may go closer to the floor. It may take longer to stop. If the light is still on, have the vehicle towed for service.

The instructions and caution are intended to prompt drivers to take immediate corrective action when the "BRAKE" telltale is illuminated, thereby minimizing any likelihood that the vehicle will experience ABS cycling subsequent to initial illumination of the telltale.

S5.3.4 of FMVSS 105 allows the subject "BRAKE" telltale to be "steady burning or flashing." The corresponding language in S5.5.4 of FMVSS 135 is "continuous or flashing". This explicit regulatory allowance for flashing demonstrates that momentary absence of telltale illumination is not per se a safety issue.

The "BRAKE" and "ABS" telltales on the subject vehicles otherwise comply with all applicable provisions of S5.3 of FMVSS 105 and S5.5 of FMVSS 135. The noncompliance is limited in scope to the single word "whenever" in S5.3.3(a) of FMVSS 105 or S5.5.3 of FMVSS 135. GM is not aware of any crashes, injuries, owner complaints or field reports related to this condition.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Comments may be submitted electronically by logging onto

the Dockets Management System Web site at <*http://dms.dot.gov*>. Click on "Help" to obtain instructions for filing the document electronically.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 7, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 2, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–14220 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4957]

Pipeline Safety: Revision of Natural Gas Distribution Incident and Annual Report Forms

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments on revision of Information Collection OMB 2137–0522.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA's Office of Pipeline Safety (OPS) is publishing its intention to revise forms RSPA F 7100.1, Incident Report For Gas Distribution Systems, and RSPA F 7100.1–1, Annual Report For Gas Distribution Systems, and the Instructions for those forms. The purpose of this notice is to request public comment on the proposed changes in the forms and on the information collection burden.

DATES: Comments on this notice must be received on or before August 4, 2003.

ADDRESSES: You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except federal holidays. Comments should identify the docket number of this notice, RSPA–98–4957. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard.

You may also submit or review comments electronically by accessing the Docket Management System's home page at *http://dms.dot.gov*. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers stated in the heading of this notice.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

The forms are available for review in Docket No. RSPA–98–4957.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, by mail at DOT, RSPA, OPS 400 Seventh Street, SW., Room 7128, Washington, DC, 20590, or by e-mail at *roger.little@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background: RSPA/OPS collects information on distribution pipeline incidents as part of its efforts to minimize natural gas distribution pipeline failures. The revised forms request additional information concerning the characteristics of an operator's pipeline system. This information is needed to "normalize" incident information for safety trend analysis. The process of making elements of data comparable for comparison purposes (as in finding a common denominator, for example) is known as "normalizing" the data. The requirements for reporting incidents are found in 49 CFR part 191. The regulations require submission of the natural gas distribution annual report form by March 15 of each year for the preceding year's operations. Reports on distribution incidents must be submitted to RSPA/OPS in writing within 30 days of the incident's occurrence.

Natural gas distribution incident and annual reports are important tools for identifying safety trends in the gas pipeline industry. The National Transportation Safety Board (NTSB), DOT's Office of the Inspector General and General Accounting Office have urged RSPA/OPS to revise the information collected on the natural gas distribution pipeline incident and annual report forms.

NTSB Safety Recommendation P–96–1 urges RSPA/OPS to:

> * * * develop within 1 year and implement within 2 years a comprehensive plan for the collection and use of gas and hazardous liquid pipeline accident data that details the type and extent of data to be collected, to provide the Research and Special Programs Administration with the capability to perform methodologically sound accident trend analyses and evaluations of pipeline operator performance using normalized accident data.

RSPA/OPS worked with representatives of the American Gas Association (AGA) to revise the natural gas distribution incident and annual report forms to make the information collected more useful to industry, government, and the public. RSPA/OPS also received suggestions for improvements from the National Association of Pipeline Safety Representatives, which represents state pipeline safety offices. State pipeline safety offices conduct safety inspections of natural gas distribution operators' records and facilities. They rely on report information for safety trending and inspection targeting.

The improvements to the natural gas distribution incident and annual report forms are necessary to address deficiencies in the current information collection. The form features more incident cause categories, impacts, failure mechanisms, locations, and other details about natural gas pipeline distribution incidents. The information derived from use of the form will make pipeline safety statistics more useful and more meaningful.

The proposed natural gas distribution operator annual report asks for pipeline mileage by decade installed. From 1970 through 1984, RSPA/OPS had a category for mileage by decade installed on the natural gas distribution operator annual report but the category was removed after the passage of the Paperwork Reduction Act.

Proposed Revision to Information Collection

Abstract: The forms to be revised are two of the four gas pipeline reporting forms authorized by Information Collection OMB 2137–0522, "Incident and Annual Reports for Gas Operators." The proposed revisions represent the

final phase of an ongoing process to revise all incident and annual reports. RSPA/OPS revised the natural gas transmission operator incident and annual report forms in 2001 for collection beginning in 2002.

The revisions proposed by this notice align cause categories for natural gas distribution incident reports with cause categories for natural gas transmission incident reports and hazardous liquid accident reports. The American Society of Mechanical Engineers (ASME) B31.4 committee, a hazardous liquid pipeline data group, has conducted annual studies of RSPA/OPS incident reports since the forms were last revised in 1984. The committee developed the cause categories for hazardous liquid pipeline accidents. RSPA/OPS has adopted the 22 categories for both hazardous liquid and natural gas transmission reports and added three other categories. RSPA/OPS proposes to adopt the ASME B31.4 committee's cause categories for all of the RSPA/OPS pipeline incident and accident report forms. The proposed revisions address the recommendations to improve pipeline safety information collection made by the NTSB, DOT's Office of Inspector General and General Accounting Office, and others.

RSPA/OPS needs this information for safety analysis and believes that the benefits of having the information outweigh the burden. For this reason, RSPA/OPS recently added the "mileage by decade" category to the natural gas transmission annual report (66 FR 23316; May 8, 2001.) On July 26, 2002, RSPA/OPS proposed to require hazardous liquid pipeline operators to submit "mileage by decade installed" information on a new hazardous liquid annual report (67 FR 48844; July 26, 2002.) Hazardous liquid pipeline operators were not previously required to submit annual reports. The collection of information on pipeline age addresses a widely acknowledged gap in pipeline safety information.

Title: Proposed Revisions to the Natural Gas Distribution Incident Report (RSPA F 7100.1) and the Annual Report For Gas Distribution Systems (RSPA F 7100.1–1).

OMB Number: 2137–0522.

Respondents: Gas distribution pipeline operators.

Estimated Number of Respondents: 1,200.

Estimated Total Annual Burden on Respondents: 15,120 hours.

The average number of burden hours per response is approximately 6 hours for the revised distribution incident report (approximately 75 fields × 5 minutes per field = approximately 6 hours per incident form) and 12 hours for the revised distribution annual report (approximately 150 fields × 5 minutes per field = approximately 12 hours per annual report form).

Estimated Number of Responses per Respondent per Year (average over the last ten years): Incident Reports: 0.08 (120 per year per 1,200 operators = .1); Annual Reports: 1.0.

The average number of burden hours per response is approximately 6 hours for the revised natural gas distribution system incident report form and 12 hours for the revised natural gas distribution system annual report form. For all 1,200 gas distribution pipeline operators the burden estimate is 720 hours (6 hours × 1,200 operators × 0.1 incidents) for incidents and 14,400 hours (12 hours × 1,200 operators × 1 annual report) for annual reports, for a total burden of 15,120 hours per annum.

(Authority: 49 U.S.C. 5103(b), 60102, 60104, 60117)

Issued in Washington, DC on May 30, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–14159 Filed 6–4–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, June 16, 2003 from 2 p.m. PDT to 4 p.m. PDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 29, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14208 Filed 6–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, July 7, 2003 from 8 am PDT to 9 am PDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 29, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14207 Filed 6–4–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
June 5, 2003

Part II

Environmental Protection Agency

40 CFR Part 51

Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7504–4]

Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this rule is to revise EPA's regional haze rule to incorporate certain provisions for Western States and eligible Indian Tribes.

The Western Regional Air Partnership (WRAP) submitted an Annex to the 1996 report of the Grand Canyon Visibility Transport Commission (GCVTC) to EPA on September 29, 2000. This submittal was required under the regional haze rule in order for nine Western States (and Indian Tribes within the same geographic region) to have the option of submitting plans implementing the GCVTC recommendations. The Annex contains recommendations for implementing the regional haze rule in nine Western States, including a set of recommended regional emissions milestones. The milestones address, for the time period between 2003 and 2018, emissions of sulfur dioxide (SO_2), a key precursor to the formation of fine particles and regional haze.

DATES: The regulatory amendments announced herein take effect on August 4, 2003.

ADDRESSES: The EPA has established an official public docket for this action under Docket No. OAR–2002–0076. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Smith (telephone 919–541–4718), Environmental Protection Agency, Air Quality Strategies and Standards Division, C504–02, Research Triangle Park, NC 27711 or Thomas Webb (telephone 415–947-4139), EPA Region 9 (AIR–5), 75 Hawthorne Street, San Francisco, CA 94105. Internet addresses: *smith.tim@epa.gov* and *webb.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

A. Regulated Entities

Entities potentially regulated by this action are nine States in the Western United States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah and Wyoming) and Indian Tribes within that same geographic area. This action, and an earlier action taken by EPA in 1999, provides these States and Tribes with an optional program to protect visibility in Federally protected scenic areas. The portion of the program addressed by today's action is a program for stationary sources of SO_2, involving a set of regional annual emissions milestones for the years between 2003 and 2018 that would apply to the total SO_2 emissions from all stationary sources emitting more than 100 tons of SO_2 per year. Examples of potentially affected sources currently emitting at this level are listed in the following table.

Examples of Regulated Entities

Coal-fired power plants
Industrial boilers
Petroleum refineries
Natural gas processing facilities with sulfur recovery plants
Cement kilns
Paper mills

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

1. Docket. The EPA has established an official public docket for this action under Docket No. OAR–2002–0076. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the

appropriate docket identification number.

II. Overview of the Stationary Source SO_2 Reduction Program Covered by This Rule

The purpose of this rule is to revise 40 CFR 51.309 of the regional haze rule to incorporate additional provisions to address visibility impairment in 16 Class I areas on the Colorado Plateau.

A. What Is the Regional Haze Rule?

Section 169A of the CAA establishes a national goal for protecting visibility in Federally-protected scenic areas. These "Class I" areas include national parks and wilderness areas. The national visibility goal is to remedy existing impairment and prevent future impairment in these Class I areas, consistent with the requirements of sections 169A and 169B of the CAA.

Regional haze is a type of visibility impairment caused by air pollutants emitted by numerous sources across a broad region. The EPA uses the term regional haze to distinguish this type of visibility problem from those which are more local in nature. In 1999, EPA issued a regional haze rule requiring States to develop implementation plans that will make "reasonable progress" toward the national visibility goal, (64 FR 35714, July 1, 1999). The first State plans for regional haze are due between 2003 and 2008. The regional haze rule provisions appear at 40 CFR 51.308 and 40 CFR 51.309.

B. What Are the Special Provisions for Western States and Eligible Indian Tribes in 40 CFR 51.309 of the Regional Haze Rule?

The regional haze rule at 40 CFR 51.308 sets forth the requirements for State implementation plans (SIPs) under the regional haze program. The rule requires State plans to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, described in 40 CFR 51.309, that may be followed by the nine Western States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming) that comprise the transport region analyzed by the GCVTC during the 1990's. This optional approach is also available to eligible Indian Tribes within this geographic region. The regulatory provisions at 40 CFR 51.309 are based on the final report issued by the GCVTC in 1996,[1] which included a number of recommended emissions reductions strategies designed to improve visibility in the 16 Class I areas on the Colorado Plateau.

In developing the regional haze rule, EPA received a number of comments on the proposed rule encouraging the Agency to recognize explicitly the work of the GCVTC. In addition, in June 1998, Governor Leavitt of Utah provided comments to EPA on behalf of the Western Governors Association (WGA), further emphasizing the commitment of Western States to implementing the GCVTC recommendations. The WGA's comments also suggested the translation of the GCVTC's recommendations into specific regulatory language. The EPA issued a Notice of Availability during the fall of 1998 requesting further comment on the WGA proposal and regulatory language based upon the WGA's recommendations. Based on the comments received on this **Federal Register** notice, EPA developed the provisions set forth in 40 CFR 51.309 that allow the nine Transport Region States and eligible Tribes within that geographic area to implement many of the GCVTC recommendations within the framework of the national regional haze rule.

The provisions in 40 CFR 51.309 comprise a comprehensive long-term strategy for addressing sources that contribute to visibility impairment within this geographic region. The strategy addresses the time period between the year 2003,[2] when the implementation plans are due, and the year 2018. The provisions address emissions from stationary sources, mobile sources, and area sources such as emissions from fires and windblown dust.

One element of the GCVTC's strategy to address regional haze is a program to reduce stationary source emissions of SO_2. This program calls for setting a series of declining caps on emissions of SO_2. These declining caps on emissions are referred to as emissions milestones and provide for a reduction in SO_2 emissions over time. In designing this program, the GCVTC intended for these milestones to be reduced through voluntary measures, but also included provisions for an enforceable market-based program that would serve as a "backstop" if voluntary measures did not succeed. At the time the regional haze rule was published, however, it was broadly recognized that the specific emission milestones, and the details of how both the voluntary and enforceable phases of the program would be implemented, were necessary elements of a regulatory program. Accordingly, the regional haze rule, in 40 CFR 51.309(f), required the development of an "Annex" to the report of the GCVTC that would fill in these details. The regional haze rule provided that the option afforded by 40 CFR 51.309 would only be available if an Annex, addressing the specific requirements of 40 CFR 51.309(f), were submitted to EPA by October 1, 2000. The EPA required the submission of an Annex by this date to ensure that EPA would be able to act on it before the December 31, 2003 deadline for SIPs under 40 CFR 51.309(c).

C. What Was Required To Be Included in the Annex to the GCVTC Report?

The regional haze rule required the GCVTC (or a regional planning body formed to implement the Commission recommendations, such as the Western Regional Air Partnership (WRAP) to provide recommendations to fill in the details for two main aspects of the program:

—Emissions reductions milestones for stationary source SO_2 emissions for the years 2003, 2008, 2013, and 2018. The milestones must provide for "steady and continuing emissions reductions" for the 2003–2018 time period. In addition, the milestones must ensure greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to §51.308(e)(2).

—Documentation setting forth the details for how a market trading program would be implemented in the event that voluntary measures are not sufficient to meet the required milestones. This documentation must include model rules, memoranda of understanding, and other documentation describing in detail how emissions reductions progress will be monitored, what conditions will result in the activation of the market trading program, how allocations will be performed, and how the program will operate.

The EPA received the Annex from the WRAP in a timely manner, on September 29, 2000. The EPA recognizes the significant amount of work that was devoted to developing the Annex and we commend the WRAP participants for their efforts. Under 40 CFR 51.309(f)(3), if EPA finds that the Annex meets the requirements of the regional haze rule, EPA committed to revise the regional haze rule based on the Annex to incorporate provisions requiring compliance with the milestones and backstop trading program. Along with the existing elements of 40 CFR 51.309, these new

[1] *Recommendations for Improving Western Vistas.* GCVTC, June 10, 1996.

[2] Indian Tribes are given the flexibility under EPA regulations to submit implementation plans and opt into the program after the 2003 deadline.

provisions would also be addressed in the 2003 SIPs by the 9 Western States.

D. What Are the Next Steps in Implementing This Program?

Today's rule modifies the requirements in 40 CFR 51.309 of the regional haze rule. As a result, 40 CFR 51.309 provides a complete regulatory framework to be used by Western States and Tribes in developing regional haze implementation plans. The EPA will continue to work closely with the States and Tribes to support their efforts to develop plans that meet the applicable requirements of the regional haze rule. Once State and tribal plans that meet the applicable requirements of the regional haze rule are reviewed and approved by EPA, they will be federally enforceable.

E. What Topics Were Covered in EPA's May 6, 2002 Proposal?

The May 6, 2002 proposal addressed the following topics:

- The proposed regional SO_2 milestones and WRAP's determination that the milestones meet the criteria for approval in the regional haze rule. The EPA reviewed the WRAP's methodology for developing specific milestones for SO_2 for the years between 2003 and 2018. The EPA proposed to approve the milestones as satisfying the requirements of the regional haze rule. The EPA noted its conclusion that the milestones provide for "steady and continuing emissions reductions." The EPA also proposed to conclude that the milestones provide for "greater reasonable progress" than the BART emission limits that would otherwise be required by the regional haze rule.
- Ways in which the milestones may be adjusted in the future. The proposal discusses the limited circumstances under which the milestones may be adjusted in the future and the proposed administrative process for making those changes.
- The stationary sources of SO_2 that are included in the program. The proposal discussed the stationary sources of SO_2 that would be required to participate in the program, and whose cumulative emissions would be compared to the milestones.
- The annual process for determining whether a milestone is exceeded, thereby triggering the trading program. The proposal described the steps to be followed in evaluating emissions data at the State, tribal and regional levels. It also described a mechanism by which States and Tribes can activate the trading program in 2013 if evidence indicates that the 2018 milestone will not be reached without such action.
- Key trading program elements that are required in SIPs and tribal implementation plans (TIPs). The preamble discussed proposed requirements regarding the backstop trading program, and discussed trading program elements such as: Issuance of and compliance with allowances; emissions quantification protocols and tracking system; the annual reconciliation process; and penalty provisions.
- Status of the program after 2018. The proposal discussed EPA's understanding of what happens to the milestones and backstop trading program at the completion of the first implementation period, in 2018.

The preamble to the May 6, 2002 proposal described each of these programmatic areas in detail, including EPA's review of the relevant portion of the WRAP submittal.

F. What Public Comments Were Received on the Proposal?

On May 6, 2002 (67 FR 30418), the proposed rule was published in the **Federal Register**. The EPA requested written comments on the proposal and held a public hearing. The public hearing was held in Phoenix, Arizona on June 4, 2002. A transcript for this public hearing is available in the public docket for the regulation (Docket OAR–2002–0076). The EPA received eleven written comments on the package, primarily from Western stakeholder groups.

G. What Topics Are Covered in This Preamble?

The EPA has made a number of changes to the proposed rule in response to the comments we received. The comments on the proposal were limited to a relatively small subset of the broad range of topics discussed in detail in the proposal. Accordingly, EPA believes that it is not necessary to repeat the comprehensive discussion contained in the preamble to the proposal. Instead, EPA has limited the discussion in this preamble to issues raised by commenters, and changes made to the final rule based on those issues.

III. Discussion of Issues Raised in Comments on the May 6, 2002 Proposal

A. General and Overarching Issues

1. Impact of May 24, 2002 American Corn Growers Decision

On May 24, 2002, the U.S. Court of Appeals for the D.C. Circuit issued a decision in *American Corn Growers et al.* v. *EPA*, 291 F.3d 1 (D.C. Cir., 2002) that invalidated part of EPA's regional haze rule. Because the WRAP Annex would be incorporated into the regional haze rule, a number of commenters asked whether the court's decision would have an impact on this rulemaking regarding the Annex. Some commenters recommended that EPA not proceed with the final rule until EPA has addressed the issues raised by the court regarding the regional haze rule in general. In contrast, a number of commenters agreed with the position that EPA took in a June 7 letter[3] that the Annex is fully consistent with the court's ruling. A number of commenters requested that EPA clarify its position and rationale on this issue. The EPA continues to believe that the decision in *American Corn Growers* does not in any way affect the WRAP Annex or EPA's ability to incorporate the Annex into its regional haze rule.

In order to better understand EPA's conclusion regarding the Annex, EPA believes it is helpful to review the history of the GCVTC and the WRAP. In its 1996 report to EPA, the GCVTC recommended a wide range of control strategies to address regional haze, including strategies to reduce emissions of SO_2 from large stationary sources. Thus, the GCVTC specifically recognized that stationary sources would need to be an important part of an overall visibility strategy and, in particular, that controlling sulfates from these sources was a key strategy for addressing haze. As part of this overall strategy, the GCVTC also concluded that interim targets that provided for "steady and continuing emission reductions" over the entirety of the planning period might also be needed.

In 1997, EPA proposed the regional haze rule, and in 1998, the WGA submitted comments to EPA requesting the addition of specific language to the rule to address the recommendations of the GCVTC. In these comments, the WGA reemphasized the commitment of the Western governors to the GCVTC recommendations. Following public notice and an opportunity to comment on the WGA's proposal, EPA issued the final regional haze rule (64 FR 35714, July 1, 1999). In 40 CFR 51.309 of the rule, EPA established a specific set of SIP requirements for the States and Tribes that participated in the GCVTC. As EPA noted in the preamble to the rule, these requirements acknowledged and gave effect to the substantial body of work already completed by the GCVTC and the WRAP.

[3] June 7, 2002 letter from Lydia Wegman, EPA, to Rick Sprott and Julie Simpson, co-chairs, WRAP Initiatives Oversight Committee.

One of the requirements in 40 CFR 51.309 addressed the GCVTC's recommendation that the States establish a cap on regional emissions of SO_2 from stationary sources. Under 40 CFR 51.309(f) of the regional haze rule, the WRAP was required to submit an annex to the GCVTC Report that would contain specific emission reduction milestones for the years 2003, 2008, 2013, and 2018. This provision explicitly references the recommendations of the GCVTC for "steady and continuing emissions reductions * * * consistent with the Commission's definition of reasonable progress" and its goal of 50 to 70 percent reduction in emissions of SO_2 between 1990 and 2040. In the preamble to the final regional haze rule, EPA explained that the WRAP would have to take into account four specific factors in setting these milestones. The preamble specifically noted that "[t]he first factor affecting the selection of interim milestones is the GCVTC's definition of reasonable progress." (64 FR 35756). The other factors listed in the rule are: (1) The ultimate target in 2040 of a 50 to 70 percent reduction in emissions of SO_2 from stationary sources; (2) the requirement that the emissions cap provide for greater progress than would be achieved through source-specific BART requirements; and (3) the timing of progress assessment and the identification of mechanisms to address the cases where emissions exceed milestones.

In the regional haze rule, EPA concluded that the specific SIP requirements in 40 CFR 51.309 provide for reasonable progress toward the national visibility goal. The WRAP's plan for capping SO_2 emissions from stationary sources is a part of the Western States' and Tribes' long-term strategy for achieving reasonable progress. As described above, the SO_2 program grew out of the GCVTC's recommendations for measures to remedy adverse impacts on visibility.

Some commenters expressed concerns that the WRAP's program for controlling SO_2 emissions in the West, as further defined by the Annex to the GCVTC's Report, is a "BART provision" subject to the *American Corn Growers* court remand. For several reasons, EPA believes that this is not the case.

Under the CAA, the BART provisions require the installation of control technology on specific sources that were built between 1962 and 1977. Nothing in the Annex requires specific controls on any individual source. A key component of the Annex's SO_2 program is the goal that all reductions called for by the program remain voluntary. If the reductions are achieved through voluntary measures, then there will be no requirements of any kind. Even if the SO_2 milestones are not achieved through voluntary actions, the Annex does not provide for source-specific controls. Rather, the failure to achieve these milestones would trigger a "backstop" emissions trading program. Such a program, by its very nature, does not dictate that any particular source install control technology or otherwise reduce its emissions.

The EPA also notes that the Annex covers all stationary sources that emit more than 100 tons per year of SO_2—not just sources built between 1962 and 1977—and thus goes well beyond the scope of the statutory BART provisions. For this reason (and others noted above), EPA believes that the SO_2 program is a component of the WRAP's strategy for ensuring reasonable progress, an aspect of the regional haze program that was not addressed by the *American Corn Growers* decision.

The EPA approved the WRAP's long-term strategy for addressing visibility consistent with the broad discretion afforded States by section 169A and title I of the CAA in developing strategies to meet reasonable progress goals and national standards. *See Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976); *Train* v. *NRDC*, 421 U.S. 60 (1975). The SO_2 program, which caps emissions of SO_2 from all large stationary sources, reflects the WRAP States' and Tribes' judgement as to one appropriate means for addressing haze and ensuring reasonable progress. The decision to limit emissions from this category of sources is well within the discretion of the States and Tribes. The court's decision in *American Corn Growers*, which addresses only the BART provisions, does not in any way limit the general authority of the States to choose appropriate control measures to ensure reasonable progress. Any suggestion that the decision requires States to undertake a source specific analysis of a source's contribution to the problem of regional haze before the State can subject a source to regulation would go far beyond the actual holding in the case.

As discussed above, 40 CFR 51.309 does not require participating States to assess and impose BART on individual sources. Best available retrofit technology is only relevant as one of four factors that the WRAP must consider in establishing the appropriate emission reduction milestones for SO_2—*i.e.*, the level of the cap. The regional haze rule requires that the milestones in the Annex to the GCVTC Report "must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to § 51.308(e)(2)." 40 CFR 51.309(f)(1)(i). This is not a requirement for BART. The requirement that the milestones "provide for greater reasonable progress" than BART is based on the decision by EPA to provide States with the flexibility to adopt alternative measures in lieu of the BART requirements set forth in statute so long as these alternative measures were "better than BART." *See* 40 CFR 51.308(e)(2). In short, the SO_2 program described in the regional haze rule, as further defined by the Annex, does not impose controls on specific sources but rather ensures that greater reasonable progress is made than would be through installation of source specific controls on the BART sources. The regional haze rule accordingly authorizes States to achieve improvements in visibility through the most cost-effective measures available.

The *American Corn Growers* court decision did not address the provisions in the regional haze rule allowing States to adopt a trading program or other alternative measures in place of source specific control measures for BART sources. The EPA finds nothing in the court's decision that would invalidate the trading program alternative to BART, as provided for in 40 CFR 51.308(e)(2). In the preamble to the regional haze rule, EPA sets forth the basis for its decision to allow States this flexibility and describes the process for States to make a showing that the alternative measures provide for greater reasonable progress. Significantly, nothing in the D.C. Circuit's opinion suggests that such an alternative is in conflict with the requirements of the visibility provisions of the CAA. An approach that allows States to adopt alternative measures in lieu of BART fully comports with the court's view of the States' broad authority in this area. Accordingly, the Annex meets the requirements set out in 40 CFR 51.309(f), and EPA believes that it may approve the proposed revisions to the regional haze rule incorporating the emission reduction milestones and other measures set forth in the Annex.

2. Whether the December 31, 2003 SIP Deadline Should Be Extended

Under 40 CFR 51.309 of the regional haze rule, SIPs for the optional program for the nine Western States are due by December 31, 2003. The EPA received a number of comments on the proposed rule with respect to this deadline. Four commenters, including the State of Colorado and three industry trade

groups, requested that EPA extend the deadline for SIPs under 40 CFR 51.309. One commenter, representing an environmental organization, recommended that this deadline should not change.

The primary argument of those recommending an extension of the December 31, 2003 deadline, is that the *American Corn Growers* decision creates additional uncertainty for States deciding whether to submit regional haze SIPs under 40 CFR 51.309 or 40 CFR 51.308. Some commenters requested that EPA extend the deadline by the amount of time it takes to resolve the remanded portions of the regional haze rule. The environmental group commenter opposed to the extension stated that there is no legal or policy basis for an extension because the deadline is required by the rule. In addition, this commenter noted that States have had several years to prepare SIPs under 40 CFR 51.309, and that the market-based alternative to BART is unaffected by the court decision. Finally, this commenter believed that delays in the SIP submittals could undermine EPA's finding that the 40 CFR 51.309 program constitutes greater reasonable progress than BART.

In the final rule, EPA retains the December 31, 2003 deadline for a number of reasons. First, as noted above, EPA does not believe that the *American Corn Growers* decision affects the WRAP States' ability to move forward in implementing 40 CFR 51.309. While the court decision may affect a State's decision on whether to pursue the optional program under 40 CFR 51.309, EPA does not believe that this is an adequate justification for delaying the program. Second, EPA believes that the 2003 deadline is a fundamental element of the overall optional strategy provided by 40 CFR 51.309. The strategy was supportable under the regional haze rule in large part because it was an early strategy that would be in place well before SIPs under 40 CFR 51.308. The fact that it was received early and contained comprehensive strategies was an important part of the rationale for its acceptance. The EPA believes that the longer the strategy is delayed in its implementation, the less valid this rationale becomes.

3. Procedural Issues

One commenter stated that EPA cannot approve the Annex because of procedural flaws related to 40 CFR 51.309(f)(1) of the regional haze rule. The commenter asserted that EPA's rulemaking to approve the Annex is procedurally flawed because EPA did not publish the Annex upon its receipt. Additionally, the commenter notes that EPA did not amend the regional haze rule within 1 year after receipt of the Annex.

The EPA disagrees with the assertions that this rulemaking is procedurally flawed. The EPA published a Notice of Availability in the **Federal Register** for the Annex on November 15, 2000 (65 FR 68999), indicating where the Annex could be found on EPA's Web site. The commenter is correct that EPA established a deadline for itself of 1 year for the Agency to incorporate the provisions of the Annex if EPA found that the Annex met the requirements of the rule. Although the statement that EPA "will act" within 1 year signaled EPA's intentions to act within that time period, nothing in the regional haze rule precludes EPA from acting after this self-imposed deadline. In particular, action within the 1-year deadline should not be interpreted as a prerequisite for approving the Annex or for incorporating the Annex into the regional haze rule. It is clear from the commenter's statements, however, that the statement that EPA will act within 1 year has created confusion as to the meaning of the provision. The EPA is clarifying this provision by removing the phrase "1 year" from section 309(f)(3).

B. Milestones

A central feature of the program in the WRAP annex, and in EPA's proposed rule, is a set of emissions milestones for SO2 from stationary sources for the time period between 2003 and 2018. In the proposed rule, EPA included the Annex milestones. In the final rule, EPA includes the same milestones as proposed.

In addition, the proposed rule included specific language to allow for future adjustments to the milestones. In the Annex, the WRAP described a limited set of future circumstances that would necessitate adjustments to the milestones. For each of these circumstances, the Annex included a detailed description of how the milestone would be adjusted, including a discussion of the administrative process for making each adjustment. In the proposed rule, EPA included regulatory language for each adjustment, closely following the provisions of the Annex. In the final rule, EPA has made a few changes to the adjustments based upon comments received.

In this unit of the preamble, we discuss comments received related to the milestones and the adjustments.

1. Whether Milestones Satisfy Requirements in the Regional Haze Rule

Proposed rule. In the proposal, EPA indicated its agreement with the WRAP's conclusion that the emissions milestones meet the requirements of the CAA and the regional haze rule. The EPA devoted a significant portion of the preamble of the proposed rule to a discussion of its rationale for this proposed finding, (67 FR 30420–30426). In this discussion, EPA concluded that the WRAP's program for SO2 was appropriate in lieu of source specific BART limits because the milestone for the year 2018 provided for "greater reasonable progress" in visibility improvement than WRAP States would obtain by implementing the requirement for source-specific BART. In addition, the preamble to the proposal discusses EPA's finding that the milestones for the years between 2003 and 2017 provide for "steady and continuing" progress.

With respect to EPA's findings on BART, the preamble discussion for the proposed rule focused largely on the demonstration provided by the WRAP in Attachment C of the Annex. The EPA noted the WRAP used the following procedure to identify the year 2018 milestone:

- Developed an estimate of baseline SO2 emissions for the year 2018, (*i.e.*, the predicted SO2 emissions in the year 2018 in the absence of a program to reduce SO_2 emissions);
- Developed a list of BART-eligible sources in the region;
- Developed an estimate of the emissions reductions that BART sources could achieve, and
- Selected a year 2018 milestone that reduces the baseline emissions by an amount that would achieve greater reasonable progress in improving visibility than by requiring each BART-eligible source to install BART.

In the proposal, EPA discussed the data and methods relied on by the WRAP for each of these steps. The EPA agreed with the conclusion reached by the WRAP that the 2018 milestone meets the requirements of the regional haze rule, taking into account the uncertainties inherent in the calculations of predicted emissions in 2018.

Public Comments. Public comments, with one exception, were supportive of EPA's finding that the year 2018 milestone represented "greater reasonable progress" than BART. One commenter, representing the trucking industry, disagreed with this finding, citing a number of areas where it believed that the demonstration was lacking or inadequate.

The WRAP commented that EPA's preamble discussion did not completely capture the scope and methodology of the year 2018 milestone decision. In their comments, the WRAP agreed that EPA had correctly described the method the WRAP used to determine that the program achieved greater reasonable progress than BART. However, the WRAP's comments stress that while the milestones were informed by these calculations, the milestones were negotiated numbers reflecting a broader view of the backstop trading program and the relevant factors in the CAA. In addition, the WRAP notes that individual elements of the calculations do not represent a consensus position in isolation from the balanced package in the Annex.

The commenter from the trucking industry was critical of EPA's acceptance of the year 2018 milestones. The commenter noted that in the preamble EPA appeared to have concerns with: (1) How the WRAP identified BART-eligible sources, (2) how the WRAP calculated emissions reductions from those sources, and (3) the WRAP's inclusion of the 35,000 tons for "headroom and uncertainty." This commenter believed that taken overall, EPA should have considered the WRAP's milestone for year 2018 to be deficient. The commenter was also critical of the provision for a backstop trading program, arguing that such a program would allow for emissions reductions far away from the Colorado Plateau to be substituted for more effective reductions at a closer distance.

The comments, with one exception, supported EPA's proposed conclusion that the milestones for the years 2003 through 2017 represented "steady and continuing" progress. Comments from the trucking industry were critical of this finding. In their view, the milestones do not provide for steady and continuing progress because some of the early year milestones exceed year 2000 actual emissions levels.

Final rule. The final rule retains the milestones contained in the proposed rule. The EPA continues to believe that the milestones provide for "greater reasonable progress than BART" and for "steady and continuing progress." The EPA disagrees with comments that the milestones are deficient in this regard. The EPA agrees with stakeholders that it is a critical consideration that the WRAP's milestones provide a "cap" on emissions which may not be exceeded. Any program providing for case-by-case controls on a specific set of sources does not establish such a "cap" for the region. Moreover, this cap applies to a population of sources that includes all sources in the region emitting more than 100 tons of SO_2, which is a much broader population than if only the BART-eligible sources were included. The EPA continues to conclude that the WRAP milestones are reasonable in light of the inherent uncertainties that exist in any forecast to the year 2018. Modeling results showed predicted visibility improvements equivalent to, or greater than, those that would result from a "command and control" scenario.

The EPA disagrees with comments that the milestones cannot be considered to provide for "steady and continuing" reductions if actual emissions were allowed to increase in the early years. As noted in the proposal, EPA believes that the WRAP appropriately used the GCVTC goal of a 13 percent reduction in emissions between 1990 and 2000 as a starting point or frame of reference, rather than an estimate of actual emissions for the year 2000. Given that a greater than expected degree of reduction has already occurred, EPA agrees that the region should not be effectively penalized for achieving early reductions in emissions.

2. Adjustments for States and Tribes That Choose Not To Participate

Proposed rule. When developing the Annex, the WRAP understood that some States and Tribes may choose not to participate in the optional program provided by 40 CFR 51.309. Thus, the WRAP provided to EPA individual opt-out amounts for each State and Tribe and for each year from 2003 to 2018. These opt-out amounts represented the amount of emissions that would be deducted from the milestones for each State and Tribe that does not participate. The EPA included a table in the proposed rule (67 FR 30446, May 6, 2002) that shows these opt-out amounts for each State and Tribe. The proposed rule noted, as the WRAP recommended, that the emissions amounts budgeted in this table are only for the purpose of determining the milestones at the beginning of the program if some States and Tribes choose not to participate. The EPA cautioned that the amounts budgeted to each State and Tribe in this table are not necessarily the amounts that will be allocated to sources within the relevant State's or Tribe's jurisdiction if a trading program is triggered.

The proposal described the process by which the milestones would be adjusted to take into account the individual State and tribal opt-out amounts. For States, SIPs for all participating States are due by the December 31, 2003 deadline. Accordingly, EPA assumed in the proposal that after this deadline has passed it will be known which States are participating and which are not. Thus, the proposal called for SIPs to provide for deducting the State-specific amounts in Table 2 (67 FR 30446, May 6, 2002) for "opt-out States" from the amounts in Table 1 (67 FR 30425, May 6, 2002) at the outset of the program. For Tribes, the proposed rule provides flexibility for opting into the program after the 2003 SIP submission deadline. Under the proposal, for Tribes that have not opted into the program by the 2003 deadline, the amounts in Table 2 (67 FR 30446, May 6, 2002) would be deducted from the amounts in Table 1 at the outset of the program. For Tribes that opt into the program at a later date, the proposal required these amounts to be automatically added to the amounts in Table 1 (67 FR 30425, May 6, 2002), beginning with the first year after a TIP implementing 40 CFR 51.309 is approved by EPA.

In the proposal, EPA stated that for the program under 40 CFR 51.309 to achieve the WRAP and GCVTC objectives, a sufficient number of States must participate in the program. The EPA proposed to defer to the WRAP's judgment on the issue of how many States would constitute a "critical mass" for the program, and we requested comment on this issue.

Public Comments. A few comments were received on issues related to the proposed opt-out amounts and discussion.

Two commenters agreed with EPA's clarification that the opt-out amounts did not necessarily represent the amount of allocations that a State's or Tribe's sources would receive if the backstop trading program were triggered. One commenter recommended that the State opt-out amounts *should* be treated as the amount of allocations for a given State, because: (1) The opt-out amounts represent the best estimate of emissions reductions for the BART-eligible sources in each State or Tribe, and (2) inclusion of the tables may create a perception that any State that issues fewer allocations than the opt-out amounts is treating the sources within the State inequitably.

Several commenters agreed with EPA's recommendation to defer judgments on "critical mass" issues to the WRAP. One environmental group commenter recommended that, in evaluating whether there are enough States and Tribes participating in 40 CFR 51.309, EPA must thoroughly consider the extent to which the SO_2 declining cap will effectively prevent

degradation from the visibility impairing emissions from new source growth across the region.

Subsequent to the comment period, the Western States Air Resources Council (WESTAR) Model Rule/MOU Working Group noted [4] that as States and Tribes follow their process for adopting SIPs and TIPs under 40 CFR 51.309, the States and Tribes will not necessarily be aware of which other States and Tribes will choose to participate in the program. Accordingly, the WESTAR Working Group believed that States and Tribes would need to include all of Table 2 and calculation procedures in their SIP/TIP submittals, such that the SIP/TIP submittal could account for all possibilities of participation by other States and Tribes. Further, the WESTAR Working Group noted that in the initial years of the program, EPA may not have approved the SIP for all participating States before the date of the annual determination of whether the milestone is exceeded. Lastly, Tribes are not required to submit a TIP by 2003 and can choose to participate in the program at anytime. Accordingly, the WESTAR Working Group recommended that EPA clarify whether the comparison of emissions to the milestones would take into account all States that have submitted SIPs, or only those with approved SIPs as of the date of the determination.

Final Rule. The final rule retains the opt-out tables from the proposal. The EPA continues to agree with the WRAP that the opt-out tables do not necessarily represent the amounts that would be allocated to a given State or Tribe under a trading program. The WRAP has developed a detailed methodology for determining and establishing trading program allocations for each source. This methodology is described in detail in sections II.D and III.D.7 of the Annex. It is this methodology that will result in allocations should the trading program be needed. The EPA believes that establishing the amounts in the opt-out tables as the amounts for trading program allocations would unnecessarily constrain the WRAP from implementing its methodology.

The EPA continues to believe, as discussed in the proposal, that judgments on the issue of "critical mass" are best left to the WRAP. Regarding the comment that the SO_2 declining cap may not effectively prevent degradation of visibility from new sources throughout the region if not enough States and Tribes participate, EPA notes that visibility progress issues as a general matter will need to be addressed in SIPs submitted under 40 CFR 51.308. Accordingly, EPA does not believe that this comment warrants any change to the proposed rule language.

The EPA agrees with the WESTAR Working Group that States and Tribes submitting their SIPs and TIPs under 40 CFR 51.309 should include Table 2 and the calculation procedures in their SIP or TIP regulations in order to account for all possibilities of participation by other States and Tribes. The EPA also agrees with the WESTAR Working Group recommendation to add to the final rule clarification that the opt-out adjustment under 40 CFR 51.309(h)(1)(i) will include the States and Tribes for which SIPs and TIPs have not been approved by EPA as of the date of the determination.

3. Adjustments for Smelter Operations

Proposed rule. At the time the WRAP was submitted to EPA, two copper smelters in the region, the Phelps Dodge Hidalgo smelter and the BHP San Manuel smelter, had suspended operations. In the Annex, the WRAP recommended that the program specifically account for the possibility that these smelters could come back on line should economic conditions change. Accordingly, the Annex contained a specific set of complex decision criteria to adjust the milestones in the future for a number of specific scenarios related to the two smelters. The EPA in the proposal attempted to clarify the WRAP's adjustments with a series of "if-then" tables, and we requested comment on whether these tables accurately reflect the decision criteria in the Annex.

Public comments. Commenters agreed that the EPA's proposed table accurately reflected the Annex. Two commenters noted that subsequent to the development of the Annex, a third smelter, the Phelps Dodge Chino smelter, suspended operations. These two commenters recommended that the regional haze rule should recognize this without reopening the negotiated agreement on the milestones. Further, the commenters recommended that the regional haze rule should provide some assurance that when the Chino Smelter comes back on line again, its 16,000 allowances will be available to it without prematurely triggering the program.

Final rule. The final rule retains the smelter adjustment tables as proposed. The EPA considered whether the final rule should contain contingencies for the Chino Smelter similar to those for Hidalgo and San Manuel. For example, one approach would be to deduct the amount from the Chino smelter from the milestones and to develop a series of adjustments to account for the possibility that it may come back on line, similar to the approach for the other two smelters. The EPA has not taken this approach, because of the complexity that would be added to the adjustments, and because this scenario was not specifically discussed as the WRAP was negotiating the Annex.

4. Adjustments for Utility Boilers Opting To Use More Refined Flow Rate Methods

Proposed rule. The proposed rule requested comment on the specific method and process for adjusting the milestones for sources using a refined method for measuring stack flow rates. This was seen as a significant issue, because the flow rate affects the determination of emissions rate from a continuous emissions monitoring system (CEMS).

In 1999, EPA adopted revisions to EPA's Reference Method 2, the standard method for measuring stack flow rates (64 FR 26484, May 14, 1999). The revisions provided three new procedures: Methods 2F, 2G, and 2H. The new procedures, if used for a given source, allow for a more detailed assessment of the stack flow rates to provide more accurate flow rate results. The changes addressed concerns raised by utilities that Reference Method 2 may over-estimate flow in certain cases, such as when the flow is not going straight up the stack. If the flow rate is over-estimated, this would also lead to the overestimation of SO_2 emissions because the facility's continuous flow rate monitor is calibrated to correspond to the flow test method. Facilities subject to the acid rain program under title IV of the CAA must perform these flow tests at least once a year to determine the accuracy of their continuous flow monitors. Facilities have an option to use either the old Method 2, or one or more of the new methods.

When the WRAP made its emission projections for purposes of developing the milestones, the new methods were not yet in place. Accordingly, if a source owner chooses to use the new flow methods, and if as expected it results in a reduced flow rate for the same level of operation, then there will be a corresponding decrease in the measured emissions. In the preamble to the proposal, EPA agreed with the WRAP that this would create the possibility of a "paper" decrease relative to the milestone if the milestone reflects the old method. As discussed in section III.A.5 of the Annex, the WRAP notes

[4] *See* memorandum from Lily Wong, EPA Region 9, to Docket OAR–2002–0076. March 2003.

that a protocol is needed for adjusting the milestones to reflect changes in the baseline emission for utility boilers any time that a source opts to change its CEMs method. The WRAP addressed this issue in greater detail in a supplemental paper entitled "Emissions Tracking Prior to Triggering the Backstop Trading Program," which was submitted to EPA on June 1, 2001.

The WRAP has identified three possible technical procedures for developing an "adjustment factor" for the new flow method. The EPA agrees that any of these three procedures would be acceptable. Under the first procedure, there would be a side-by-side comparison of flow rates using both the new and the old flow reference methods. For example, if the new method measured 760,000 cubic feet per minute, and the old method measured 800,000 cubic feet per minute, the adjustment factor would be (760,000/800,000), or 0.95. The second method would use annual average heat rate, which is reported to the Energy Information Administration (EIA), as a surrogate for the flow rate. Under this method, the flow adjustment factor would be calculated using the annual average heat rate using acid rain heat input data (MMBtu) and total generation (MWHrs)reported to EIA, calculated as the following ratio:

$$\frac{\text{Heat Input/MW-hrs for first full year of data using new flow rate method}}{\text{Heat Input/MW-hrs for last full year of data using old flow rate method}}$$

The third method would use data reported to EPA's acid rain program. Under this method, there would be a comparison of the standard cubic feet per minute (CFM) per megawatt(MW) before and after the new flow reference method based on CEMs data, calculated as the following ratio:

$$\frac{\text{SCF/Unit of Generation for first full year of data using new flow rate method}}{\text{SCF/Unit of Generation for last full year of data using old flow rate method}}$$

In the supplemental information paper, the WRAP identified three possible approaches for using the adjustment factors for making a correct comparison of emissions to the milestones. The WRAP did not indicate a preference for any single approach. The three options are as follows:

(a) Using one of the options described above for determining the flow adjustment factor, revise the source's baseline emissions forecast for 2003, 2008 and 2013. For each year following the adoption of the new flow reference method through 2017, reduce the interim milestone by the corresponding amount. To illustrate how this approach would work, the proposal used an example where the adjustment factor for a given stack is 0.95. As discussed above, this means that the emissions with the new method is deemed to be 0.95 times the emissions with the old method. For this example, for option (a) this means that the previous baseline emissions for that source would be multiplied by 0.95. The annual compliance check would then be done by comparing regional SO_2 emissions (unadjusted, as reported to EPA's acid rain program) to the revised milestone.

(b) Using one of the options described above for determining the flow adjustment factor, revise the source's reported emissions on an annual basis, and do not adjust the milestone. For the example noted above, under option (b) the emissions reported to EPA's acid rain program would be adjusted upward by multiplying the amount times (1/0.95). For each year following the adoption of the new flow reference method through 2017, the annual compliance check would be done by comparing the adjusted regional SO_2 emissions to the unadjusted milestones.

(c) Use a combination of the two approaches. Under this approach, interim milestones would be adjusted only every 5 years (using option (a) above) and the reported emissions for additional sources making the change in the intervening years are adjusted for comparison to the milestones (using option (b) above).

In the proposal, EPA stated that any one of these three approaches would be acceptable, but that a specific approach needs to be selected for the final rule. The EPA also noted its view that these adjustments to the milestone or to the reported emissions would not necessarily require SIP or TIP revisions, because the precise method for making the adjustment, and the publicly available data elements that will be used for making the adjustment, could be specifically identified in the final rule.

Public comments. Commenters generally agreed with EPA's assessment that any of the three approaches for determining an adjustment factor would be acceptable.

The WRAP noted in its comments that the 2018 milestone already included assumptions about the effect of this flow rate adjustment. The WRAP recognized that the preamble to the rule implies this distinction but the WRAP recommended that this be reflected in the regulatory text as well.

Regarding the three options related to the process for using the adjustment factors, the WRAP recommended option (c) in its comments. That is, the milestones would be adjusted every 5 years with the periodic SIP revisions, and adjustments would be made to the reported emissions for the interim period. Other commenters, while supporting the concept of adjusting the milestones with the SIP revisions, did not address whether the reported emissions should be adjusted in the interim period. The EPA infers from these comments that these commenters are likely recommending that emission adjustments need not be made in the interim period.

Final rule. The final rule includes regulatory language agreeing with the WRAP's recommendations regarding the flow rate adjustment. States are required in the SIPs to provide for reporting of "adjusted" emission rates pending an update to the milestones, which would occur at the time of the plan revisions required under 40 CFR 51.309(d)(10).

5. Adjustments for Enforcement Actions

Proposed rule. The proposed rule included a provision in the Annex for adjustments to the milestones for "illegal emissions." In developing the milestones, the WRAP identified the baseline emissions for each source during the base year, and "forecasted" emissions for the source during the 2003 to 2018 time period, taking into consideration growth, utilization, retirement, and the absence of any additional requirements. The

compilation of these source-specific baseline emissions resulted in the baseline emission inventory totals, which serve as a "starting point" for measuring progress from the program. The WRAP recognized in the Annex that if a source was in violation of applicable requirements during the base year when its emissions were determined, the baseline emissions during 2003–2018 would be overestimated.

In the proposal, EPA included this provision with general regulatory language providing for the adjustment of baseline emissions for illegal emissions, and we requested comment on possible ways of clarifying the provision in the final rule. The EPA noted in the preamble to the proposal that there are instances where it may be unclear whether under the approach in the Annex, emissions would be considered as "illegal," for example where:

—Disputing parties resolve their differences through (1) A consent decree that is either entered through Federal or State courts, or (2) an administrative enforcement proceeding by either a State, Tribe, or EPA; or

—A State disagrees with EPA or a citizens' group over whether or not a particular alleged violation occurred.

The EPA requested comment on how these situations should affect the milestones. Specifically, EPA requested comment on the following possible options:

Option 1. Under this option, the rule would require that if there is any resolution [5] to alleged illegal SO_2 emissions, then all of the reductions resulting from the resolution would be considered as "illegal emissions." Taking into account these reductions, the State or Tribe would then "re-forecast" the source's emissions and its effect on the milestone. "Re-forecast" means to re-apply the forecasting process, that is the process the WRAP originally used to project future emissions and develop the milestones, using the corrected baseline SO_2 emissions for the affected source. A comparison of this re-forecast of emissions with the previous forecast of emissions would determine the amount of the adjustment for each year up through 2018.

Option 2. Under this option, the rule would allow for case-by-case judgments on the appropriateness of adjusting baseline emissions following resolution of allegations of illegal SO_2 emissions. The rule would, however, clarify the entity responsible for deciding whether a case involves illegal emissions warranting an adjustment to the milestones. Under this option, we requested comment on which entity should be responsible for this determination, that is, whether the rule should clarify whether the parties entering into a settlement, the States, the Tribes, the WRAP, or EPA would determine the settlement's impact on the milestones.

The EPA noted that under any of the proposed options, adjustments to the milestone would occur only after the source in the enforcement case has achieved the requisite reduction of SO_2 emissions. Consequently, adjustments to the milestones would have no effect on any other facility's operation because all of the reductions would be achieved by the source subject to the enforcement action.

The EPA also solicited comments in the proposal on how to treat any extra SO_2 emissions reductions that a facility might achieve as a result of a settlement. The EPA will often allow a company that is settling through a consent decree or settlement agreement to perform a supplementary environmental project and allow the expenditures on this project to partially offset penalties that the company would otherwise be assessed. The EPA noted in the preamble to the proposal that if the milestones are not reduced by the amount of extra emissions reductions from this type of project, then the environment may see little benefit, since another company would be allowed more SO_2 emissions. Thus, in the proposal, EPA sought input on whether these "extra" emissions reductions should be considered part of this "illegal emission" adjustment and factored into a recalculation of the milestone.

Public Comments. The EPA received a number of comments on this provision.

A few commenters recommended that this provision be deleted from the rule entirely. Some commenters criticized this provision because it would lower the milestones and reduce the potential pool of allowances under the backstop trading program. Accordingly, these commenters believed that the provision would serve to punish the "non-violators" in the program at large. Another commenter believed that any adjustment for "illegal emissions" is not appropriate unless it has been demonstrated that the provision would improve visibility.

Other commenters supported the provision but recommended that the term "adjustments for illegal emissions" be replaced with the term "adjustments due to enforcement actions." Some commenters requested clarification on whether these adjustments would only apply to enforcement actions that would have affected the assumptions used in baseline emissions projections. One commenter recommended that the proposed adjustment for illegal emissions should apply only to emissions reductions resulting from consent decrees or administrative orders where the EPA or authorized State has commenced the enforcement action, and not where emissions reductions arise out of "voluntary settlements" initiated by the company.

Regarding the two options for clarifying this provision, the WRAP and other commenters recommended the second option. These commenters noted that case-by-case judgments will be needed to determine whether and the degree to which the milestones should be adjusted. Responding to EPA's request to clarify the entity responsible for calculating the adjustment, the WRAP recommended that the entity responsible should be the parties entering into a settlement, in conjunction with the relevant State or Tribe. The commenters envisioned that EPA would have an oversight role in the SIP approval process to determine that the adjustment agreed to through the enforcement process is properly reflected in the milestone adjustment.

The WRAP comments recommended that specific language be added to the final rule requiring States and Tribes to document, and include in the administrative record,[6] a discussion of whether any adjustments to the milestones are appropriate based upon administrative or judicial enforcement actions, and to include an explanation of the basis for the State's or Tribe's decision.

Regarding EPA's request for comment on how "extra" emissions reductions in enforcement actions should be treated, the WRAP and other commenters believed that these extra emissions reductions should also be treated on a case-by-case basis. The WRAP commenters recommended that EPA include a provision in the rule requiring States or Tribes to address in the periodic SIP revision whether SO_2 allowances should be retired or confiscated [7] as a result of an

[5] For option 1, the proposal used the broad term "resolution" to refer to all types of emissions reductions resulting from enforcement actions.

[6] The EPA interprets the term "administrative record" in the WRAP's comments to refer to information made available in support of the State's or Tribe's implementation plan submittal to EPA under 40 CFR 51.309(d)(10).

[7] This comment responded to EPA's question on how the milestones should be adjusted with a

administrative or judicial enforcement action and the rationale for the State's or Tribe's decision.

Final rule. The EPA has retained this provision in the final rule. The EPA agrees with the WRAP that this provision is necessary to ensure that the "baseline," the starting point for the milestone calculations, reflects compliance with regulations. So long as the reductions to the milestones do not occur before the date a source comes back into compliance, EPA does not believe that this adjustment has the effect of "penalizing" the other sources. Regarding the comment that this provision is deficient due to a lack of demonstrated visibility improvements, EPA believes that the WRAP was not required to make a demonstration of the visibility improvements of this specific provision, which is part of the WRAP's overall program for SO_2 reductions from stationary sources.

The final rule reflects EPA's agreement with recommendations of commenters to replace the term "adjustments for illegal emissions" with the term "adjustments due to enforcement actions." The EPA agrees that this terminology better encompasses the types of situations that the provision would address. The EPA interprets the term "enforcement action" in these comments to be used broadly to include any type of enforcement action including administrative orders, settlements, consent decrees, court orders, and compliance schedules in title V permits.

As recommended by some commenters, we have added language consistent with Option 2. The EPA agrees with commenters that there will be case-by-case considerations in enforcement actions that could affect whether an adjustment to the milestones is appropriate. The EPA generally agrees with comments suggesting that the entity responsible for calculating the amount of the adjustment should be the parties entering into the settlement, and that where those parties do not include the State or Tribe, the State or Tribe should be consulted to assure that correct assumptions are used for the adjustment. Further, EPA believes that if the parties involved in the action are responsible for recommending the amount of the adjustment, or whether an adjustment is appropriate, this would allow a source entering a voluntary settlement to negotiate whether or not an adjustment should be made.

The EPA believes it is useful to clarify a few points regarding actions where EPA or a citizens' group is the plaintiff in the enforcement action. Such cases would be brought to the U.S. District Court. Pursuant to longstanding Department of Justice policy, in any such case members of the public, including an interested State or Tribe, would have an opportunity to review and comment on the proposed consent decree settling the enforcement case. *See* 28 CFR 50.7. For any such case before the U.S. District Court, EPA intends to provide the State or Tribe an opportunity to review and comment on the proposed settlement. If a settlement or order from the U.S. District Court is issued and contains an adjustment to the milestones, such a settlement or order from the court is binding and the State and Tribe would be required to adjust the milestones as directed by the court. For instances where such court actions are silent on reforecasting the baseline emissions and adjusting the milestones, EPA believes the State or Tribe must determine whether such a reforecast and adjustment is appropriate.

The EPA agrees with the WRAP's recommendations that the State or Tribe should provide documentation of these adjustments for enforcement cases in the administrative record for the 5-year SIP or TIP revision. Specifically, the rule requires the following documentation:

—Identification of each source that has reduced SO_2 emissions under an administrative or judicial enforcement action,
—Whether the milestones were adjusted in response to the reduction in SO_2 emissions under the enforcement action,
—The rationale for the State's or Tribe's decision on the milestone adjustment,
—If extra SO_2 emissions reductions (over and above those reductions needed for compliance) were part of the settlement, whether those reductions resulted in any adjustment to the milestones or allowance allocations.

C. Annual Process for Determining Whether a Trading Program Is Triggered

The proposed rule describes an annual process to determine whether the emissions from participating States exceed the milestones and thus trigger the backstop trading program. This proposed process contained a number of deadlines for steps in the annual process, and contained special provisions for certain years. Only a few comments were received on these provisions.

1. Date for the Annual Determination

Proposed rule. The proposed rule contained annual deadlines for determining whether the milestone is exceeded. This proposed schedule called for a draft determination not later than December 31 of each year, beginning with a draft determination for the year 2003 by December 31, 2004. The proposed schedule called for a final determination, taking into account public comments, by the end of the following March, beginning with a final determination by March 31, 2005 for calendar year 2003.

Public comments. In their comments on the proposal, the WRAP recommended that this annual deadline be extended by 1 year. For example, pursuant to this recommendation, EPA would extend the deadline for the final determination for calendar year 2003 from March 31, 2005 to March 31, 2006. Because certain States or Tribes may have more numerous or complex sources, the WRAP believed that additional time may be needed to collect, validate, and analyze emissions data. In support of this request for additional time, the WRAP notes that adding time for the annual determination would not affect the timing for implementing the backstop trading program. For example, even if the annual determination for calendar year 2003 were not made until 2006, this would not affect the date for the onset of the trading program. If the calendar year 2003 milestone were triggered, sources would still need to hold allowances for emissions in calendar year 2009.

Final rule. In the final rule, EPA has retained the deadline for the annual determination as proposed. The EPA recognizes that some States within the region may have more complex technical and administrative procedures for collecting annual emissions inventory data. The EPA's current judgment is that for States who have indicated possible participation in the program under 40 CFR 51.309, these obstacles do not exist. The EPA believes that it is not desirable to move the deadline forward in time unless it is absolutely necessary. While, as the WRAP correctly notes, this would not affect the deadlines for implementation of the backstop trading program, it would have the effect of reducing the amount of time for planning and implementation if the trading program were triggered. If the States needing more time do, in fact, decide to participate in the program, EPA believes that the regional haze rule could be

recommendation on whether allowances should be retired or confiscated. The EPA interprets this comment as addressing both the milestones and the allowances, which add up to the milestones.

revised at a later date to reflect this need.

2. Option for Triggering the Trading Program in the Year 2013

Proposed rule. The proposed rule provided States and Tribes with the option at a specific point in time to consider emission projections for the year 2018, in addition to actual emissions inventory reports for previous years in deciding whether or not to trigger the backstop market trading program. For this option, if States and Tribes so choose, the emissions inventory reports for the year 2012—which are collected in calendar year 2013—may also contain emissions projections for the year 2018. If the projections indicate that the year 2018 milestone will be exceeded, then under the proposal, States and Tribes may choose to implement the market trading program beginning in the year 2018.

Public comments. One commenter representing Western business interests recommended that the WRAP develop, and the final rule contain, specific criteria for the option of triggering the trading program in 2013. The commenter recommended that, for example, the final rule should contain criteria for a specific emissions level in 2013, or a specific level of emissions reductions yet to be achieved between 2013 and 2018.

Final rule. In the final rule, EPA has retained the 2013 option as proposed. The EPA believes that the intent of this provision in the Annex is to provide broad flexibility to the States and Tribes for deciding whether this 2013 option should be exercised. The EPA does not believe that it is desirable or feasible to develop specific decision criteria for this purpose in the final rule.

3. Requirements for Recordkeeping

Proposed rule. The proposal, in 40 CFR 51.309(h)(iii), included a requirement for the retention of records relevant to the annual comparison of SO_2 emissions to the milestones for at least 5 years from the establishment of the record. For records that provided the basis for an adjustment to the milestone, the proposed rule required retention of records for at least 5 years after the date of the SIP revision.

Final rule. No public comments were received on this issue during the comment period. Following the close of the comment period, however, the WESTAR model rule working group [8] questioned whether this recordkeeping requirement would be adequate in all cases, if EPA's intent were to retain the records for 5 years after they are relevant to the annual determination. Given the design of the program, 4 and ¼ years can elapse between the creation of a record and the use of the record in the annual comparison of regional SO_2 emissions against the milestone. This is because for all except the first 2 years of the program, the annual determination is based on a 3-year average of the regional SO_2 emissions for the preceding 3-year period. Additionally, the formal comparison with the milestone is not accomplished until 15 months after the end of this 3-year period. Thus, close to 5 years can pass from the establishment of a record to its use. The working group believed that the intent of the recordkeeping requirement was to maintain relevant records for 5 years after the determination of whether the milestone was exceeded for a given year, which could mean that some records relevant to the determination would be needed for approximately 10 years from the date they were generated. The EPA agrees that this was the intent of the recordkeeping requirement in 40 CFR 51.309(h)(iii) of the proposed rule; accordingly, the final rule extends the time period for the retention of records from 5 to 10 years.

[8] *See* note from Lily Wong, EPA Region 9, to docket OAR–2002–0076, March 2003.

D. Requirements for the Backstop Trading Program

A fundamental feature of the Annex is a backstop market trading program that would be triggered if any annual milestone is exceeded. The Annex, as required by 40 CFR 51.309(f) of the regional haze rule, provided documentation and details for the backstop trading program. Attachment A to the annex was a draft model rule for use by States in implementing the backstop trading program. In the proposal, EPA included ten fundamental elements that SIPs under 40 CFR 51.309 must contain, and the basic requirements for those elements to help guide EPA's review of the SIPs. The fundamental elements described in the proposed rule were as follows:

(1) Provisions for the allocation of allowances to each source in the program;

(2) Emissions quantification protocols;

(3) Provisions for the monitoring, recordkeeping and reporting of emissions;

(4) Provisions for a centralized system to track allowances and emissions;

(5) Provisions requiring the identification of an authorized account representative for each source in the program;

(6) Provisions requiring the account representative to demonstrate annual compliance with allowances;

(7) Provisions for the process of transferring allowances between parties;

(8) Provisions describing the "banking" of extra emissions reductions for use in future years, if the implementation plan allows for banked allowances;

(9) Provisions establishing enforcement penalties for noncompliance with the trading program; and

(10) Provisions for periodic evaluation of the trading program.

In the proposed rule, EPA included basic requirements for each of these 10 provisions, and we requested comment on whether we had addressed each requirement in an appropriate level of detail, and on whether the substance of the requirement was sufficient to ensure the integrity of the trading program.

The EPA did not receive any adverse comments regarding the level of detail of the proposed requirements for the trading program. We did receive comment on the substance of a few of the provisions that we discuss in this section of the preamble.

1. Allowances

Proposed rule. The proposed rule required the backstop trading program to include allowances. An allowance authorizes a source included within a market trading program to emit one ton of SO_2 during a given year. At the end of the compliance period, which is a 12-month period ending with each calendar year, a source owner's allowances must exceed or equal its annual emissions.

The proposed rule would require States and Tribes to include initial source-specific allowances for each source included within the program. Under the proposal, these initial allocations must specify the tons per year allocated for each source for each year between 2009 and 2018. The Annex contains a detailed discussion of the methodology for distributing allowances to sources. The EPA proposed, however, that the details of this methodology were not needed in EPA's rule. If those allowances add up to the appropriate regional total, EPA proposed that the objectives of the program would be met. The EPA proposed one exception to this approach, a requirement that 20,000 tons of allowances be reserved as a "set-aside" for use by Tribes.

Public comments. The EPA received comments on three issues related to allowances. First, the WRAP and one electric utility commenter

recommended that the proposed rule be modified such that initial SIPs would not be required to have source-specific amounts for each source. Instead, these commenters recommended that EPA allow the initial SIPs to include a formula that will be used to calculate the allowances when the program is triggered.

Second, the WRAP and one environmental group commenter recommended specific regulatory language for reserving a portion of allowances for renewable energy resources such as wind, solar photovoltaic and solar thermal technologies, geothermal, landfill gas and biomass technologies, and hydropower projects meeting Low-impact Hydropower Institute criteria. This regulatory language consisted of a regulatory definition of "eligible energy resource." In addition, the recommendation included specific regulatory language for inclusion in 40 CFR 51.309(h)(4)(i) that would provide "eligible energy resources" with 2.5 tons of SO_2 allowances per megawatt of installed nameplate capacity per year.

Final rule. The EPA has amended the proposed rule as requested by the WRAP and other commenters. The EPA agrees that a clear and definitive formula for issuing source-specific allowances is an acceptable approach. The approach to distributing allowances described in the Annex provides for adjustments of the allocations over time, for example providing "bonus" allocations for early reductions. Because the allocations provide for adjustments over time, it is likely that individual source allocations could change between the date of the 2003 SIPs and the date a trading program would be triggered. Accordingly, EPA believes that re-calculation of the source-specific allowances when the program is triggered would be likely in any case. If the program is triggered, the subsequent SIP revision must include the source-specific allocations.

The EPA has also incorporated the WRAP's recommended provision regarding renewable energy credits. Given the WRAP's desire that this provision be a feature of the backstop trading program, EPA agrees that regulatory language is needed to ensure that this feature is included in SIPs. The EPA has incorporated the regulatory language recommended by the WRAP with two modifications. First, EPA includes only the first sentence of the WRAP's recommended definition ("Eligible renewable energy resource, for purposes of 40 CFR 51.309, means electricity generated by non-nuclear and non-fossil low or no air emission technologies"). The EPA believes that it is not necessary to include, and would be difficult to interpret, the WRAP's recommended additional language limiting the definition to only those technologies "using resources that are virtually inexhaustible, reduce haze, and are environmentally beneficial." The EPA agrees with the WRAP that it is useful to clarify that this definition specifically includes:

—Electricity generated by wind energy technologies;
—Solar photovoltaic and solar thermal technologies;
—Geothermal technologies;
—Technologies based on landfill gas and biomass sources; and
—New low-impacts hydropower that meets the Low-Impact Hydropower Institute criteria.

Similarly, EPA agrees with the WRAP that it is useful to clarify that "biomass" includes agricultural, food and wood wastes, but does not include biomass from municipal solid waste, black liquor, or treated wood, and that for purposes of this definition, low-impacts hydropower does not include pumped storage. At the same time, EPA has concerns that the various lists in the WRAP's proposed definition may not be exhaustive, and that it would be preferable that the list be able to change without necessitating a change to 40 CFR 51.309.

The EPA has also included an amendment to 40 CFR 51.309(h)(4)(i) which requires that the backstop market trading program include the WRAP's recommended provision for renewable energy credits. This amendment requires SIPs under 40 CFR 51.309 to include a provision that eligible renewable energy resources that begin operation after October 1, 2000 will receive 2.5 tons of SO_2 allowances per megawatt of installed nameplate capacity per year. The rule also includes language consistent with the WRAP's recommendation that allowance allocations for renewable energy resources that begin operation prior to the program trigger will be retroactive to the time of initial operation. The EPA believes, however, that it is important for States to preserve flexibility over time with respect to implementing this provision. Accordingly, the final rule allows, but does not require, that implementation plans may provide for an upper limit on the number of allowances provided for eligible renewable energy resources.

2. Emissions Quantification Protocols

Proposed rule. The proposed rule required that implementation plans under 40 CFR 51.309 must include specific emissions quantification protocols, that is, procedures for determining actual emissions. These procedures will be used to measure, or determine, annual emissions from each source in the trading program if the trading program is triggered. The proposed rule also required that States include the necessary monitoring, recordkeeping, and reporting provisions to measure and track results.

In the Annex, the WRAP recognized the need to have detailed and prescribed emission quantification protocols and recommended that the participating States and Tribes establish such provisions in the SIPs submitted under 40 CFR 51.309. The Annex describes the WRAP's approach to monitoring in section II, pages 39–41, in section III, item III.D.3 on page 64, and in Attachment A, Draft Model Rule section C.2.3 Monitoring Requirements, and section C9 Emissions Monitoring. In particular, the WRAP recognized the need for emission monitoring protocols which ensure that emissions estimates are accurate and comparable for participating sources. For the trading program, the emissions become a tradeable, fungible commodity. Accordingly, it is important to the integrity of the program to ensure that one ton of emissions from one source is equivalent to one ton of emissions from another source.

In the Annex, the WRAP proposed that sources subject to the acid rain program under title IV of the CAA would continue to follow the continuous emissions monitoring procedures in the acid rain program, which appear in 40 CFR part 75. Because continuous emissions monitoring represents the best available method for determining emissions, EPA would not require separate emission protocols for these sources as part of implementing 40 CFR 51.309.

For other categories of sources not covered by part 75, the WRAP in the Annex recognized the need to develop protocols based upon "best available" monitoring techniques for each source category. In the proposed rule, for source categories with sources in more than one State submitting an implementation plan under 40 CFR 51.309, EPA required each State to use the same protocol. Further, in the proposal, EPA included criteria for determining the acceptability of these protocols in the implementation plans. These criteria are the same criteria listed in section 5.2 and 5.3 of EPA's Economic Incentive Program (EIP) guidelines. These guidelines state that emission quantification protocols:

—Must ensure reliable results, and that they must ensure that repeated application of the protocol obtains results equivalent to EPA-approved test methods;
—Must be replicable, that is, the protocol ensures that different users will obtain the same or equivalent results in calculating the amount of emissions and/or emissions reductions.

These EIP guidelines also specify that trading programs need to include monitoring, recordkeeping, and reporting provisions to provide adequate information for determining a source's compliance with the program. Adequate monitoring, recordkeeping and reporting procedures have several key attributes, including representativeness (characteristic of the source category and available monitoring techniques), reliability, replicability, frequency (that is, the monitoring is sufficiently repeated within the compliance period), enforceability (that is, the monitoring is independently verifiable), and timeliness.

Public comments. Comments on this provision were generally supportive of the notion that stringent protocols are needed to ensure the integrity of the "currency" for the trading program. Consistent with this view, one commenter representing electric utilities recommended that non-utility sources need to employ emissions quantification protocols that are equivalent to those of electric utilities. In the WRAP's comments, a few changes to the regulatory language were recommended. Some comments expressed concerns that the proposal did not provide enough flexibility in the use of quantification protocols.

The WRAP comments recommended that the proposal be modified to state:

> For source categories with sources in more than one State submitting an implementation plan under this section, each State must use protocols that are "sufficiently rigorous and comparable to ensure that emissions in the region are measured in a reliable and a consistent manner.

The WRAP believed that the terms "sufficiently rigorous and comparable" were preferable to the word requirement of the "same" methodology for each State. The WRAP also sought clarification that the proposed language in 40 CFR 51.309(h)(4)(iii) requiring that "the protocols must provide consistent approaches for all sources within a given source category" would not limit the WRAP States' and Tribes' ability to establish different monitoring requirements within source categories based on established criteria such as the size of an emission unit. For example, the WRAP comments noted that it may be appropriate to require the use of a CEMS on a large industrial boiler while using emission factors for a smaller boiler that is used as a backup unit.

Finally, the WRAP expressed concerns that this provision should provide for the use of flexible monitoring options that make sense for this particular trading program. Because smaller sources are anticipated to have greater difficulty meeting stringent monitoring requirements, the WRAP's market trading forum (MTF) is considering adopting more flexible monitoring provisions for these smaller sources. For smaller sources, the MTF goals are:

—To provide assurances that the milestone goals will still be met,
—To ensure that data are sound and reliable,
—To obtain data that are consistent with the assumptions of the Annex, and
—To ensure the integrity of the trading program.

While these MTF discussions are still in the preliminary stages, the WRAP comments seek assurance from EPA that the final rule will allow consideration of different approaches.

Another commenter noted that emission quantification protocols are continually evolving and becoming more refined. This commenter expressed concerns that if improved protocols, different from those used to establish the baseline, are used to determine steady and continuing progress and if the program is triggered, this could have the effect of penalizing sources for developing and using improved protocols. This commenter noted that EPA should not create a disincentive to such innovation. The commenter believed that if the quantification protocols remain static for SO_2 measurements until the program is triggered, at which time sources will be required to implement different reduction programs, then sources will be better able to adapt to the more precise measurements resulting from new quantification protocols. This commenter also believed that as a result, the sources will be able to factor in the need, if any, for greater reductions resulting from improved quantification protocols.

Final rule. The EPA has retained the language as proposed. The EPA believes that it is important to retain the requirement that sources in similar categories use the same method for determining emissions under the trading program. The EPA wishes to clarify that this does not preclude the MTF from making distinctions within a given category regarding the appropriate technique for determining emissions. However, we believe that it is important that any such distinctions be done consistently to ensure that the same methods are being used for similar sources.

The EPA does not believe that the proposed rule discourages innovation in the development of monitoring techniques. For the "pre-trigger" portion of the program, that is, the time period before a trading program, the program specifically provides for adjustments to the milestones to ensure that changes in monitoring techniques are appropriately considered.

3. Enforcement Penalties

Proposed rule. The proposed rule required that the backstop trading program include specific enforcement penalties to be applied if the emissions from a source exceed the allowances held by the source. In the preamble, EPA noted that the Annex provides for two types of automatic penalties when excess emissions occur:

—The automatic surrender of two future-year allowances for every ton of excess emissions, and
—A financial penalty ($5000 per ton, indexed to inflation from the year 2000) deemed to exceed the expected cost of allowances by a factor of three to four.

In addition, the proposed rule required that in establishing enforcement penalties, the State or Tribes must ensure that:

—When emissions from a source in the program exceed the allowances held by the source, each day of the year is a separate violation, and
—Each ton of excess emissions is a separate violation.

Public comments. The WRAP and a number of industry group commenters objected to the proposed requirements that when emissions from a source in the program exceed the allowances held by the source, each day of the year be considered a separate violation and that each ton of excess emissions be considered a separate violation. First, the WRAP and some industry comments asserted that the maximum penalty is punitive, and cannot be justified for a program that has been established to meet a welfare-based regional goal. Second, commenters believed that because this provision involved greater case-by-case judgments than the penalties in the Annex, the provision could lead to inconsistencies between the various State and tribal agencies.

The WRAP and other commenters recommended that EPA replace the penalty provisions in the proposal with the provisions that were recommended in the Annex, which were, in turn, based upon the acid rain program.

Final rule. The EPA has made a few changes to the final rule based upon public comments received. First, EPA has decided to include in the final rule the two specific types of automatic penalties listed in the Annex for excess emissions. The EPA believes that by including a requirement for these penalty provisions in the final rule, EPA can remove any ambiguity that may exist over whether the types of provisions envisioned by the WRAP would be acceptable to EPA for SIPs submitted under 40 CFR 51.309. The EPA agrees with the commenters that the program should establish sufficient penalties to deter non-compliance. The final rule includes a requirement to forfeit two allowances for each ton of excess emissions, and a requirement for monetary penalties. The EPA uses the WRAP's specific $5000 per ton amount in the final rule. At the same time, EPA believes that because it will be a number of years before the onset of any backstop trading program, it is possible that the appropriate $/ton figure could change over this time period, and that there may be additional factors that may need to be taken into account. The final rule provides for the development of an alternative to this amount, if the value is consistent across States and Tribes and the value substantially exceeds the expected costs of allowances, in order to provide a strong incentive for sources to hold allowances at least equal to their emissions.

The EPA believes that many commenters may have misunderstood the proposed regulatory language requiring that each day of the year be considered a separate violation and that each ton of excess emissions be considered a separate violation. The EPA wishes to clarify that we view these provisions as clarifying the *liabilities* that exist for violations under the CAA, and that these penalties are not automatic. The EPA believes that it is important to recognize that while the penalty structure devised by the WRAP will represent the principle way to deter violations, EPA believes that it is useful to clarify that the additional liabilities exist under the CAA. We believe this is consistent with the acid rain program. For example, under 40 CFR 77.1(b), EPA clarifies that the automatic penalties in the acid rain program do not negate other penalties under the CAA, as follows:

(b) Nothing in this part shall limit or otherwise affect the application of sections 112(r)(9), 113, 114, 120, 303, 304, or 306 of the Act, as amended. Any allowance deduction, excess emission penalty, or interest required under this part shall not affect the liability of the affected unit's and affected source's owners and operators for any additional fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Act.

While EPA agrees with the WRAP that the penalty structure contained in the backstop trading program, which is patterned after the acid rain program, should be effective and should constitute the principal way penalties would be imposed, it is nonetheless useful and important to clarify that sources are potentially liable for other penalties under the CAA.

The EPA also clarifies in the final rule language, as noted on page 46 of the Annex (Annex section II.D.6.f.), that in addition to excess emissions, violations are possible with respect to other program requirements (such as monitoring and reporting requirements). We agree with the WRAP that CAA civil and criminal penalties would apply to such violations, including liability for each day as an individual violation.

4. Requirements for Periodic Evaluation

Proposed rule. The proposed rule required the backstop trading program to include a provision for periodic evaluations of the program. Such periodic evaluations are required as a means of determining whether the program, in its actual implementation, would need any mid-course corrections. The proposal included a list of nine questions that the program evaluations should address. These proposed questions, which were derived from EPA's guidance for EIP, section 5.3(b), were as follows:

(A) Whether the total actual emissions could exceed the milestones, even though sources comply with their allowances;

(B) Whether the program achieved the overall emission milestone it was intended to reach, and a discussion of the actions that have been necessary to reach the milestone:

(C) The effectiveness of the compliance, enforcement and penalty provisions;

(D) The administrative costs of the program to sources and to State and tribal regulators, including a discussion of whether States and Tribes have enough resources to implement the trading program;

(E) Whether the market trading program has likely led to decreased costs for reaching the milestone relative to a non-market based approach, including a discussion of the market price of allowances relative to control costs that might have otherwise been incurred;

(F) Whether the trading program resulted in any unexpected beneficial effects, or any unintended detrimental effects;

(G) Whether the actions taken to reduce SO_2 have led to any unintended increases in other pollutants;

(H) Whether there are any changes needed in emissions monitoring and reporting protocols, or in the administrative procedures for program administration and tracking;

(I) The effectiveness of the provisions for interstate trading, and whether there are any procedural changes needed to make the interstate nature of the program more effective.

Public comments. The only comments on the periodic evaluation provision were from the WRAP. The WRAP, while supporting items (A), (C), (H) and (I) without changes, recommended changes to items (B) and (D) and recommended deletion of items (E), (F) and (G).

The WRAP's comments recommended deleting the phrase "and a discussion of the actions that have been necessary to reach the milestones" from the end of item (B). The WRAP noted that the backstop trading program is intended to provide incentives for long-term business planning. The program also allows other concerns, such as the need to meet the $PM_{2.5}$ NAAQS, to bring about some of the emissions reductions needed to meet the regional haze goals. The WRAP stated that it could be difficult to determine what actions were required to achieve all of the emissions reductions in the region, because most of the reductions would follow from individual business decisions. Accordingly, in its comments, the WRAP recommended that this provision not be mandated by the rule.

The WRAP comments recommended deletion of the phrase "the administrative costs of the program to sources and to State and tribal regulators" from item (D), such that this item would be modified to read "a discussion of whether States and Tribes have enough resources to implement the trading program." The WRAP stated that States and Tribes will be monitoring the costs of the program as part of their on-going internal program review, but that this should not be mandated by EPA. Rather, the WRAP recommended that the rule should be focused on what is needed to meet the visibility improvement goals, and that the development of the most cost-effective

strategies to meet those goals should be left to the States and Tribes.

The WRAP's comments recommended deletion of item (E) from the rule. The WRAP indicated that while States and Tribes may choose to perform an analysis of the cost effectiveness of the program, this should not be mandated by EPA. The WRAP also recommended deletion of items (F) and (G) from the rule. In its comments, the WRAP explained its view that it could be very difficult to determine what changes in emissions in the region are due to the milestones because so many different factors will come into play in a backstop trading program. Moreover, the WRAP comments noted that the regional haze rule already includes provisions for a 5-year SIP review of the entire program under 40 CFR 51.309, and that new SIPS will be developed every 10 years. The WRAP stated that it believes that existing requirements in the rule are adequate to ensure that there are not any unintended consequences due to implementation of the backstop trading program, and that the additional audit requirements in (F) and (G) could prove to be difficult and expensive to analyze.

Final rule. The final rule incorporates the WRAP's recommended changes to items (B) and (D), and accepts the WRAP's recommendation to delete item (E). The EPA has, however, retained items (F) and (G). The EPA believes that it is important that a program evaluation of the trading program determine whether the trading program resulted in any unexpected beneficial effects, or any unintended detrimental effects and whether the actions taken to reduce SO_2 have led to any unintended increases in other pollutants. While the WRAP correctly notes that there are SIP reviews every 5 years, and new SIPS every 10 years, EPA believes that the program evaluations should be designed to provide information that indicate whether these SIP reviews should contain any mid-course corrections. The EPA does not believe that it will require a burdensome or exhaustive analysis to determine whether, qualitatively, such effects have occurred. If it is known that these detrimental effects have occurred, EPA believes that WRAP States should take this into account in the SIP revisions.

E. Provisions Related to Time Period After 2018

Proposed rule. In the proposal, EPA noted that the Annex did not attempt to address the fate of this program beyond calendar year 2018. In the proposal, EPA believed that it is reasonable for WRAP States and Tribes to defer until a later date any judgment on the specific levels of SO_2 that can be achieved. Finally, in the proposal, EPA noted its belief that any actions that occur after 2018 should not be allowed to increase SO_2 emissions beyond the 2018 milestone. Accordingly, EPA proposed to indicate in the language in Table 1 of the proposed rule that any milestone developed for years after 2018 must not allow increases over and above those for the year 2018.

Public comments. One commenter, supported by two other commenters, believed that, because the WRAP Annex covers the period from 2003 to 2018, EPA's approval of the Annex should not be dependent on what occurs after 2018. The EPA interprets this comment as requesting that the final rule be silent on the time period after 2018. The WRAP's comments recommended that the language in Table 1 of the proposed rule be modified to read "no more than 510,000 tons (480,000 tons if suspended smelters do not resume operation) unless the milestones are replaced with a different program that meets any BART and 'reasonable progress' requirements established in this rule."

Final rule. The EPA has incorporated language similar to that requested by the WRAP into Table 1. This ensures that the progress made by participating States and Tribes in addressing the visibility impairment will not be eroded in the event that the SIP revisions due in 2018 are not in place at the beginning of 2019. At the same time, this provision clearly indicates that this SIP revision is the expected means of addressing visibility after that date.

F. Provisions Related to Indian Tribes

Proposed Rule. Western Indian Tribes have been directly involved during the development of the GCVTC report and the subsequent development of the WRAP Annex report. Through this involvement, they have been able to ensure that unique issues of importance to Tribes have been carefully considered by all stakeholders. The Annex addresses issues of tribal interest, including a specific provision of the program for Tribes in the market trading program. The EPA believes that tribal participation is important for the success of the visibility protection program in the Western United States and reflected this in the proposed rule.

When developing the backstop trading program, the WRAP established a 20,000 ton allowance amount (called the "set-aside") to be allocated to Tribes. In the event that the backstop market trading program is triggered, the set-aside would be available to Tribes to either (1) allow for new source growth over and above the amounts allocated for new sources by the Annex; (2) sell for revenue; or (3) retire. Note that this set-aside amount is in addition to any allocations to individual sources within Indian Country. For example, if the Navajo Nation participates in the program, there would be an allocation for the Four Corners Power Plant and for the Navajo Power Plant, which are located on the Navajo Reservation. The WRAP's backstop trading program includes within the overall milestones an amount for each such existing source in addition to the tribal set-aside. For more discussion of this issue, see 67 FR 30438, May 6, 2002.

In the proposal, EPA included the 20,000 ton tribal set-aside as a requirement of the backstop trading program. In addition, EPA discussed in the preamble its views of EPA's role with respect to allocation of the 20,000 ton set-aside. In this discussion, EPA stated its view that allocation of the 20,000 ton amount was not a critical short-term need, because the backstop trading program would be triggered, at the earliest, in the year 2009. The EPA indicated its expectation that Tribes will develop the method for allocating the 20,000 tons, but that EPA will seek to provide assistance as necessary to facilitate the process.

In the proposed rule, EPA reiterated its position that it will "pursue the principle of tribal 'self government' and will work with tribal governments on a 'government-to-government' basis." The CAA Amendments of 1990 added section 301(d) which authorizes EPA to "treat Tribes as States" for the purposes of administering CAA programs. The EPA promulgated regulations implementing section 301(d) in the Tribal Authority Rule, which elaborates on EPA's tribal policies, on February 12, 1998, (63 FR 7254). For a more detailed discussion of EPA's tribal policies, see the Tribal Authority Rule (63 FR 7254) and the proposed rule (67 FR 30418).

Public Comments. The EPA received several comments relating to tribal issues, including the set-aside for Tribes in the market trading program and the need for providing assistance (such as developing a model TIP) to Indian Tribes.

The WRAP's comments agreed with the proposed language in § 51.309(h)(4)(i) regarding the set-aside and added that the final rule should say that tribal participation in the market trading program would not be affected by States that do not choose to participate in the market trading program. The WRAP comments included an example: "if California opts out of the backstop trading program, all Tribes that are located in California may

still participate in the distribution of the tribal set-aside." The WRAP also suggested that EPA make assistance in developing a TIP a high priority, and that EPA should develop a model implementation plan which could be appropriately modified and used by any Tribe choosing to participate in the market trading program.

One commenter representing industrial sources located in Indian country expressed the concern that participation by Tribes with large stationary sources was important for the program to reach "critical mass." Additionally, this commenter believed that EPA should work to serve the interests of sources located in Indian country by assisting the Tribes in developing a program under 40 CFR 51.309.

The WRAP's comments agreed with EPA's assessment that allocation of the 20,000 ton tribal set-aside does not need to be completed in the near-term, and strongly agreed that the distribution of the set-aside should be determined by the Tribes and not EPA or the WRAP. However, the WRAP recommended that the final rule contain a provision that will require the determination of a method to allocate or manage the set-aside by no later than 1 year after the market trading program is triggered.

Final Rule. The EPA agrees with commenters regarding participation of Indian Tribes in the regional SO_2 emissions reductions program. The EPA agrees that Tribes should be allowed to participate in the program and their participation is not dependent on the participation of the States that surround them. As stated in the Tribal Authority Rule (63 FR 7271)

> [t]ribes * * * shall be treated in the same manner as states with respect to all provisions of the Clean Air Act and implementing regulations, except for those provisions identified in section 49.4 and the regulations that implement those provisions. (63 FR 7271).

Because the CAA provisions for the regional haze rule are not listed in section 49.4, Tribes should have the opportunity to be treated in the same manner as States for purposes of implementing 40 CFR 51.309. Accordingly, eligible Tribes may submit a plan regardless of the participation of neighboring States.

The EPA concurs with the comments regarding the importance of assisting Tribes in developing TIPs. As stated in the proposal, "For Tribes which choose to implement 40 CFR 51.309, EPA believes there are a number of ways that EPA can provide assistance." The EPA will help those Tribes with major SO_2 sources to comply with the pre-trigger emissions tracking requirements, and to assist Tribes interested in participating in the backstop trading program. To this end, EPA has met, or plans to meet, with all Tribes that have major SO_2 sources. In these meetings, EPA is explaining the regional haze rules and options for participating in the SO_2 reduction program.

The EPA agrees with the WRAP's comments that a model TIP could serve to facilitate implementation of the program in Indian country. The EPA will work with Tribes to further assess the needs for such a model TIP. The EPA also agrees with the WRAP's recommendation to establish a 1-year deadline for allocation of the 20,000 ton set-aside, and we have added this language to the final rule.

EPA is committed to protecting tribal air resources, building tribal air program capacity, and working with Tribes on a government-to-government basis.

IV. Statutory and Executive Order Reviews

In preparing any final rule, EPA must meet the administrative requirements contained in a number of statutes and executive orders. In this section of the preamble, we discuss how the final rule addresses these administrative requirements. Except where EPA committed in the proposal to further efforts, these discussions reflect EPA's assessments for the proposed rule. No public comments were received regarding EPA's proposed treatment of these administrative requirements.

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

Today's final rulemaking amends the regional haze rule by incorporating a specific set of SO_2 emission targets for regionwide stationary sources of SO_2 emissions for a nine-State region in the Western United States. The emission targets would affect and have potential economic impacts only for States choosing to participate in the optional program provided by 40 CFR 51.309 of the regional haze rule. The emissions reductions resulting from the program vary over the 2003 to 2018 time period. If all nine States participate in the program, the WRAP estimates that for the year 2018, SO_2 emissions would be reduced from a projected baseline of 612,000—642,200 tons to an enforceable milestone of 480,000—510,000 tons. If the milestones are not achieved through voluntary emissions reductions by the affected sources, then they will be achieved through an enforceable backstop market trading program.

In order to understand the possible regulatory impacts of this rule, it is necessary to review the previous analysis that EPA completed for the entire regional haze program. In 1999, EPA prepared a Regulatory Impact Analysis (RIA) for the regional haze rule (see regional haze rule docket (A–95–38)). In that RIA, EPA assessed the costs, economic impacts, and benefits for four illustrative progress goals, two sets of control strategies, two sets of assumptions for estimating benefits, and systems of nationally uniform progress goals versus regional varying progress goals (64 FR 35760, July 1, 1999). Because we had no way of predicting the visibility goals each State would pick under the regional haze rule requirements, we conducted an extensive analysis of eight "what if" scenarios. For each scenario, the RIA determined the control measures needed to achieve the given degree of visibility improvement and the associated costs. The RIA also presented results for six specific sub-regions, such as "Rocky Mountain," "West," and others. These emission reduction scenarios are provided in the RIA in Tables 6–7 and 6–8.

The EPA believes that some of the emissions reductions from the Annex provisions for stationary source SO_2, assuming States choose this optional 40

CFR 51.309 approach, may result from environmental obligations under the CAA. To the extent this is the case, the emissions reductions required the WRAP's SO_2 milestones and backstop trading program may have already been addressed in other regulatory impact analyses for those programs.

The remainder of the emissions reductions resulting from the WRAP's program for stationary source SO_2 would be over and above those required to meet other environmental obligations. Where this is the case, we believe that the control costs and other potential economic consequences of achieving the reductions are reflected in the RIA for the 1999 regional haze rule. The range of results for the eight scenarios analyzed in the RIA resulted in predicted SO_2 emissions reductions that are within the range of emissions reductions included in the Annex. Two of the eight scenarios resulted in 284,000 tons of stationary source reductions in regions containing one or more of the WRAP Annex States. Five other scenarios include SO_2 emissions reductions ranging from 95,000 to 128,000 tons per year. Hence, the costs and benefits associated with the WRAP's program are captured in the RIA for the 1999 final regional haze rule.

The EPA received no public comments regarding Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in today's rule have been submitted to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1813.05) and a copy may be obtained from Susan Auby, by mail at Office of Environmental Information—Information Strategies Branch, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

The EPA has prepared burden estimates for the specific burden impacts of today's rule. These burden estimates are calculated using the assumption that seven eligible States and four tribes would participate in the program. The results of the calculations indicate 16,100 hours to 19,990 hours for affected sources, 14,010 to 14,430 hours for States, 2,520 to 2,600 hours for Tribes, 1,305 to 1,375 hours for the Federal government, and 240 hours for regional planning organizations.

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 use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA sought comments on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden. The EPA received no comments regarding the burden or the Paperwork Reduction Act as it applies to today's rulemaking.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 rulemaking on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (as discussed on the SBA Web site at *http://www.sba.gov/size/indextableofsize.html);* (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the potential for economic impacts of today's rule on small entities, I certify that today's rule will not have a significant economic impact on a substantial number of small entities. Today's rule amends the requirements of the regional haze program to provide nine Western States and a number of Tribes with an optional method for complying with the requirements of the CAA. No State or Tribe is required to submit an implementation plan meeting its requirements. For States or Tribes that choose to submit an implementation plan under this optional program, however, today's rule requires those States and/or Tribes to meet a series of regional SO_2 emission milestones. The EPA will determine whether these milestones are met based on the actual emissions from stationary sources with SO_2 emissions of more than 100 tons per year. From data EPA obtained from the WRAP's Web site, it appears that there are 194 establishments meeting the 100 tons per year of SO_2 criterion for this program, including 39 utility power plants, and 155 non-utility sources.[9] The vast majority of these establishments—which include sources such as power plant boilers, copper smelters, chemical plants, petroleum refineries, natural gas production plants, large manufacturing operations, mills—are not small entities. The EPA estimates that 12 facilities are likely to be owned by small entities, and 164 are owned by entities that are not small. The EPA has been unable to determine the size of 16 entities that own 18 of the establishments.[10] Even if all 18 were determined to be owned by small entities, and all nine States and those Tribes with covered sources adopted the optional approach to complying with the visibility requirements of the CAA, less than 30 small entities would be potentially affected by this rule.

The goal of the WRAP is for the regional SO_2 milestones established by the rule to be met through voluntary measures and EPA believes that

[9] The number of power plants was obtained from "Data Worksheets from ICF Consulting Detailing Utility Emissions Projections," Item 3 in supplemental information transmitted to Tim Smith, EPA, from Patrick Cummins, WRAP. June 29, 2001. The non-utility estimate was obtained from: *Technical Support Documentotion. Voluntory Emissions Reduction Program for Major Industriol Sources of Sulfur Dioxide in Nine Western Stotes ond o Bockstop Morket Troding Progrom.* Section 2.A. Revised Appendix A for the Pechan Report, table A–1.

[10] The EPA provides documentation of these estimates in a technical memorandum, "Size of Potentially Affected Entities Should the Western Regional Air Partnership States Choose to Adopt Regulations in Accordance with the Draft Proposed Rule Revising § 51.309(h)." Allen Basala, EPA, October 17, 2001. This memorandum is included in the docket for today's final rule.

participating States and Tribes may be able to meet the milestones through such measures. However, as a backstop in the event the milestones are not met in this manner, today's rule requires the implementation of a market trading program to ensure that emissions in the relevant region do not exceed the milestones. Today's rule gives the States and Tribes the discretion to allocate emissions credits to sources, as the States and Tribes determine appropriate. Ultimately, the impact on small entities will not be determined by this rule, but rather by how the relevant State or Tribe exercises its discretion in adopting the optional program and allocating emissions credits. We encourage States and Tribes to consider the impact of its market trading program on small entities. Nonetheless, EPA believes that no more than 28 small entities will be affected by this rule, and most likely less, given that EPA does not anticipate that all nine States with the option to participate in this program will do so. We did not receive any public comments regarding the RFA or the Small Business Regulatory Enforcement Fairness Act of 1996. The EPA continues to believe that today's rulemaking will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, 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.

By incorporating into the regional haze rule the provisions of the Annex for a voluntary emissions reductions program and backstop trading program, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The entire program under 40 CFR 51.309, including today's amendments, is an option that each of the States may choose to exercise. The program is not required and thus is clearly not a "mandate." Thus, EPA is not obligated to develop a small government agency plan, as required under section 203 of UMRA.

The EPA also believes that because today's rule provides those States potentially subject to the rule with substantial flexibility, today's rule meets the UMRA requirement in section 205 to select the least costly and burdensome alternative in light of the statutory mandate for SIPs for visibility protection that address BART. Today's rule provides States and sources with the flexibility to achieve regional SO_2 reductions in a way that is both cost and administratively effective. Sources are given the opportunity to achieve voluntary reductions. If such reductions do not occur, then the rule provides for the establishment of a trading program to achieve targeted emissions reductions. If a trading program is implemented, sources have the flexibility to buy and sell allowances in order to reach emissions reductions milestones in the most cost-effective way. Today's rule, therefore, inherently provides for adoption of the least costly, most-cost effective, and least-burdensome alternative that achieves the objective of this rule.

The EPA believes that this rulemaking is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule, (64 FR 35761, July 1. 1999). However, today's rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for States, local, or tribal governments or the private sector. The program contained in 40 CFR 51.309, including today's rule, is an optional program.

E. Executive Order 13132: Federalism

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

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing a regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the regulation.

Today's 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. As an optional program, today's rule will not directly impose significant new requirements on State and local governments. In addition, even if today's rule did have federalism implications, it will not impose substantial direct compliance costs on State or local governments, nor will it preempt State law.

Consistent with EPA policy, we nonetheless consulted with State and local officials early in the process of developing this regulation, to provide them with an opportunity for meaningful and timely input into its development. These consultations included a working meeting with State and local officials and numerous discussions with committees and forums of the WRAP. In the spirit of Executive Order 13132 and consistent with EPA policy to promote

communications between EPA and State and local governments, EPA specifically solicited comment on today's rule from State and local officials. We received no comments regarding this executive order from State and local officials or any other public commenters.

As required by section 8(a) of Executive Order 13132, EPA included a certification from its Federalism Official stating that EPA had met the Executive Order's requirements in a meaningful and timely manner, when it sent the draft of this final rule to OMB for review pursuant to Executive Order 12866. A copy of this certification has been included in the public version of the official record for this final rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to, among other things, 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 Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults tribal officials early in the process of developing today's regulation. Under section 5(c) of the Executive Order, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless EPA consults with tribal officials early in the process of developing today's regulation.

Today's rule may have tribal implications, but we believe that it will neither impose substantial direct compliance costs on the Tribes nor preempt tribal law. The EPA sought input from potentially affected Tribes before reaching a conclusion on whether this rule will have tribal implications. This was due, in a large part, to the voluntary nature of this program and the uncertainty of potential impacts on Tribes in the event a State or Tribe chooses to participate in the program. Possible impacts on Tribes choosing to opt into this program are discussed above in unit III of this preamble.

The EPA notes that the WRAP consulted extensively with tribal representatives in the development of the Annex, the document which provided the basis for today's rulemaking. The Annex provides recognition of Tribes throughout the document and there is a specific discussion of tribal issues in Attachment F of the Annex. Today's rulemaking closely mirrors the recommendations of the WRAP and therefore reflects discussions between the WRAP and Western Tribes.

In keeping with EPA policies regarding Tribes and Executive Order 13175, prior to the issuance of the final rule, EPA provided additional opportunities for consultation with tribal officials or authorized representatives of tribal governments on the potential impacts of today's rule on Tribes. After consulting with a tribal representative, EPA provided Tribes with several opportunities to provide comments on today's rulemaking. During the public comment period, EPA met with tribal environmental staff at tribal environmental forums in Portland, Oregon and Sparks, Nevada. Also, during the public comment period, EPA sent letters to all Western Tribes describing the regional haze rules and, in particular, today's rule, alerting them to the public comment period and seeking their opinions on the rulemaking. Finally, EPA staff met with Tribes in the Western United States, that have sources located on their tribal lands, with sources potentially subject to BART requirements. Although EPA did receive public comments on Tribal issues, we did not receive any public comments specific to this executive order.

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

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under 5–501 of the Order has the potential to influence the regulation. Today's rule to codify the SO_2 emission reduction program is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risk. There were no public comments received pertaining to this executive order.

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

Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." Under Executive Order 13211, a Statement of Energy Effects is a detailed statement by the agency responsible for the significant energy action relating to: (i) Any adverse effects on energy supply, distribution, or use including a shortfall in supply, price increases, and increased use of foreign supplies should the proposal or rule be implemented, and (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

While this rulemaking is a "significant regulatory action" under Executive Order 12866, EPA has determined that this rulemaking is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In today's rule, if States chose to implement the option provided by 40

CFR 51.309, this would lead to a regional reduction in SO_2 emissions in order to meet the WRAP's SO_2 milestones for the 2003–2018 time period. The WRAP's analysis of the program's requirements results in the following projections: [11]

- No reduction in crude oil supply;
- No reduction in fuel production;
- 0.0 percent to 0.2 percent increase in wholesale electricity prices in 2018;
- Production cuts in coal in the Western States balanced by increases in coal production in the Appalachian region;
- No increase in energy distribution costs;
- No significantly increased dependence on foreign supplies of energy;
- Adverse impacts on employment, gross regional product, and real disposable incomes in the affected Western States of less than 0.05 percent in 2018;
- Room for new sources of electrical generating capacity within the target SO_2 emission levels.

Given the particular concern in the West regarding needed electrical generating capacity, EPA believes it important to note the WGA statement that "the conclusion [* * * of their analysis * * *] is that sulfur dioxide emissions reductions milestones should in no way impede the construction of new coal-fired power plants in the West [12] * * *"

Furthermore, an assessment by WGA of the effects of the WRAP Annex indicates that it is possible to build 7000 megawatts or more of new coal-fired generation at any time between 2001 and 2018 without exceeding the SO_2 emission milestones in the Annex.[13] However, the amount of megawatts that could be built is affected by analytical assumptions regarding fuel mix and quality, capacity utilization, control levels, and the demarcation of fuel use regions. Additional scenarios included in the WGA analysis show that there could be room for 19,000 megawatts of generation capacity.

The EPA believes that the program contained in the Annex and in today's rule will not result in energy reduction of 500 or more megawatts installed production capacity. Under this program, considerable flexibility is afforded to electricity generators on how to comply with the program. Even if the trading program is triggered and sources must comply with allowances, we believe that the least-cost solutions afforded by the trading program, and the ability to secure emissions reductions from other sources, will make it very unlikely that the program would lead to plant shutdowns. The EPA did not receive any public comments specifically addressing this executive order or EPA's findings.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

However, today's rule does not incorporate any requirements to use any particular technical standards, such as specific measurement or monitoring techniques. Therefore, EPA is not considering the use of any voluntary consensus standards in this rulemaking. Today's rule does require States to develop emissions quantification protocols and monitoring procedures for their SIPs as part of the market trading program. However, EPA generally defers to the choices the States make in their SIPs when the CAA does not prescribe requirements, so EPA is not requiring the use of specific, prescribed techniques, or methods in those SIPs. Nevertheless, while EPA believes that it is not necessary to consider the use of any voluntary consensus standards for this proposal, we will encourage States and Tribes to consider the use of such standards in the development of these protocols. The EPA did not receive any public comments concerning this executive order.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that today's rule should not raise any environmental justice issues. The overall result of the program is regional reductions in SO_2. Because this program would likely reduce regional and local SO_2 levels in the air and because there are separate programs under the CAA to ensure that SO_2 levels do not exceed national ambient air quality standards, it appears unlikely that this program would permit any adverse affects on local populations. The EPA did not receive any public comments regarding this executive order.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on August 4, 2003.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen oxides, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: May 21, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

[11] ICF consulting, Final Report on Regional Economic Impacts of Annex. Transmitted to Tim Smith, EPA/OAQPS by Patrick Cummins, WRAP Co-Project Manager, June 29, 2001.

[12] Memorandum from Jim Souby to Staff Council, State Environmental Directors and State Air Directors, "Energy and Air Quality Issues." February 23, 2001.

[13] Technical Memorandum, "Analysis of New Coal-Fired Power Plants Under the Proposed Sulfur Dioxide Emission Reduction Milestones for the Nine-State Grand Canyon Visibility Transport Region." February 22, 2001.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Subpart P—Protection of Visibility

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410–7671q.

■ 2. Section 51.309 is amended by:
■ a. Revising paragraph (b)(5).
■ b. Adding paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (b)(12) and (b)(13).
■ c. Revising paragraph (c).
■ d. Revising paragraphs (d)(4)(i)through(d)(4)(iv).
■ e. Revising paragraph (f)(1)(i) and (f)(3).
■ f. Adding paragraph (h).

The revisions and additions read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b) * * *

(5) Milestone means the maximum level of annual regional sulfur dioxide emissions for a given year, assessed annually consistent with paragraph (h)(2) of this section beginning in the year 2003.

* * * * *

(8) Base year means the year, generally a year between 1996 and 1998, for which data for a source included within the program were used by the WRAP to calculate base year emissions as a starting point for development of the Annex required by paragraph (f) of this section.

(9) Forecast means the process used by the WRAP to predict future emissions for purposes of developing the milestones required by paragraph (f) of this section.

(10) Reforecast means a corrected forecast, based upon reapplication of the forecasting process after correction of base year emissions estimates.

(11) BHP San Manuel means:

(i) the copper smelter located in San Manuel, Arizona which operated during 1990, but whose operations were suspended during the year 2000,

(ii) The same smelter in the event of a change of name or ownership.

(12) Phelps Dodge Hidalgo means:

(i) The copper smelter located in Hidalgo, New Mexico which operated during 1990, but whose operations were suspended during the year 2000,

(ii) the same smelter in the event of a change of name or ownership.

(13) Eligible renewable energy resource, for purposes of 40 CFR 51.309, means electricity generated by non-nuclear and non-fossil low or no air emission technologies.

(c) *Implementation Plan Schedule.* Each Transport Region State may meet the requirements of § 51.308(b) through (e) by submitting an implementation plan that complies with the requirements of this section. Each Transport Region State must submit an implementation plan addressing regional haze visibility impairment in the 16 Class I areas no later than December 31, 2003. Indian Tribes may submit implementation plans after the December 31, 2003 deadline. A Transport Region State that does not submit an implementation plan that complies with the requirements of this section (or whose plan does not comply with all of the requirements of this section) is subject to the requirements of § 51.308 in the same manner and to the same extent as any State not included within the Transport Region.

* * * * *

(d) * * *

(4) * * *

(i) Sulfur dioxide milestones consistent with paragraph (h)(1) of this section.

(ii) Monitoring and reporting of sulfur dioxide emissions. The plan submission must include provisions requiring the annual monitoring and reporting of actual stationary source sulfur dioxide emissions within the State. The monitoring and reporting data must be sufficient to determine whether a 13 percent reduction in actual emissions has occurred between the years 1990 and 2000, and for determining annually whether the milestone for each year between 2003 and 2018 is exceeded, consistent with paragraph (h) (2) of this section. The plan submission must provide for reporting of these data by the State to the Administrator and to the regional planning organization consistent with paragraph (h)(2) of this section.

(iii) Criteria and Procedures for a Market Trading Program. The plan must include the criteria and procedures for activating a market trading program consistent with paragraphs (h)(3) and (h)(4) of this section. The plan must also provide for implementation plan assessments of the program in the years 2008, 2013, and 2018.

(iv) Provisions for market trading program compliance reporting consistent with paragraph (h)(4) of this section.

* * * * *

(f) * * *

(1) * * *

(i) The annex must contain quantitative emissions milestones for stationary source sulfur dioxide emissions for the reporting years 2003, 2008, 2013 and 2018. The milestones must provide for steady and continuing emissions reductions for the 2003–2018 time period consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments of progress and identification of deficiencies which will be due in the years 2008, 2013, and 2018. The milestones must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to § 51.308(e)(2) and would be approvable in lieu of BART.

(2) * * *

(3) The EPA will publish the annex upon receipt. If EPA finds that the annex meets the requirements of paragraph (f)(1) of this section and assures reasonable progress, then, after public notice and comment, EPA will amend the requirements of this section to incorporate the provisions of the annex. If EPA finds that the annex does not meet the requirements of paragraph (f)(1) of this section, or does not assure reasonable progress, or if EPA finds that the annex is not received, then each Transport Region State must submit an implementation plan for regional haze meeting all of the requirements of § 51.308.

* * * * *

(h) *Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide.* The first implementation plan submission must include a stationary source emissions reductions program for major industrial sources of sulfur dioxide that meets the following requirements:

(1) *Regional sulfur dioxide milestones.* The plan must include the milestones in Table 1, and provide for the adjustments in paragraphs (h)(1)(i) through (iv) of this section. Table 1 follows:

TABLE 1.—SULFUR DIOXIDE EMISSIONS MILESTONES

Column 1	Column 2	Column 3	Column 4
For the year . . .	. . . if BHP San Manuel and Phelps Dodge Hidalgo resume operation, the maximum regional sulfur dioxide milestone is . . .	. . . if neither BHP San Manuel nor Phelps Dodge Hidalgo resumes operation, the minimum regional sulfur dioxide milestone is . . .	. . . and the emission inventories for these years will determine whether emissions are greater than or less than the milestone:
2003	720,000 tons	682,000 tons	2003.
2004	720,000 tons	682,000 tons	Average of 2003 and 2004.
2005	720,000 tons	682,000 tons	Average of 2003, 2004 and 2005.
2006	720,000 tons	682,000 tons	Average of 2004, 2005 and 2006.
2007	720,000 tons	682,000 tons	Average of 2005, 2006 and 2007.
2008	718,333 tons	680,333 tons	Average of 2006, 2007 and 2008.
2009	716,667 tons	678,667 tons	Average of 2007, 2008 and 2009.
2010	715,000 tons	677,000 tons	Average of 2008, 2009 and 2010.
2011	715,000 tons	677,000 tons	Average of 2009, 2010 and 2011.
2012	715,000 tons	677,000 tons	Average of 2010, 2011 and 2012.
2013	695,000 tons	659,667 tons	Average of 2011, 2012 and 2013.
2014	675,000 tons	642,333 tons	Average of 2012, 2013 and 2014.
2015	655,000 tons	625,000 tons	Average of 2013, 2014 and 2015.
2016	655,000 tons	625,000 tons	Average of 2014, 2015 and 2016.
2017	655,000 tons	625,000 tons	Average of 2015, 2016 and 2017.
2018	510,000 tons	480,000 tons	Year 2018 only.
Each year after 2018	no more than 510,000 tons unless the milestones are replaced with a different program that meets any BART and reasonable progress requirements established in § 51.309.	no more than 480,000 tons unless the milestones are replaced with a different program that meets any BART and reasonable progress requirements established in § 51.309.	3-year average of the year and the two previous years, or any alternative provided in any future plan revisions under § 51.308(f).

(i) Adjustment for States and Tribes Which Choose Not to Participate in the Program, and for Tribes that opt into the program after the 2003 deadline. If a State or Tribe chooses not to submit an implementation plan under the option provided in § 51.309, or if EPA has not approved a State or Tribe's implementation plan by the date of the draft determination required by § 51.309(h)(3)(ii), the amounts for that State or Tribe which are listed in Table 2 must be subtracted from the milestones that are included in the implementation plans for the remaining States and Tribes. For Tribes that opt into the program after 2003, the amounts in Table 2 or 4 will be automatically added to the milestones that are included in the implementation plans for the participating States and Tribes, beginning with the first year after the tribal implementation plan implementing § 51.309 is approved by the Administrator. The amounts listed in Table 2 are for purposes of adjusting the milestones only, and they do not represent amounts that must be allocated under any future trading program. Table 2 follows:

TABLE 2.—AMOUNTS SUBTRACTED FROM THE MILESTONES FOR STATES AND TRIBES WHICH DO NOT EXERCISE THE OPTION PROVIDED BY § 51.309

State or tribe	2003	2004	2005	2006	2007	2008	2009	2010
1. Arizona	117,372	117,372	117,372	117,372	117,372	117,941	118,511	119,080
2. California	37,343	37,343	37,343	37,784	37,343	36,363	35,382	34,402
3. Colorado	98,897	98,897	98,897	98,897	98,897	98,443	97,991	97,537
4. Idaho	18,016	18,016	18,016	18,016	18,016	17,482	16,948	16,414
5. Nevada	20,187	20,187	20,187	20,187	20,187	20,282	20,379	20,474
6. New Mexico	84,624	84,624	84,624	84,624	84,624	84,143	83,663	83,182
7. Oregon	26,268	26,268	26,268	26,268	26,268	26,284	26,300	26,316
8. Utah	42,782	42,782	42,782	42,782	42,782	42,795	42,806	42,819
9. Wyoming	155,858	155,858	155,858	155,858	155,858	155,851	155,843	155,836
10. Navajo Nation	53,147	53,147	53,147	53,147	53,147	53,240	53,334	53,427
11. Shoshone-Bannock Tribe of the Fort Hall Reservation	4,994	4,994	4,994	4,994	4,994	4,994	4,994	4,994
12. Ute Indian Tribe of the Uintahand Ouray Reservation	1,129	1,129	1,129	1,129	1,129	1,131	1,133	1,135
13. Wind River Reservation	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384

State or tribe	2011	2012	2013	2014	2015	2016	2017	2018
1. Arizona	119,080	119,080	116,053	113,025	109,998	109,998	109,998	82,302
2. California	34,402	34,402	33,265	32,128	30,991	30,991	30,991	27,491
3. Colorado	97,537	97,537	94,456	91,375	88,294	88,294	88,294	57,675
4. Idaho	16,414	16,414	15,805	15,197	14,588	14,588	14,588	13,227

State or tribe	2011	2012	2013	2014	2015	2016	2017	2018
5. Nevada	20,474	20,474	20,466	20,457	20,449	20,449	20,449	20,232
6. New Mexico	83,182	83,182	81,682	80,182	78,682	78,682	78,682	70,000
7. Oregon	26,316	26,316	24,796	23,277	21,757	21,757	21,757	8,281
8. Utah	42,819	42,819	41,692	40,563	39,436	39,436	39,436	30,746
9. Wyoming	155,836	155,836	151,232	146,629	142,025	142,025	142,025	97,758
10. Navajo Nation	53,427	53,427	52,707	51,986	51,266	51,266	51,266	44,772
11. Shoshone-Bannock Tribe of the Fort Hall Reservation	4,994	4,994	4,994	4,994	4,994	4,994	4,994	4,994
12. Ute Indian Tribe of the Uintahand Ouray Reservation	1,135	1,135	1,135	1,135	1,135	1,135	1,135	1,135
13. Northern Arapaho and Shoshone Tribes of the Wind River Reservation	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384

(ii) Adjustment for Future Operation of Copper Smelters.

(A) The plan must provide for adjustments to the milestones in the event that Phelps Dodge Hidalgo and/or BHP San Manuel resume operations or that other smelters increase their operations.

(B) The plan must provide for adjustments to the milestones according to Tables 3a and 3b except that if either the Hidalgo or San Manuel smelters resumes operation and is required to obtain a permit under 40 CFR 52.21 or 40 CFR 51.166, the adjustment to the milestone must be based upon the levels allowed by the permit. In no instance may the adjustment to the milestone be greater than 22,000 tons for the Phelps Dodge Hidalgo, greater than 16,000 tons for BHP San Manuel, or more than 30,000 tons for the combination of the Phelps Dodge Hidalgo and BHP San Manuel smelters for the years 2013 through 2018. Tables 3a and 3b follow:

TABLE 3A.—ADJUSTMENTS TO THE MILESTONES FOR FUTURE OPERATIONS OF COPPER SMELTERS

Scenario	If this happens . . .	and this happens . . .	. . . then you calculate the milestone by adding this amount to the value in column 3 of Table 1
1	Phelps Dodge Hidalgo resumes operation, but BHP San Manuel does not.	Phelps Dodge Hidalgo resumes production consistent with past operations and emissions.	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 22,000 tons PLUS (2) Any amounts identified in Table 3b. B. For the years 2013 through 2018, the milestone increases by this amount or by 30,000 tons, whichever is less.
2	Phelps Dodge Hidalgo resumes operation, but BHP San Manuel does not.	Phelps Dodge Hidalgo resumes operation in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) Expected emissions for Phelps Dodge Hidalgo (not to exceed 22,000 tons), PLUS (2) Any amounts identified in Table 3b. B. For the years 2013 through 2018, the milestone increases by this amount or by 30,000 tons, whichever is less.
3	BHP San Manuel Manuel resumes operation, but Phelps Dodge Hidalgo does not.	BHP San Manuel resumes production consistent with past operations and emissions.	A. 16,000 tons PLUS B. Any amounts identified in Table 3b.
4	BHP San Manuel resumes operation, but Phelps Dodge Hidalgo does not.	BHP San Manuel resumes operations in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. Expected emissions for BHP (not to exceed 16,000 tons) PLUS B. Any amounts identified in Table 3b.
5	Both Phelps Dodge Hidalgo and BHP San Manuel resume operations.	Both smelters resume production consistent with past operations and emissions.	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increase by 38,000 tons. B. For the years 2013 through 2018, the milestone increases by 30,000 tons.

TABLE 3A.—ADJUSTMENTS TO THE MILESTONES FOR FUTURE OPERATIONS OF COPPER SMELTERS—Continued

Scenario	If this happens . . .	and this happens . . .	. . . then you calculate the milestone by adding this amount to the value in column 3 of Table 1
6	Both Phelps Dodge Hidalgo and BHP San Manuel resume operations.	Phelps Dodge Hidalgo resumes production consistent with past operations and emissions, but BHP San Manuel resumes operations in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. For the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 22,000 PLUS (2) Expected emissions for San Manuel (not to exceed 16,000 tons). B. For the years 2013 though 2018, the milestone increases by this same amount, or by 30,000 tons, whichever is less.
7	Both Phelps Dodge Hidalgo and BHP San Manuel resumes operations.	BHP San Manuel resume production consistent with the past operations and emissions, but Phelps Dodge Hidalgo resumes operations in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. For the year that production resumes, and for each year up to the year 2012, milestone increases by: (1) 16,000 PLUS (2) Expected Hidalgo emissions (not to exceed 22,000 tons). B. For the years 2013 though 2018, the milestone increases by this same amount, or by 30,000 tons, whichever is less.
8	Both Phelps Dodge Hidalgo and BHP San Manuel do not resume operations.		A. Any amounts identified in Table 3b.

TABLE 3B.—ADJUSTMENTS FOR CERTAIN COPPER SMELTERS WHICH OPERATE ABOVE BASELINE LEVELS

[In tons]

Where it applies in table 3a, if the following smelter . . .	complies with existing permits but has actual annual emissions that exceed the following baseline level . . .	. . . the milestone increases by the difference between actual emissions and the baseline level, or the following amount, whichever is less
Asarco Hayden	23,000	3,000
BHP San Manuel	16,000	1,500
Kennecott Salt Lake	1,000	100
Phelps Dodge Chino	16,000	3,000
Phelps Dodge Hidalgo	22,000	4,000
Phelps Dodge Miami	8,000	2,000

(iii) Adjustments for changes in emission monitoring or calculation methods. The plan must provide for adjustments to the milestones to reflect changes in sulfur dioxide emission monitoring or measurement methods for a source that is included in the program, including changes identified under paragraph (h)(2)(iii)(D) of this section. Any such adjustment based upon changes to emissions monitoring or measurement methods must be made in the form of an implementation plan revision that complies with the procedural requirements of § 51.102 and § 51.103. The implementation plan revision must be submitted to the Administrator no later than the first due date for a periodic report under paragraph (d)(10) of this section following the change in emission monitoring or measurement method.

(iv) Adjustments for changes in flow rate measurement methods for affected sources under 40 CFR 72.1. For the years between 2003 and 2017, the implementation plan must provide for adjustments to the milestones for sources using the methods contained in 40 CFR part 60, appendix A, Methods 2F, 2G, and 2H. For any year for which such an adjustment has not yet been made to the milestone, the implementation plan must provide for an adjustment to the emissions reporting to ensure consistency. The implementation plan must provide for adjustments to the milestones by no later than the date of the periodic plan revision required under § 51.309(d)(10).

(v) Adjustments due to enforcement actions arising from settlements. The implementation plan must provide for adjustments to the milestones, as specified in paragraph (h)(1)(vii) and (viii) of this section, if:

(A) an agreement to settle an action, arising from allegations of a failure of an owner or operator of an emissions unit at a source in the program to comply with applicable regulations which were in effect during the base year, is reached between the parties to the action;

(B) the alleged failure to comply with applicable regulations affects the assumptions that were used in calculating the source's base year and forecasted sulfur dioxide emissions; and

(C) the settlement includes or recommends an adjustment to the milestones.

(vi) Adjustments due to enforcement actions arising from administrative or judicial orders. The implementation plan must also provide for adjustments to the milestones as directed by any final administrative or judicial order, as specified in paragraph (h)(1)(vii) and (viii) of this section. Where the final administrative or judicial order does not include a reforecast of the source's baseline, the State or Tribe shall evaluate whether a reforecast of the source's baseline emissions is appropriate.

(vii) Adjustments for enforcement actions. The plan must provide that, based on paragraph (h)(1)(v) and (vi) of this section, the milestone must be decreased by an appropriate amount based on a reforecast of the source's decreased sulfur dioxide emissions. The adjustments do not become effective until after the source has reduced its sulfur dioxide emissions as required in the settlement agreement, or administrative or judicial order. All adjustments based upon enforcement actions must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(viii) Documentation of adjustments for enforcement actions. In the periodic plan revision required under 51.309(d)(10), the State or Tribe shall include the following documentation of any adjustment due to an enforcement action:

(A) identification of each source under the State or Tribe's jurisdiction which has reduced sulfur dioxide emissions pursuant to a settlement agreement, or an administrative or judicial order;

(B) for each source identified, a statement indicating whether the milestones were adjusted in response to the enforcement action;

(C) discussion of the rationale for the State or Tribe's decision to adjust or not to adjust the milestones; and

(D) if extra SO_2 emissions reductions (over and above those reductions needed for compliance with the applicable regulations) were part of an agreement to settle an action, a statement indicating whether such reductions resulted in any adjustment to the milestones or allowance allocations, and a discussion of the rationale for the State or Tribe's decision on any such adjustment.

(ix) Adjustment based upon program audits. The plan must provide for appropriate adjustments to the milestones based upon the results of program audits. Any such adjustment based upon audits must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103. The implementation plan revision must be submitted to the Administrator no later than the first due date after the audit for a periodic report under paragraph (d)(10) of this section.

(x) Adjustment for individual sources opting into the program. The plan may provide for adjustments to the milestones for any source choosing to participate in the program even though the source does not meet the 100 tons per year criterion for inclusion. Any such adjustments must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(2) *Requirements for monitoring, recordkeeping and reporting of actual annual emissions of sulfur dioxide.*

(i) *Sources included in the program.* The implementation plan must provide for annual emission monitoring and reporting, beginning with calendar year 2003, for all sources with actual emissions of sulfur dioxide of 100 tons per year or more as of 2003, and all sources with actual emissions of 100 tons or more per year in any subsequent year. States and Tribes may include other sources in the program, if the implementation plan provides for the same procedures and monitoring as for other sources in a way that is federally enforceable.

(ii) *Documentation of emissions calculation methods.* The implementation plan must provide documentation of the specific methodology used to calculate emissions for each emitting unit included in the program during the base year. The implementation plan must also provide for documentation of any change to the specific methodology used to calculate emissions at any emitting unit for any year after the base year.

(iii) *Recordkeeping.* The implementation plan must provide for the retention of records for at least 10 years from the establishment of the record. If a record will be the basis for an adjustment to the milestone as provided for in paragraph (h)(1) of this section, that record must be retained for at least 10 years from the establishment of the record, or 5 years after the date of the implementation plan revision which reflects the adjustment, whichever is longer.

(iv) *Completion and submission of emissions reports.* The implementation plan must provide for the annual collection of emissions data for sources included within the program, quality assurance of the data, public review of the data, and submission of emissions reports to the Administrator and to each State and Tribe which has submitted an implementation plan under this section. The implementation plan must provide for submission of the emission reports by no later than September 30 of each year, beginning with reports due September 30, 2004 for emissions from calendar year 2003. For sources for which changes in emission quantification methods require adjustments under paragraph (h)(1)(iii) of this section, the emissions reports must reflect the method in place before the change, for each year until the milestone has been adjusted. If each of the States which have submitted an implementation plan under this section have identified a regional planning organization to coordinate the annual comparison of regional SO_2 emissions against the appropriate milestone, the implementation plan must provide for reporting of this information to the regional planning body.

(v) *Exceptions reports.* The emissions report submitted by each State and Tribe under paragraph (h)(2)(ii) of this section must provide for exceptions reports containing the following:

(A) identification of any new or additional sulfur dioxide sources greater than 100 tons per year that were not contained in the previous year emissions report;

(B) identification of sources shut down or removed from the previous year emissions report;

(C) explanation for emissions variations at any covered source that exceed plus or minus 20 percent from the previous year's emissions report;

(D) identification and explanation of changed emissions monitoring and reporting methods at any source. The use of any changed emission monitoring or reporting methods requires an adjustment to the milestones according to paragraph (h)(1)(iii) of this section.

(vi) *Reporting of emissions for the Mohave Generating Station for the years 2003 through 2006.* For the years 2003, 2004, 2005, and for any part of the year 2006 before installation and operation of sulfur dioxide controls at the Mohave Generating Station, emissions from the Mohave Generating Station will be calculated using a sulfur dioxide emission factor of 0.15 pounds per million BTU.

(vii) *Special provision for the year 2013.* The implementation plan must provide that in the emissions report for calendar year 2012, which is due by September 30, 2013 under paragraph (h)(2)(iv) of this section, each State has the option of including calendar year 2018 emission projections for each source, in addition to the actual

emissions for each source for calendar year 2012.

(3) *Annual comparison of emissions to the milestone.*

(i) The implementation plan must provide for a comparison each year of annual SO_2 emissions for the region against the appropriate milestone. In making this comparison, the State or Tribe must make the comparison, using its annual emissions report and emissions reports from other States and Tribes reported under paragraph (h)(2)(iv) of this section.

(ii) The implementation plan must provide for the State or Tribe to make available to the public a draft report comparing annual emissions to the milestone by December 31 of each year. The first draft report, comparing annual emissions in 2003 to the year 2003 milestone will be due December 31, 2004.

(iii) The implementation plan must provide for the State or Tribe to submit to the Administrator a final determination of annual emissions by March 31 of the following year. The final determination must state whether or not the annual emissions for the year exceed the appropriate milestone.

(iv) A State or Tribe may delegate its responsibilities to prepare draft reports and reports supporting the final determinations under paragraphs (h)(3)(i) through (iii) of this section to a regional planning organization designated by each State or Tribe submitting an approvable plan under this section.

(v) Special considerations for year 2012 report. If each State or Tribe submitting an approvable plan under this section has included calendar year 2018 emission projections under paragraph (h)(2)(vii) of this section, then the report for the year 2012 milestone which is due by December 31, 2013 under paragraph (h)(3)(ii) of this section may also include a comparison of the regional year 2018 emissions projection with the milestone for calendar year 2018. If the report indicates that the year 2018 milestone will be exceeded, then the State or Tribe may choose to implement the market trading program beginning in the year 2018, if each State or Tribe submitting an approvable plan under this section agrees.

(vi) Independent review. The implementation plan must provide for reviews of the annual emissions reporting program by an independent third party. This independent review is not required if a determination has been made under paragraph (h)(3)(iii) of this section to implement the market trading program. The independent review shall be completed by the end of 2006, and every 5 years thereafter, and shall include an analysis of:

(A) the uncertainty of the reported emissions data;

(B) whether the uncertainty of the reported emissions data is likely to have an adverse impact on the annual determination of emissions relative to the milestone; and,

(C) whether there are any necessary improvements for the annual administrative process for collecting the emissions data, reporting the data, and obtaining public review of the data.

(4) *Market trading program.* The implementation plan must provide for implementation of a market trading program if the determination required by paragraph (h)(3)(iii) of this section indicates that a milestone has been exceeded. The implementation plan must provide for the option of implementation of a market trading program if a report under paragraph (h)(3)(v) of this section indicates that projected emissions for the year 2018 will exceed the year 2018 milestone. The implementation plan must provide for a market trading program whose provisions are substantively the same for each State or Tribe submitting an approvable plan under this section. The implementation plan must include the following market trading program provisions:

(i) *Allowances.* For each source in the program, the implementation plan must either identify the specific allocation of allowances, on a tons per year basis, for each calendar year from 2009 to 2018 or the formula or methodology that will be used to calculate the allowances if the program is triggered. The implementation plan must provide that eligible renewable energy resources that begin operation after October 1, 2000 will receive 2.5 tons of SO_2 allowances per megawatt of installed nameplate capacity per year. Allowance allocations for renewable energy resources that begin operation prior to the program trigger will be retroactive to the time of initial operation. The implementation plan may provide for an upper limit on the number of allowances provided for eligible renewable energy resources. The total of the tons per year allowances across all participating States and Tribes, including the renewable energy allowances, may not exceed the amounts in Table 4 of this paragraph, less a 20,000 ton amount that must be set aside for use by Tribes. The implementation plan may include procedures for redistributing the allowances in future years, if as the amounts in Table 4 of this paragraph, less a 20,000 ton amount, are not exceeded. The implementation plan must provide that any adjustment for a calendar year applied to the milestones under paragraphs (h)(1)(i) through (vii) of this section must also be applied to the amounts in Table 4. Table 4 follows:

TABLE 4.—TOTAL AMOUNT OF ALLOWANCES BY YEAR

For this year:	If the two smelters resume operations, the total number of allowances issued by States and Tribes may not exceed this amount:	If the two smelters do not resume operations, the total number of allowances issued by States and Tribes may not exceed this amount:
2009	715,000	677,000
2010	715,000	677,000
2011	715,000	677,000
2012	715,000	677,000
2013	655,000	625,000
2014	655,000	625,000
2015	655,000	625,000
2016	655,000	625,000
2017	655,000	625,000

TABLE 4.—TOTAL AMOUNT OF ALLOWANCES BY YEAR—Continued

For this year:	If the two smelters resume operations, the total number of allowances issued by States and Tribes may not exceed this amount:	If the two smelters do not resume operations, the total number of allowances issued by States and Tribes may not exceed this amount:
2018	510,000	480,000

(ii) *Compliance with allowances.* The implementation plan must provide that, beginning with the compliance period 6 years following the calendar year for which emissions exceeded the milestone and for each compliance period thereafter, the owner or operator of each source in the program must hold allowances for each ton of sulfur dioxide emitted by the source.

(iii) *Emissions quantification protocols.* The implementation plan must include specific emissions quantification protocols for each source category included within the program, including the identification of sources subject to part 75 of this chapter. For sources subject to part 75 of this chapter, the implementation plan may rely on the emissions quantification protocol in part 75. For source categories with sources in more than one State or tribal area submitting an implementation plan under this section, each State or Tribe should use the same protocol to quantify emissions for sources in the source category. The protocols must provide for reliability (repeated application obtains results equivalent to EPA-approved test methods), and replicability (different users obtain the same or equivalent results that are independently verifiable). The protocols must include procedures for addressing missing data, which provide for conservative calculations of emissions and provide sufficient incentives for sources to comply with the monitoring provisions. If the protocols are not the same for sources within a given source category, and where the protocols are not based upon part 75 or equivalent methods, the State or Tribes must provide a demonstration that each such protocol meets all of the criteria of this paragraph.

(iv) *Monitoring and Recordkeeping.* The implementation plan must include monitoring provisions which are consistent with the emissions quantification protocol. Monitoring required by these provisions must be timely and of sufficient frequency to ensure the enforceability of the program. The implementation plan must also include requirements that the owner or operator of each source in the program keep records consistent with the emissions quantification protocols, and keep all records used to determine compliance for at least 5 years. For source owners or operators which use banked allowances, all records relating to the banked allowance must be kept for at least 5 years after the banked allowances are used.

(v) *Tracking system.* The implementation plan must provide for submitting data to a centralized system for the tracking of allowances and emissions. The implementation plan must provide that all necessary information regarding emissions, allowances, and transactions is publicly available in a secure, centralized data base. In the system, each allowance must be uniquely identified. The system must allow for frequent updates and include enforceable procedures for recording data.

(vi) *Authorized account representative.* The implementation plan must include provisions requiring the owner or operator of each source in the program to identify an authorized account representative. The implementation plan must provide that all matters pertaining to the account, including, but not limited to, the deduction and transfer of allowances in the account, and certifications of the completeness and accuracy of emissions and allowances transactions required in the annual report under paragraph (h)(4)(vii) of this section shall be undertaken only by the authorized account representative.

(vii) *Annual report.* The implementation plan must include provisions requiring the authorized account representative for each source in the program to demonstrate and report within a specified time period following the end of each calendar year that the source holds allowances for each ton per year of SO_2 emitted in that year. The implementation plan must require the authorized account representative to submit the report within 60 days after the end of each calendar year, unless an alternative deadline is specified consistent with emission monitoring and reporting procedures.

(viii) *Allowance transfers.* The implementation plan must include provisions detailing the process for transferring allowances between parties.

(ix) *Emissions banking.* The implementation plan may provide for the banking of unused allowances. Any such provisions must state whether unused allowances may be kept for use in future years and describe any restrictions on the use of any such allowances. Allowances kept for use in future years may be used in calendar year 2018 only if the implementation plan ensures that such allowances would not interfere with the achievement of the year 2018 amount in Table 4 in paragraph (c)(4)(i) of this section.

(x) *Penalties.* The implementation plan must:

(A) provide that if emissions from a source in the program exceed the allowances held by the source, the source's allowances will be reduced by an amount equal to two times the source's tons of excess emissions,

(B) provide for appropriate financial penalties for excess emissions, either $5000 per ton (year 2000 dollars) or an alternative amount that is the same for each participating State and Tribe and that substantially exceeds the expected cost of allowances,

(C) ensure that failure to comply with any program requirements (including monitoring, recordkeeping, and reporting requirements) are violations which are subject to civil and criminal remedies provided under applicable State or tribal law and the Clean Air Act, that each day of the control period is a separate violation, and that each ton of excess emissions is a separate violation. Any allowance reduction or

penalty assessment required under paragraphs (h)(4)(x)(A) and (B) of this section shall not affect the liability of the source for remedies under this paragraph.

(xi) *Provisions for periodic evaluation of the trading program.* The implementation plan must provide for an evaluation of the trading program no later than 3 years following the first full year of the trading program, and at least every 5 years thereafter. Any changes warranted by the evaluation should be incorporated into the next periodic implementation plan revision required under paragraph (d)(10) of this section. The evaluation must be conducted by an independent third party and must include an analysis of:

(A) Whether the total actual emissions could exceed the values in § 51.309(h)(4)(i), even though sources comply with their allowances;

(B) Whether the program achieved the overall emission milestone it was intended to reach;

(C) The effectiveness of the compliance, enforcement and penalty provisions;

(D) A discussion of whether States and Tribes have enough resources to implement the trading program;

(E) Whether the trading program resulted in any unexpected beneficial effects, or any unintended detrimental effects;

(F) Whether the actions taken to reduce sulfur dioxide have led to any unintended increases in other pollutants;

(G) Whether there are any changes needed in emissions monitoring and reporting protocols, or in the administrative procedures for program administration and tracking; and

(H) The effectiveness of the provisions for interstate trading, and whether there are any procedural changes needed to make the interstate nature of the program more effective.

(5) *Other provisions.*

(i) *Permitting of affected sources.* The implementation plan must provide that for sources subject to part 70 or part 71 of this chapter, the implementation plan requirements for emissions reporting and for the trading program under paragraph (h) of this section must be incorporated into the part 70 or part 71 permit. For sources not subject to part 70 or part 71 of this chapter, the requirements must be incorporated into a permit that is enforceable as a practical matter by the Administrator, and by citizens to the extent permitted under the Clean Air Act.

(ii) *Integration with other programs.* The implementation plan must provide that in addition to the requirements of paragraph (h) of this section, any applicable restrictions of Federal, State, and tribal law remain in place. No provision of paragraph (h) of this section should be interpreted as exempting any source from compliance with any other provision of Federal, State, tribal or local law, including an approved implementation plan, a Federally enforceable permit, or any other Federal regulations.

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Part III

Department of the Interior

Office of the Secretary

Bureau of Land Management

43 CFR Parts 4, 4100, and 5000

Special Rules Applicable to Public Land Hearings and Appeals; Grazing Administration—Exclusive of Alaska, Administrative Remedies; Grazing Administration—Effect of Wildfire Management Decisions; Administration of Forest Management Decisions; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Bureau of Land Management

43 CFR Parts 4100 and 5000

RIN 1090–AA83

Special Rules Applicable to Public Land Hearings and Appeals; Grazing Administration—Exclusive of Alaska, Administrative Remedies; Grazing Administration—Effect of Wildfire Management Decisions; Administration of Forest Management Decisions

AGENCY: Office of Hearings and Appeals; Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its existing regulations governing hearings and appeals to codify who has a right of appeal, to expedite its review of wildfire management decisions, and to simplify proof of service. The Bureau of Land Management (BLM) is adding regulations allowing BLM to make its wildfire management decisions effective immediately when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, and to expedite review of those decisions. The amendments to both the OHA and BLM regulations are needed to clarify and expedite administrative review procedures.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, Phone: 703–235–3750, or Michael H. Schwartz, Group Manager, Regulatory Affairs, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Room 401 LS, Washington, DC 20240, Phone: 202–452–5198. Persons who use a telecommunications device for the deaf (TDD) may contact either individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 2002, the Office of Hearings and Appeals (OHA) and the Bureau of Land Management (BLM) jointly proposed rules that would make BLM wildfire management decisions effective immediately and would expedite OHA decisions on appeals from such BLM decisions. 67 FR 77011 (Dec. 16, 2002). OHA also proposed to amend its existing rules governing the right to appeal and proof of service.

The Department received approximately 9,000 comments on the proposed rule. Of these, the great majority were divided between nearly identical form communications expressing general support for the proposal and nearly identical form communications expressing general opposition to the proposal. The remainder were specific and substantive comments from trade and governmental associations, commercial public land users, environmental interest groups, local and tribal governmental entities, and individuals. We have summarized and paraphrased the comments in order to keep this final rulemaking document manageable and comprehensible.

We have organized our discussion of topics in the order they were presented in the preamble to the proposed rule, *i.e.*, (A) standing to appeal, (B) effectiveness of BLM wildfire management decisions, (C) expedited OHA review of appeals from those decisions, and (D) proof of service. *See* 67 FR 77011, 77012–13 (Dec. 16, 2002).

A. Standing to Appeal

OHA proposed to codify decisions of the Interior Board of Land Appeals (IBLA) that have determined whether a person had a right to appeal a BLM decision. OHA proposed to define the phrases "party to a case" and "adversely affected," both of which appear in the existing regulation governing who may appeal, 43 CFR 4.410(a). "Party to a case" was defined in proposed § 4.410(b) to mean "one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action." "Adversely affected" was defined in proposed § 4.410(d) to mean that "a party has a legally cognizable interest, and the decision on appeal has caused, or will cause, injury to that interest." OHA also proposed to reflect in § 4.410(c) the limitation found in IBLA decisions that a party may only raise on appeal to IBLA issues it previously presented to BLM.

Some comments stated that only persons who can show direct economic damage should have a right of appeal, while others suggested that the scope of "legally cognizable interest" should be broadened. While many comments approved of the proposals, several expressed a concern that the proposals would do away with or limit public participation in BLM's decisionmaking or restrict access to the appeals process.

We emphasize that the proposed rules were—and these final rules are—intended to codify existing IBLA precedents, not to either restrict or expand who has a right to appeal. We therefore decline either to limit or extend that right in this rulemaking.

If in the circumstances of a particular appeal, a person or organization can demonstrate that a BLM decision has caused or has a substantial likelihood of causing injury to a "legally cognizable interest" as IBLA has interpreted and applied that phrase in numerous decisions, then that person or organization is adversely affected under § 4.410(d). If a person or organization with an adversely affected legally cognizable interest has also been a party to the case, as defined in § 4.410(b), then that person or organization has a right of appeal. See, *e.g.*, *San Juan Coal Co.*, 155 IBLA 389, 393 (2001); *Legal and Safety Employer Research, Inc.*, 154 IBLA 167, 171–72 (2001); *Powder River Basin Resource Council*, 124 IBLA 83, 89 (1992); and cases cited. The definition of "party to a case" in § 4.410(b) does not affect a person's ability to participate in BLM's decisionmaking; rather, it defines one of the two requirements for standing to appeal a BLM decision to IBLA.

Some comments expressed concern that the selection of the three IBLA decisions cited above implied that other decisions in which appellants were found to have a right of appeal, *e.g.*, *National Wildlife Federation* v. *Bureau of Land Management*, 129 IBLA 124 (1994); *Donald K. Majors*, 123 IBLA 142 (1992); and *High Desert Multiple-Use Coalition*, 116 IBLA 47 (1990), were now discredited. No such implication was intended. The three decisions were cited in the preamble to the proposed rule to illustrate circumstances that IBLA has encountered in determining whether a particular appellant did or did not have a right to appeal. Other IBLA decisions are also relevant in making such determinations, including those holding that an organization may have a right of appeal on behalf of its members and that not only an interest in the land but also an interest in resources affected by a decision may be legally cognizable.

Some comments correctly pointed out that the language in proposed

§ 4.410(d)—"has caused, or will cause, injury" to a legally cognizable interest—does not reflect the holding in *San Juan Coal Co., supra*, and other decisions that a "substantial likelihood" of causing injury is sufficient. We have modified the language in the final § 4.410(d) to provide "and the decision on appeal has caused or is substantially likely to cause injury to that interest."

Some comments requested clarification of the statement in the preamble to the proposed rule that a person who uses land in trespass, without claim or color of right, would not have a legally cognizable interest. That statement is illustrated by IBLA's decision in *Fred J. Schikora*, 89 IBLA 251 (1985), which held that the interest of a trespasser who made improvements upon land in Alaska, without color or claim of right, was not a legally cognizable interest for a right to appeal a BLM decision that granted a conflicting Native allotment application for the land. The statement was not intended to imply that a member of the public who accesses public lands from private lands or uses public lands for recreational or other purposes would be in trespass and would not have a right of appeal from a decision involving the public lands, assuming he or she were a party to the case and had a legally cognizable interest that would be adversely affected by the decision.

A comment from a state governor was "concerned with the apparent lack of standing for states and local governments under the proposed changes. The amendments to this section of regulations are silent as to whether or not states and local governments will have standing based on their sovereignty alone." Similar comments came from associations of counties and a county board of supervisors. For example: "It is important that local government be recognized as an entity that does have standing to appeal. It is becoming more and more common for county government to become involved in those federal land planning decisions that affect their citizens, tax [rolls], or the local economy." We are codifying IBLA's decisions on who has a right of appeal. IBLA's decisions have not granted standing to state or county governments when they have not been adversely affected but have sought to represent their citizens in a *parens patriae* role. *Blaine County Board of Commissioners*, 93 IBLA 155, 157–158 (1986); *The Klamath Tribes*, 135 IBLA 192, 194 (1996); *State of Missouri Department of Natural Resources*, 142 IBLA 201, 207 (1998). Therefore, we do not accept the suggestion that we provide standing to state or local governments based on their sovereignty alone. Of course, if a state or local government demonstrates that it was a party to a case and was adversely affected, it would have a right of appeal.

Some comments were concerned that proposed § 4.410(c) would limit a party's ability to raise on appeal issues that could not have been raised during the party's participation in BLM's decisionmaking process. For example, the comments suggested, BLM might include information in a decision that was not available during the comment period on the draft decision, the decision might differ from the alternatives considered during that period, or the circumstances on the ground may have changed during the decisionmaking or after the decision is issued. We agree that a party should be able to raise additional issues in such circumstances, and in the final rule we have amended § 4.410(c) accordingly.

Some comments expressed concern that limiting a party to presenting only those issues on appeal that it had raised before the agency would force every party to raise every issue it could conceive of and that this could "not possibly save the agency any time in the appeals process. The agency would have already considered the comments initially and the appellant would certainly not be raising a completely new issue if it had been raised by someone else, it would be something the agency had already considered (and rejected). This provision will likely increase the number, length, and volume of comments, since no one would be able to rely on the comments of others."

We believe this concern is more hypothetical than real. Under existing precedent, IBLA will not adjudicate issues raised for the first time on appeal, except in extraordinary circumstances. *See Henry A. Alker*, 62 IBLA 211 (1982). Since a party cannot assume that IBLA will find extraordinary circumstances in any given appeal, the party has every incentive to raise with BLM any issues it deems significant. Nor can a party assume that someone else will raise the party's issues on its behalf, unless two or more parties coordinate their comments, which they are free to do. Parties may submit joint comments or may incorporate others' comments by reference. If an issue was not important enough to a party to raise with BLM, IBLA should not be obligated to consider it on appeal.

In summary, § 4.410(b) is adopted as proposed and §§ 4.410(c) and (d) are adopted as amended. Also, we have amended the cross-reference in § 4.410(a)(4) to reflect the changes made in this section.

B. Effectiveness of BLM Wildfire Management Decisions

BLM proposed to add two provisions, in 43 CFR 4190.1 and 5003.1, that would make its wildiire management decisions affecting rangelands and forests effective immediately, that is, when issued. The proposal defined "wildfire management" as including but not limited to (1) fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods and (2) projects to stabilize and rehabilitate lands affected by wildfire.

In the following paragraphs, we will discuss the substantive comments that addressed the BLM portion of the proposed rule, that is, the proposed addition of 43 CFR 4190.1 and the proposed revision of 43 CFR 5003.1. These comments addressed four principal topics:

- Placing BLM wildfire management decisions in full force and effect pending appeals;
- How BLM defines wildfire management decisions;
- Where and to what lands the new regulations should apply; and
- How the changes BLM proposed in these areas relate to the regulations of the Office of Hearings and Appeals and the proposed changes to those regulations.

Accordingly, we will discuss the comments under headings based on these topics.

1. How Should BLM Put Fire Management Decisions Into Effect?

Many of the substantive comments supported the proposed rule placing BLM fire management decisions in full force and effect pending appeal. These comments, from logging interests, grazing interests, forestry associations, and local government organizations, basically agreed with the preamble statement in the proposed rule that the faster BLM is able to take action to reduce future threats of wildland fires, the more likely BLM can safeguard public and firefighter health and safety, protect property, and improve environmental baseline conditions in the wildland-urban interface and other priority areas. They agreed that wildfire management decisions are by their nature urgent, both to prevent or reduce catastrophic wildfires in upcoming dry seasons, and to speed recovery from past fires and thereby prevent erosion, water pollution, and other harmful legacies that they have caused.

In a comment supporting the proposed rule, a professional forestry society said that wildfire management decisions to perform fuels reduction and fire rehabilitation and stabilization should be implemented efficiently to protect communities, watersheds, wildlife habitat, and adjacent properties from the potentially devastating effects of wildfire. The comment said, however, that these decisions should remain consistent with the pre-defined objectives and goals outlined in the applicable Resource Management Plan and should adhere to all applicable environmental laws. We agree with this comment. Our fire management projects will be consistent with our Resource Management Plans and applicable environmental laws. No change is necessary in the final rule.

Other comments, mainly from national and regional environmental organizations, raised specific objections and concerns that require discussion. This discussion follows.

One comment stated that the proposed rule would discourage public appeals from agency actions, which are essential to public participation. The comment cited the Federal Land Policy and Management Act (FLPMA), at Section 309(e), which requires the Secretary to give the public adequate notice and "opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands." 43 U.S.C. 1739(e). The comment went on to say (1) that the proposed rule would allow a project to begin before a decision is made on the appeal, effectively discounting public opinion; (2) that a decision on appeal to reject a proposed project has less effect if the project has already commenced and the negative effects of the action have already occurred; and (3) that the public is less likely to participate in the decisionmaking process when it can have no real or immediate effect on a proposed project. The comment concluded that a "policy discouraging public involvement should not be adopted because it contradicts the spirit of FLPMA, which encourages public comment on proposed actions and participation in the appeal process for a management decision."

Another comment addressing the same theme said that the purpose of a stay pending appeal is to allow project planners the opportunity to review citizen concerns and modify the project's parameters to address such concerns, as warranted, prior to project implementation. The comment went on to say that project stays have two fundamental benefits: (1) To ensure that potentially unsound environmental ramifications of project decisions, as identified by interested parties, do not compromise the landscape in question; and (2) to promote trust between those citizens who have sought to comment on the management of public lands and the agency responsible for carrying out those actions. The comment concluded by saying that the rule change undermines the value of public comment by allowing citizen concerns to be effectively ignored, further eroding the trust citizens have in public land management agency decisions.

The appeal process is not part of the public participation required by Section 309(e) of FLPMA. The rule may discourage some appeals; but contrary to the concern expressed in the comment, it encourages public participation by making it more essential at the project design/environmental review stage. It is at this stage that BLM gathers evidence and public input upon which to base its fire management plans/projects and decisions. Also, the purpose of staying a decision pending appeal is not to give the BLM further opportunity to consider issues raised by the appellant, but to protect the interests of the appellant and the public while IBLA is considering the appeal. Finally, while the proposed provision made these decisions effective immediately, an adversely affected party may appeal the decision and petition the Office of Hearings and Appeals for a stay of the decision pending appeal under 43 CFR 4.21(b), which, if granted, would minimize whatever harm the appellant alleges.

One comment said that the proposed revision is entirely unnecessary, since BLM and the Office of Hearings and Appeals already have the authority to make a decision effective immediately if it is determined to be in the "public interest" to do so. The comment went on to say that the authority for this determination should remain with IBLA on a case-by-case basis to avoid any abuse of the provision by line officers in the field. Another comment from an environmental interest group also stated that the new provisions were unnecessary, since in appropriate circumstances OHA or an appeals board could find that the public interest requires that particular fire management decisions should be placed in full force and effect notwithstanding the filing of appeals.

The final rule eliminates a bureaucratic step—requesting OHA to place a decision in full force and effect—in making often very urgent decisions to help reduce the severity of upcoming fire seasons, without unduly impairing the ability of persons to appeal those decisions and to seek stays of the decisions pending appeal.

The authorities to which the first of these comments refers are 43 CFR 4160.3(f), which allows BLM to place certain grazing decisions into effect immediately or on a date certain and to remain in effect pending appeal; 43 CFR 5003.1 (paragraph (a) as this section is revised in the proposed rule), which provides that appealing does not automatically suspend the effect of a forest management decision; and 43 CFR 4.21, which authorizes the OHA Director or IBLA to stay a decision in the public interest pending appeal. Of these authorities, section 4160.3(f) limits full force and effect to certain decisions unrelated to wildfire management.

In light of the disastrous fire seasons in recent years and the ongoing drought in much of the West, BLM views its ability to carry out fire management practices as a matter of great urgency. We also view the fire management practices we contemplate, mentioned in the proposed rule and listed in sections 4190.1(a) and 5003.1(b) of this final rule, as scientifically justified. Therefore, we think that these fire management decisions need to be effective immediately if BLM finds a substantial risk of wildfire due to such problems as drought and fuels buildup, or an immediate risk of erosion due to wildfire. We have added language to sections 4190.1 and 5003.1 requiring BLM to make such a threshold finding before making a decision effective immediately.

If wildfire has destroyed the vegetation on a tract of land, especially sloped land, it is clear that wind or rain will cause erosion. It is also clear that wind or rain or both are common occurrences in most environments covered by these regulations. Therefore, the time-related standard of "immediate risk" is appropriate for determining whether a decision to rehabilitate a denuded slope, for example, especially one situated in a sensitive circumstance like above a trout stream or a salmon spawning ground, should be made effective immediately.

However, it is not so obvious whether prescriptive decisions aimed at preventing or reducing catastrophic wildfires would routinely meet a threshold of "immediate risk." We therefore believe it is appropriate to use a qualitative threshold of "substantial risk" for these decisions. In deciding whether there is a substantial risk of wildfire, BLM field managers will analyze the situation based on the Fire

Condition Class of the tract of range or forest land in question.

BLM recognizes three Fire Condition Classes, found in the Implementation Plan for the 10-Year Comprehensive Strategy, A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, May 2002.

Fire Condition Class 1 refers to lands that have experienced burns in their normal range of fire frequency. The risk of losing key ecosystem components from the occurrence of fire remains relatively low, and the lands will be subject to maintenance management.

Fire Condition Class 2 refers to lands that have been moderately altered from their historical range of fire frequency by either increased or decreased fire frequency. BLM has identified a moderate risk of losing key ecosystem components, as well as human property, in these lands. To restore their historical fire regimes, these lands may require some level of restoration through prescribed fire, mechanical or chemical treatments, and the subsequent reintroduction of native plants.

Fire Condition Class 3 lands have been significantly altered from their historical range. Because fire regimes have been extensively altered (*i.e.*, fire has not occurred for far longer than normal frequency would predict), risk of losing key ecosystem components from fire is high. We consider such lands to be at high risk because of the danger posed to people and property and the severe, long-lasting damage likely to result to species and watersheds when a fire burns on these lands, particularly during drought years. To restore their historical fire regimes—before BLM can employ prescribed fire to manage fuel or obtain other desired benefits—these lands may require multiple mechanical or chemical restoration treatments, or reseeding.

Under this rule, Fire Condition Class 3 would be considered to pose substantial risk of wildfire, and BLM would make wildfire management decisions for these lands effective immediately. Most Fire Condition Class 2 lands would also be regarded this way, but field managers would decide on a case-by-case basis whether to make these decisions effective immediately (or on a date established in the decision). BLM would generally not make maintenance decisions for lands in Fire Condition Class 1 effective immediately.

Two comments stated that BLM already has several categorical exclusions under the National Environmental Policy Act (NEPA) that we may utilize for fuel reduction strategies and other wildfire management activities, referring to the Departmental Manual of the Department of the Interior at 516 DM 6, Appendix 5. One comment said that this rendered the proposed regulation change unnecessary. The other comment stated that BLM should continue to utilize these categorical exclusions where they are appropriate to protect communities from loss of life and property, so long as these projects will not individually or cumulatively cause significant environmental effects; but it urged us to withdraw the proposed rule lifting the automatic stay provision for wildfire management decisions.

There are categorical exclusions that pertain to some of the techniques that BLM would likely use for fire management:

- Precommercial thinning and brush control using small mechanical devices;
- Sale and removal of individual trees and small groups of trees that are dead, diseased, injured, or that pose a safety hazard, where no new roads are necessary;
- Reforestation; and
- Disposal for Christmas trees, personal firewood use, etc.

However, categorical exclusions have nothing to do with the appeals process, but merely allow BLM to perform expedited NEPA reviews as set forth in CEQ regulations. Under a categorical exclusion, BLM must still document its environmental review and must still consider circumstances such as endangered species, air quality, and cultural resources. Categorical exclusions do not provide for an immediate effective date or expedited administrative review of decisions to implement these practices. Further, the categorical exclusions do not cover such techniques as prescribed burns and more extensive thinning that might be necessary in a fire management program.

2. How Should BLM Define a Wildfire Management Decision?

One comment from a state farm bureau federation said that the role of livestock grazing needs to be further defined in this process, and suggested that livestock grazing can be an effective fuels reduction technique and can also be a tool to control noxious weeds. The comment urged that livestock grazing be incorporated into fuel reduction projects as one element of effectively controlling wildfire, disease, or invasive species.

The language in the proposed rule does not rule out the incorporation of livestock grazing in a fuel reduction (or pest or disease control) program. Under 43 CFR 4160.3, BLM has the discretion to make a grazing decision connected to wildfire management effective immediately. However, such decisions will not routinely be made effective immediately under this rule. Decisions as to pest or disease control are beyond the scope of this rule.

The same comment went on to relate grazing to open space preservation and other desirable social results. However, these ideas go beyond the narrow focus of this rule, which is wildfire management.

One comment suggested that the list of types of fire management decisions that BLM should make effective immediately pending appeal should include removal of lightning-attracting snags. The comment stated that removing snags proved to be the key to stopping the Tillamook burns. Only after an enormous number of such snags were felled were the fires subject to control, according to the comment.

The language in the rule, "Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods," is certainly broad enough to include removal of snags (or dead trees) when appropriate (leaving aside the question whether snags attract lightning more than living trees). However, due to the recognized value of snags (wildlife habitat, nutrient cycling, longer-term source of large woody debris, etc.) many land management plans contain best management practices or project design features that specifically require retention of an appropriate number of snags. The removal of snags is best reviewed in the context of an overall forest health restoration or post-fire salvage project. In order to preserve the field manager's ability to make reasoned decisions based on the particular circumstances at hand, we do not want to list specific fire management tactics in these regulations.

One comment from a lumber company suggested that BLM replace the word "thinning" with the word "removal" because, depending on the ecosystem and landscape, some wildfire management actions may include more than just thinning, and "removal" is a broader term. We have amended this provision to allow thinning with or without removal. Whether the thinned material is removed from the site is determined by the local BLM manager based on how best to achieve the primary objective of the action: Forest health or fuels hazard reduction or both. Thinning activities not related to these objectives will continue to be subject to section 5003.1(a) of the final rule.

Several comments from environmental interest groups stated

that the proposed rule was overbroad in characterizing fire management decisions that would be made effective immediately. These comments said that the proposed rule did not require any determination that the proposed action will safeguard public and firefighter health and safety, protect property, or improve conditions in the wildland-urban interface, and that the proposed rule thus threatens to allow projects having no appreciable fire reduction benefit to go forward before there is any opportunity for administrative review.

We have amended the rule to require that BLM determine that vegetation, soil, or other resources on the public land are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, before making wildfire management decisions effective immediately. Further, the decisions that BLM will implement under this rule are still analyzed under the National Environmental Policy Act during their development. If BLM prepares an Environmental Impact Statement or Environmental Assessment, the "Purpose" and "Need" sections of those documents will clearly make the link to the project's fire hazard reduction benefits. Similarly, the criteria for use of the categorical exclusion for fuels hazard reduction clearly specify that the project must be for this purpose. Finally, this rule does not prohibit a petition for a stay under section 4.21(b).

Another comment stated that the proposed revision of section 5003.1 is overly broad and vague, providing unhampered discretion to BLM line officers to remove large trees far from human habitation in thinning projects. It went on to say that, in recent history, many BLM projects purporting to reduce fire danger have included removal of large trees, which is an extremely controversial and scientifically unjustifiable action. The comment concluded that, while thinning of small trees and removal of brush are generally acceptable as fuel reduction treatment in the vicinity of homes and communities, there is no scientific evidence to suggest that logging of large trees, which are more fire resistant, reduces fire danger in the forest or other areas.

The text of the regulation in question defines wildfire management as including: "Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods." We have not adopted a one-size-fits-all diameter limit on tree size in this rule, although tree size may have a bearing on the decision. BLM intends the fuel reduction contemplated in this language to refer to projects that we implement with fuels hazard reduction or forest health as the primary objective. Further, BLM follows the NEPA process in reaching and justifying its decisions.

Another comment expressed concern that the proposed rule would cause and exacerbate adverse environmental impacts of wildfire in extremely sensitive areas, including soil erosion and water pollution. The comment went on to suggest that salvage logging could be authorized as a "wildfire management decision," but would have a devastating effect on recently burned landscapes. It said that a 1995 report prepared by a group of independent scientists, known as the Beschta Report, concludes that logging in recently burned areas will have significant adverse impacts on the environment, causing soil compaction and erosion, loss of habitat for cavity nesting species, and loss of structurally and functionally important large woody debris, and that leaving large woody debris will not significantly increase the risk of reburn. According to the comment, the U.S. Forest Service confirmed the findings of the Beschta Report in its report entitled "Environmental Effects of Postfire Logging: Literature Review and Annotated Bibliography," stating that "[f]ollowing Beschta and others (1995) and Everett (1995), we found no studies documenting a reduction in fire intensity in a stand that have [sic] previously burned and then been logged."

The second element of wildfire management stated in the proposed rule, "[p]rojects to stabilize and rehabilitate lands affected by wildfire," contemplates reseeding and soil stabilization, not salvage logging as suggested in the comment. BLM may authorize salvage logging in appropriate circumstances, after conducting the appropriate level of NEPA review. We do not normally consider salvage logging as constituting a stabilization and rehabilitation activity. We do not agree that the Forest Service literature review confirms the findings of the Beschta Report, which to our understanding has never been subject to peer review. Salvage logging will continue to be subjected to required environmental review and implemented on a case-by-case basis.

One comment stated that "mechanical" thinning is not defined in the proposed rule, and that the proposal purports to "apply only to fire management decisions, not to other decisions relating to grazing or timber sales." It went on to say that if mechanical thinning techniques include cutting trees, this contradicts the statement that this action does not apply to timber sales. The comment concluded by saying that unless the cut trees are disposed of, rather than sold, the action will qualify as a timber sale, and that appeals of timber sale decisions must go through the current administrative appeals process. Another comment along the same lines said that, if the BLM's own record is an appropriate reference, this definition will include large scale commercial green tree logging as well as salvage logging.

A timber sale, planned for as such in BLM Resource Management Plans, is not a wildfire management project, and would not be covered by section 5003.1(b). However, sales of small amounts of lumber may be incidental to fire management thinning projects. Thinning stands of timber is more difficult and expensive than clearcutting the same stands, and less profitable for companies engaged in such activities, for two reasons: the small trees are less valuable, and cutting them down individually is more labor intensive and expensive. Such incidental sales may be authorized as part of a wildfire management project under the new regulations. The key to the application of the rule is the intent of the project. As long as the primary objective of the action is fuels hazard reduction, this rule applies.

The same comment went on to say that it is a generally accepted conclusion that the sciences of fuel reduction and post-fire restoration are not well-advanced and that there is a great deal of uncertainty that logging large trees can in fact reduce the probability of undesirable fire behavior. On the contrary, the comment said, removing large trees increases the probability of catastrophic fire by opening up the canopy, warming and drying the forest floor and producing large amounts of fuels. The comment also stated that there is a great deal of scientific uncertainty that salvage logging can be considered ecologically beneficial and a genuine form of rehabilitation. It also challenged the effectiveness of thinning by citing both Federal and academic scientists who have recently doubted that thinning actually reduces fire severity. It quoted a September 17, 2002, letter by 12 leading academic scientists in the field of forest ecology:

> The most debated response to alleviating destructive fires in the future—mechanically thinning trees—has had limited study, and that has been conducted primarily in dry forest types. Thinning of overstory trees, like building new roads, can often exacerbate the

situation and damage forest health. * * * Although a few empirically based studies have shown a systematic reduction in fire intensity subsequent to some actual thinning, others have documented increases in fire intensity and severity.

Franklin, J., *et al.* 09/17/02 letter to President Bush and Members of Congress.

We agree that more research would be useful, as scientists agree that there is a lack of science-based information about what specific fuel treatments to apply to balance a complex and conflicting mix of objectives. However, there is general consensus from more than 90 years of fire research that fires burn hotter and faster when there is more fuel available to feed them. The basic objective of fuels hazard reductions treatment is to remove this fuel. Fuels treatment programs prescribed under the 10-Year Comprehensive Strategy and Implementation Plan for the National Fire Plan do not prescribe a thin-only strategy. Thinning is accompanied by follow-up treatments. The scientific rationale for the fire behavior benefits of slash treatment after thinning and of understory prescribed burning are well-documented and longstanding. There is peer-reviewed science and general consensus in the scientific community that properly implemented and maintained fuel treatments that include prescribed burning will result in reduced fire severity within the treated areas. Fire reduction benefits outside the treated areas will depend on a number of variables. Understanding the effect of these variables will increase with additional research.

However, the problem of uncharacteristically intense and volatile wildfire behavior in certain ecosystems is getting worse. We cannot afford to wait until every conceivable scientific study is completed before we take action.

One comment requested an expansion of the definition for wildfire management under proposed sections 4190.1 and 5003.1 to add mention of restoration treatment of unburned acres. The comment stated that wildfire restoration of lands may not always deal with fuel treatments, but rather may require other management actions that would return the land to its historical fire regimes. It gave the example of altering species composition through tree planting. It suggested adding some language on landscape restoration treatments related to wildfire to these two proposed sections. Another comment stated that the list of wildfire decisions should be expanded to include decisions necessary to mitigate insect and disease outbreaks, the control of invasive species, and the impacts of other natural disasters such as severe weather events and seismic activity. The comment went on to say that these outbreaks are affecting millions of acres of the nation's forests and rangelands and are easily spread to nearby lands, and that, in many cases, adjacent landowners are powerless to address the problem without action from their Federal neighbors.

We believe that changes to reflect these comments would be too far beyond the scope of the proposed rule to be adopted in this final rule, and unnecessary. We agree that, in many instances, forest or rangeland restoration treatments are complementary to fuels management decisions. We also agree that forest and rangeland restoration is more than simple fuels hazard reduction, as it includes other components such as species composition, re-introduction of native plants in the understory, control of exotic or invasive species, and density management to improve the vigor of residual vegetation for resistance to insects and disease. A well-designed fuels hazard project, with interdisciplinary input, may be a highly cost-effective and efficient way to begin to address a range of issues relating to forest health. A fuels hazard project designed with such interdisciplinary input and made effective immediately may serve as an important first step, and follow-up actions to implement the non-fuels-reduction aspects of the project will be subject to appropriate review and administrative appeal. Existing section 5003.1 (section 5003.1(a) of this rule) provides that filing an appeal does not automatically suspend the effect of forest management decisions, which would include such follow-up actions. This provision has long been available to help expedite such projects.

3. Where and to What Lands Should the Regulations Apply?

One comment, questioning language in the preamble of the proposed rule, asked what BLM meant when we intimated that the new provisions would be implemented in "wildland-urban interface and other priority areas" (67 FR 77011, 77012), but did not specify in the regulatory text any particular lands to be covered. The comment stated that "priority area" is not defined in the proposal, and that if the scope of the project is truly limited to two types of areas, wildland-urban interface and priority areas, then "priority area" should be defined. If, however, the comment said, the rules affect all BLM land, the scope should be clearly stated. Additionally, the comment concluded, clarifying these definitions will allow the rules to be construed narrowly and avoid inclusion of areas not intended to be covered by the rule.

As the proposed rule stated, BLM will first use its limited wildfire management resources in priority areas, including wildland-urban interface lands. The rule does not define "priority areas"; BLM has discretion to identify such areas based on site-specific circumstances. In general, priority areas will include lands containing or near human habitation and business structures, sensitive resources such as archaeological sites, endangered species habitat, municipal watersheds, and burned-over watersheds subject to erosion. BLM will choose many wildfire management projects in a collaborative process as defined in BLM's 10-Year Comprehensive Strategy and Implementation Plan for implementation of the National Fire Plan. Local conditions and resources will guide the field manager in making wildfire management decisions.

Several comments faulted the proposed rule for not being limited to or not focusing on the wildland-urban interface, where wildfires have the greatest potential for property damage and for impacts on human health and safety. Some of the same comments questioned how, even if the wildland-urban interface were to be specifically targeted, the public would interact in good faith with such management activities when they proceed on the ground immediately, potentially without NEPA review, offering to the public only the judicial system for recourse.

We recognize the urgency of dealing with fire management issues on forest land near developed areas, but it would be unduly narrowing to limit the effect of the rule to those lands. Other resources, such as endangered species habitat, archaeological or other cultural features, or sensitive watersheds, may make fuel reduction or treatment under section 5003.1(b)(1) or land stabilization and rehabilitation under section 5003.1(b)(2) equally urgent on more remote lands.

A categorical exclusion does not exempt an agency action from environmental review. Rather, it requires the agency to scrutinize the proposed action to see whether it meets the criteria for categorical exclusion, that is, whether it is the type of action that the agency has decided, through its procedures adopted under 40 CFR 1507.3 of the regulations of the Council on Environmental Quality, does not individually or cumulatively have a

significant effect on the human environment. In practice, this will normally be done through a documented checklist of criteria.

As we stated earlier in this preamble, making decisions effective immediately encourages public participation by making it more essential at the project design/environmental review stage. It is at this stage that BLM gathers evidence and public input upon which to base its decisions.

One comment from an association of professional foresters suggested that BLM should give priority to areas outside the wildland-urban interface area when dangerous fuel buildup or post-wildfire conditions originating on BLM-administered public lands could have impacts on adjacent private lands.

We are not stating any priorities in this rule. The local field manager will determine where to initiate wildfire management projects, and will consult with appropriate local interests, including state and local government agencies, private property owners, academic experts, and environmental interest groups, in order to identify resources or properties that need protection.

In practice, BLM plans and implements forest health and fuel reduction treatments both within and outside the wildland-urban interface. Targeting of appropriated dollars for both fiscal year 2002 and 2003 was apportioned approximately 60 percent to wildland-urban interface and 40 percent to non-wildland-urban interface lands. Also, BLM selects all fuels and hazard reduction projects with input from a variety of Federal and non-federal stakeholders. Thus, a wide variety of parties aids in the project priorization process.

The same comment went on to suggest that BLM lands for which state forestry agencies have initial attack responsibilities (due to the location or situation of the land, or under cooperative agreements or other arrangements) should also be included in the immediate implementation of fire management decisions. Since the rule applies to all fire management decisions, the decisions that the comment refers to will be effective immediately when BLM makes the determination required by section 4190.1(a) or 5003.1(b).

4. How Should BLM's Wildfire Management Procedures Relate to the Regulations of the Office of Hearings and Appeals?

One comment said that, because public lands decisions often involve irretrievable natural resources, such as wildlife habitat, BLM should at least defend its actions in the internal appeals process before moving forward with a disputed action.

The problem of uncharacteristically intense and volatile wildfire behavior in certain ecosystems is getting worse. The intensity of some of these fires can result in post-fire conditions that limit the ability of the site to be rehabilitated/restored. It is precisely because wildfire management decisions often involve irretrievable natural or cultural resources, or human habitations, that these decisions must be made effective immediately and the appeals process expedited.

One comment stated that the proposed rule failed to explain its relationship with 43 CFR 4.21(a)(2)–(3) and (b), dealing with requests for stays of bureau decisions. It said that the preamble stated only that "the BLM decision will not be subject to the automatic stay of 43 CFR 4.21(a)." Under current regulations, the comment continued,

> A decision becomes effective on the day after the appeals period expires, unless a petition for stay pending appeal is filed. The proposed regulation does not state that its intent is to eliminate the possibility of the IBLA's granting a stay under the standards of 43 CFR § 4.21(b). Yet it is silent as to the effect of filing a petition for such a stay. If the intent of the rule is to eliminate the 45-day stay triggered, under current regulations, by the filing of such a petition, then it effectively eliminates any possibility of meaningful IBLA review of "wildfire management decisions." If the BLM can proceed to implement a decision despite the filing of a petition for a stay, that decision may well be implemented before the IBLA ever rules on the petition, effectively eliminating any opportunity for administrative review. Parties adversely affected will have no alternative but to proceed immediately to federal court.

The comment has uncovered a drafting error in the proposed rule. Rather than exempting wildfire management decisions from the provisions of all of section 4.21, it should have referred specifically to section 4.21(a)(1). The final rule corrects this error. The stay provisions of section 4.21(b) will apply to decisions made effective immediately under this final rule.

OHA is developing a proposed rule reorganizing section 4.21. When that rule is published in final form, it will include conforming amendments to correct any cross-reference discrepancies in the regulations promulgated today in this rule.

C. Time Limit for Decisions on Appeals From BLM Wildfire Management Decisions

OHA proposed to add a new section, 43 CFR 4.416, requiring IBLA to decide appeals from BLM wildfire management decisions within 60 days after all pleadings have been filed. Some comments stated that the 60-day deadline that the proposed rule sets for the IBLA to decide appeals in "wildfire management" cases is unreasonable for several reasons: (1) It may not be possible for the IBLA to decide "wildfire management" cases within the time period provided; (2) expediting these cases may impose additional delays on the remainder of the Board's cases; and (3) the rule imposes no consequences for the IBLA's failure to meet the 60-day deadline, so that the result of the Board's failure to meet the deadline would simply be for the challenged decision to continue in effect indefinitely, frustrating any opportunity for meaningful administrative review prior to a project's implementation and its potentially irreversible effects. Other comments said that the effect of the rule would be to moot the issues involved in the decision before an objective decisionmaker can resolve them.

The possibility of such delay in other appeals does exist, depending on how many appeals from BLM wildfire management decisions there are; but the trade-off in the use of IBLA's resources is appropriate in view of the necessity for rapid implementation of wildfire management decisions. The severity of the effects of recent fire seasons on the land and resources, and on the national and local economies, justifies whatever impacts the rule may have on other cases on IBLA's docket. Imposing a 60-day deadline on an IBLA decision on the merits has no effect on the ability of an appellant to petition for a stay of the decision appealed. Petitioning for a stay is the mechanism for preventing a decision from remaining in effect indefinitely pending appeal, if the appellant can demonstrate a sufficient basis for staying the decision.

One comment suggested adding to proposed § 4.416, "and within 180 days after the appeal is filed." We have adopted this suggestion in the final rule. The added language will provide a definite deadline for deciding appeals from wildfire management decisions.

Proposed section 4.416 is adopted as amended.

D. Proof of Service

OHA also proposed to amend three sections—43 CFR 4.401(c)(2), 4.422(c)(2), and 4.450–5—to provide

that proof of service of documents on other parties may be made by a statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service. Although some comments said these provisions should not be amended, on the grounds that it is not unreasonable to require an appellant to provide hard proof that it has filed a timely appeal, most comments approved the proposed amendments as bringing IBLA's practice into line with current rules in Federal and state courts.

The amendments to these sections are adopted as proposed.

II. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule will not have an annual economic effect of $100 million or more or adversely affect in a material way an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government or communities. A cost-benefit and economic analysis is not required. These amended regulations will have virtually no effect on the economy because they merely simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions. Any economic effects should be positive, as expedited fuel reduction projects reduce the scope and intensity of wildfire conflagrations, in turn reducing the destruction of natural resources and man-made improvements.

2. This rule will not create inconsistencies with or interfere with other agencies' actions. This rule amends existing regulations of the Office of Hearings and Appeals and the Bureau of Land Management so that they will continue to be consistent with each other.

3. This rule will not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations have to do only with the procedures for hearings and appeals of BLM land management decisions, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations merely simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions.

4. This rule does not raise novel legal or policy issues. These regulations merely simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will have no appreciable effect on small entities. A Small Entity Compliance Guide is not required.

C. 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.

1. This rule will not have an annual effect on the economy of $100 million or more. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions should have no effect on the economy.

2. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will not affect costs or prices for citizens, individual industries, government agencies, or geographic regions.

3. This rule will 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. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*):

1. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. Small government entities rarely appeal BLM wildfire management decisions. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will neither uniquely nor significantly affect these governments. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.* is not required.

2. This rule will not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

E. Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule will not have significant takings implications. A takings implication assessment is not required. These amendments to existing regulations that will simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions will have no effect on property rights. The rule should have the effect of enabling BLM better to protect private property from catastrophic wildfire.

F. Federalism (Executive Order 13132)

In accordance with Executive Order 13132, these final regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on states from simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions. A Federalism Assessment is not required.

G. Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule, by merely simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire

management decisions effective immediately, and expediting review of those decisions, will not unduly burden either administrative or judicial tribunals.

Comments from environmental interest groups addressed this issue by saying that, because the proposed rule will allow BLM to move forward with projects despite a pending appeal, the proposed rule would force citizens to go directly to court to prevent activities that they believe adversely affect the environment. These comments concluded that, for reasons of time, expense, and the necessity of retaining counsel, the Federal courts represent an impracticable and even unavailable venue for many members of the public to resolve these issues.

However, the final rule has been amended to make it clear that it does not prevent appellants from seeking a stay of the decision being appealed. Also, we do not believe that the wildfire management decisions we contemplate making will be appealed as frequently as the comment writers expect. Finally, if BLM's wildfire management projects are properly planned, with extensive public participation in the spirit of the Secretary of the Interior's philosophy of coordination, communication, and consultation in support of conservation, there should be few administrative or court challenges. Even if the final rule leads to increased resort to the Federal courts, the urgency of wildfire management justifies the arguable increased burden on the courts.

H. Paperwork Reduction Act

These regulations do not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. These regulations simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions. They do not require the public to provide information.

I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that the final rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes "[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to the final rule. The final rule is an administrative and procedural rule, relating to the timing of the effectiveness of BLM wildfire management decisions and the Department's administrative appeals process. The rule will not change the requirement that projects must comply with NEPA. Therefore, an environmental assessment or environmental impact statement under NEPA is not required.

One comment expressed concern about the cumulative impacts of the proposed rule and other elements of the President's "Healthy Forests Initiative." It cited—

- Changes in Forest Service regulations implementing the Appeals Reform Act,
- Direction to expedite Endangered Species Act consultation on fuel treatment projects, and guidance from the Council on Environmental Quality on conducting environmental assessments of such projects,
- The proposed revision of the National Forest Management Act regulations,
- The proposed Categorical Exclusions for salvage logging projects up to 250 acres, and
- The proposed Categorical Exclusions for fuel reduction projects on both Forest Service and BLM administered lands.

The comment went on to say that the Categorical Exclusion proposals would exempt Forest Service and BLM fuel reduction projects from NEPA documentation requirements, and that the proposed BLM wildfire regulations would not provide for a project stay on BLM-specific wildfire projects pending appeal. Consequently, the comment said, the cumulative effect of these two proposed rule changes is to eliminate environmental review of purported fuel reduction projects while allowing them to proceed on the ground during an administrative review. The comment concluded that it is critical to evaluate the cumulative effect of these numerous rule changes. Another comment stated that this rule "may result in significant effects that are unknown and thus require at least an EA."

This rule is strictly procedural in nature, and is a small part of the overall wildfire management and Healthy Forests Initiative. It does not change any environmental review process that BLM must follow before implementing a wildfire management decision. The rule expedites the implementation of Federal decisions that still require proper NEPA documentation. BLM is preparing an Environmental Impact Statement to address the overall environmental effects of other aspects of the Initiative. We decline to address those concerns in this procedural final rule.

J. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

As required by Executive Order 13175 and 512 DM 2, the Department of the Interior has evaluated potential effects of the final rule on Federally recognized Indian tribes and has determined that there are no potential effects. The final rule will not affect Indian trust resources; it simplifies proof of service, codifies who has a right of appeal, allows BLM to make wildfire management decisions effective immediately, and provides for expedited review of those decisions.

We received one comment from a commission representing the interests of several Indian Tribes with respect to fishing, hunting, and gathering, and pasturing livestock. The comment expressed some of the same concerns shown in the comments of environmental organizations discussed elsewhere in this preamble as to the cumulative effects of this rule and other initiatives of the Administration affecting the environment. The comment said that the cumulative effect of these proposals would "allow potentially harmful projects to be planned and implemented without adequate tribal consultation, environmental review, or opportunity for appeal or public oversight." The comment went on to say:

> These proposed regulations cannot be reviewed in a vacuum, but must be considered together with the Departments [sic] recent addition of a categorical exclusion from NEPA review for "hazardous fuel reduction" activities. The categorical exclusions have the potential to allow logging and even grazing projects to proceed without environmental review or adequate consultation with Tribes. The proposed appeal changes then would allow these

projects to proceed and start implementation despite the concerns or an appeal. Coupled together, this will greatly reduce the Tribes', or any interested party's, ability to provide substantive input on the adverse effects of a proposed project.

We recognize these concerns. While we do not believe there is a necessity to consult with specific Tribes or their representatives about this rule beyond accepting their public comments about it, there certainly may be need to consult with them regarding specific wildfire management projects if they may have impacts on Indian trust resources. Further, as stated earlier in this preamble, BLM is preparing an Environmental Impact Statement reviewing the possible impacts of the Healthy Forests Initiative, and these tribal concerns will be considered there.

K. Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, we have found that this final rule will not have a significant effect on the nation's energy supply, distribution, or use. Simplifying proof of service, codifying who has a right of appeal, allowing BLM to make wildfire management decisions effective immediately, and expediting review of those decisions will not affect energy supply or consumption.

L. Authors

The principal authors of this final rule are Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, and Michael H. Schwartz and Ted Hudson, Bureau of Land Management, assisted by Michael Hickey and Amy Sosin, Office of the Solicitor, Department of the Interior.

List of Subjects

43 CFR Part 4

Administrative practice and procedure, Grazing lands, Public lands.

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

43 CFR Part 5000

Administrative practice and procedure, Forests and forest products, Public lands.

Dated: May 19, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

Dated: May 14, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

■ For the reasons set forth in the preamble, part 4, subpart E, and part 5000, subpart 5003 of Title 43 of the Code of Federal Regulations are amended, and part 4100, subpart 4190 of Title 43 of the Code of Federal Regulations is added, as set forth below:

43 CFR Subtitle A—Office of the Secretary of the Interior

PART 4—[AMENDED]

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

■ 1. The authority for 43 CFR part 4, subpart E, continues to read:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

■ 2. In § 4.401, revise paragraph (c)(2) to read as follows:

§ 4.401 Documents.

* * * * *

(c) * * *

(2) At the conclusion of any document that a party must serve under the regulations in this part, the party must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service.

* * * * *

■ 3. In § 4.410, redesignate paragraph (b) as (e), and revise paragraph (a)(4) and add paragraphs (b), (c), and (d) to read as follows:

§ 4.410 Who may appeal.

(a) * * *

(4) As provided in paragraph (e) of this section.

(b) A party to a case, as set forth in paragraph (a) of this section, is one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.

(c) Where BLM provided an opportunity for participation in its decisionmaking process, a party to the case, as set forth in paragraph (a) of this section, may raise on appeal only those issues:

(1) Raised by the party in its prior participation; or

(2) That arose after the close of the opportunity for such participation.

(d) A party to a case is adversely affected, as set forth in paragraph (a) of this section, when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.

* * * * *

■ 4. Section 4.416 is added under the undesignated center heading "actions by board of land appeals" to read as follows:

§ 4.416 Appeals of wildfire management decisions.

The Board must decide appeals from decisions under § 4190.1 and § 5003.1(b) of this title within 60 days after all pleadings have been filed, and within 180 days after the appeal was filed.

■ 5. In § 4.422, revise paragraph (c)(2) to read as follows:

§ 4.422 Documents.

* * * * *

(c) * * *

(2) At the conclusion of any document that a party must serve under the regulations in this part, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service.

* * * * *

■ 6. In § 4.450–5, revise the introductory paragraph to read as follows:

§ 4.450–5 Service.

The complaint must be served upon every contestee in the manner provided in § 4.422(c)(1). Proof of service must be made in the manner provided in § 4.422(c)(2). In certain circumstances, service may be made by publication as provided in paragraph (b)(1) of this section. When the contest is against the heirs of a deceased entryman, the notice must be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged incompetent, service of notice must be made by delivering a copy of the notice to the legal guardian or committee, if there is one, of such infant or incompetent person. If there is no guardian or committee, then service must be by delivering a copy of the notice to the person having the infant or incompetent person in charge.

* * * * *

43 CFR Chapter II—Bureau of Land Management, Department of the Interior

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

■ 7. The authority citation for part 4100 continues to read:

Authority: 43 U.S.C. 315, 315a–315r, 1181d, 1740.

■ 8. Add subpart 4190, consisting of 4190.1, to read as follows:

Subpart 4190—Effect of Wildfire Management Decisions

§ 4190.1 Effect of wildfire management decisions.

(a) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(b) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (a) of this section within the time limits prescribed in 43 CFR 4.416.

PART 5000—ADMINISTRATION OF FOREST MANAGEMENT DECISIONS

■ 9. The authority citation for part 5000 continues to read as follows:

Authority: 43 U.S.C. 1181(a); 43 U.S.C. 1701; 30 U.S.C. 601 *et seq.*

Subpart 5003—Administrative Remedies

■ 10. Revise § 5003.1 to read as follows:

§ 5003.1 Effect of decisions; general.

(a) Filing a notice of appeal under part 4 of this title does not automatically suspend the effect of a decision governing or relating to forest management as described under sections 5003.2 and 5003.3.

(b) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a wildfire management decision made under this part and parts 5400 through 5510 of this chapter effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(c) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (b) of this section within the time limits prescribed in 43 CFR 4.416.

[FR Doc. 03–14103 Filed 6–2–03; 12:53 pm]

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Federal Register

Thursday,
June 5, 2003

Part IV

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 402

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AJ02

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. 030506115–3115–01]

RIN 0648–AR05

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: U.S. Fish and Wildlife Service, Interior; Bureau of Land Management, Interior; National Park Service, Interior; Bureau of Indian Affairs, Interior; Forest Service, Agriculture; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: As part of the President's Healthy Forests Initiative announced in August 2002, the U.S. Department of the Interior, Fish and Wildlife Service (FWS) and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) (singly or jointly, Service), in cooperation with the U.S. Department of Agriculture, Forest Service (FS) and the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and National Park Service (NPS), are proposing joint counterpart regulations for consultation under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA) to streamline consultation on proposed projects that support the National Fire Plan (NFP), an interagency strategy approved in 2000 to reduce risks of catastrophic wildland fires and restore fire-adapted ecosystems. These counterpart regulations, authorized in general at 50 CFR 402.04, will provide an optional alternative to the existing section 7 consultation process described in 50 CFR part 402, subparts A and B. The counterpart regulations complement the general consultation regulations in part 402 by providing an alternative process for completing section 7 consultation for agency projects that authorize, fund, or carry out actions that support the NFP. The alternative consultation process contained in these proposed counterpart regulations will eliminate the need to conduct informal consultation and eliminate the requirement to obtain written concurrence from the Service for those NFP actions that the Action Agency determines are "not likely to adversely affect" (NLAA) any listed species or designated critical habitat.

DATES: Comments on this proposal must be received by August 4, 2003, to be considered in the final decision on this proposal.

ADDRESSES: Comments or materials concerning the proposed rule should be sent to the Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203. Comments can also be accepted if submitted via e-mail to *healthyforests@fws.gov*. Comments and materials received in conjunction with this rulemaking will be available for inspection, by appointment, during normal business hours at the above address.

The FWS has agreed to take responsibility for receipt of public comments and will share all comments it receives with NMFS and the Action Agencies. All the agencies will work together to compile, analyze, and respond to public comments.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, at the above address (Telephone 703/358–2171, Facsimile 703/358–1735) or Phil Williams, Chief, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–1401; facsimile 301/713–0376).

SUPPLEMENTARY INFORMATION:

Implementation of National Fire Plan

In response to several years of catastrophic wildland fires throughout the United States culminating in the particularly severe fire season in 2000, when over 6.5 million acres of wildland areas burned, President Clinton directed the Departments of the Interior and Agriculture to develop a report outlining a new approach to managing wildland fires and restoring fire-adapted ecosystems. The report, entitled Managing the Impact of Wildfires on Communities and the Environment, was issued September 8, 2000. This report set forth ways to reduce the impacts of fires on rural communities, a short-term plan for rehabilitation of fire-damaged ecosystems, and ways to limit the introduction of invasive species and address natural restoration processes. The report, and the accompanying budget requests, strategies, plans, and direction, have become known as the NFP. The NFP is intended to reduce risk to communities and natural resources from wildland fires through rehabilitation, restoration and maintenance of fire-adapted ecosystems, and by the reduction of accumulated fuels or highly combustible fuels on forests, woodlands, grasslands, and rangelands.

In August 2002, during another severe wildland fire season in which over 7.1 million acres of wildlands burned, President Bush announced the Healthy Forests Initiative. The initiative was intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize the damage caused by catastrophic wildfires by reducing unnecessary regulatory obstacles that have at times delayed and frustrated active land management activities. Because of nearly a century of policies to exclude fire from performing its historical role in shaping plant communities, fires in our public forests and rangelands now threaten people, communities, and natural resources in ways never before seen in our Nation's history.

Many of the Nation's forests and rangelands have become unnaturally dense as a result of past fire suppression policies. Today's forests contain previously unrecorded levels of fuels, while highly flammable invasive species now pervade many rangelands. As a result, ecosystem health has suffered significantly across much of the Nation. When coupled with seasonal droughts, these unhealthy forests and rangelands, overloaded with fuels, are vulnerable to unnaturally severe wildland fires. The geographic scope of the problem is enormous, with estimates approaching 200 million acres of forest and rangeland at risk of catastrophic fire. The problem has been building across the landscape for decades. Its sheer size makes it impossible to treat all the acres needing attention in a few years or even within the next decade.

In 2002 alone, the Nation experienced over 88,000 wildland fires that cost the Federal government $1.6 billion to suppress. Many of these wildfires significantly impacted threatened or endangered species. The Biscuit Fire burned an area of 499,570 acres in Oregon and California that included 49 nest sites and 50,000 acres of designated critical habitat for the threatened northern spotted owl and 14 nesting areas and 96,000 acres of designated critical habitat for the threatened marbled murrelet. The estimated fire suppression cost was $134,924,847. The Rodeo-Chediski fire in Arizona, the largest fire in the State's post-settlement

history, burned through 462,614 acres, including 20 nesting areas for the threatened Mexican spotted owl. Unless fuel loads can be reduced on the thousands of acres classified at high risk of catastrophic wildfires, more adverse effects like those of the 2002 fire season are certain to occur.

The long-term strategy for the NFP is to correct problems associated with the disruption of natural fire cycles as a result of fire suppression policy or fire-prone non-native invasive species and minimize risks to public safety and private property due to the increase in amount and complexity of the urban/wildland interface. The NFP calls for a substantial increase in the number of acres treated annually to reduce unnaturally high fuel levels, which will decrease the risks to communities and to the environment caused by unplanned and unwanted wildland fire. These types of preventative actions will help ensure public safety and fulfill the goals of the President's Healthy Forests Initiative.

The FS, BIA, BLM, and NPS, as Federal land management agencies, play an important role in implementing actions under the NFP that will reduce the potential risks of catastrophic wildland fire. The FWS also develops and carries out actions in support of the NFP on National Wildlife Refuges or National Fish Hatcheries. These five agencies constitute the Action Agencies who may use the counterpart regulations proposed herein. The types of projects being conducted by these agencies under the NFP include prescribed fire (including naturally occurring wildland fires managed to benefit resources), mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. Prompt implementation of these types of actions will substantially improve the condition of the Nation's forests and rangelands and substantially diminish potential losses of human lives and property caused by wildland fires. The Service and the Action Agencies are proposing these counterpart regulations to accelerate the rate at which these type of activities can be implemented such that the likelihood of catastrophic wildland fires is reduced.

Federal Fuels Treatment Activities

Each of the Action Agencies has substantial experience in planning and implementing projects that further the goals of reducing risks associated with wildland fires, while improving the condition of our public lands and wildlife habitat. The FS works collaboratively with its partners to design and implement projects to meet a variety of land and resource management objectives, including projects to improve habitat for wildlife and fish species. Through several hundred rehabilitation, restoration and hazardous fuels reduction projects under the NFP, the FS treats over 2 million acres each year to benefit natural resources, people, and communities. All of these projects have long-term multiple resource benefits, and several have short-term wildlife benefits as well. On the Winema and Fremont National Forests in Oregon, a thousand acres of forest were thinned and underburned to protect stands and large trees from wildfire, and to increase the longevity of those trees used by bald eagles for nesting and roosting. On the Santa Fe National Forest in New Mexico, after habitat loss due to the Cerro Grande Fire, ground cover in the form of large fallen woody material has been restored to benefit the Jemez Mountain salamander. Habitat that had been damaged by post-wildland fire debris flows has been restored to reduce erosion and benefit Yellowstone cutthroat trout on the Custer National Forest in Montana. On the Jefferson National Forest in Virginia, prescribed fire is used every 3 years on Mt. Rogers to maintain the grassy bald area in a grass-forb stage and prevent woody vegetation from becoming established that would out compete rare plant species. Similarly, on the National Forests in Mississippi, prescribed burning reduces woody vegetation and fuels, encourages fire-dependent perennials, and restores and expands remnants of native prairie.

The BIA has planned many beneficial projects under the NFP that are designed to reduce wildland fire risk on Indian lands and to increase public safety around tribal and non-tribal communities. For example, one project will utilize both mechanical treatments and prescribed fire in lodgepole pine and Engelmann spruce forests to reduce fuel loadings and protect residents and residences around the Blackfeet Indian Reservation communities of East Glacier, Little Badger, Babb, St. Mary, Heart Butte, and Kiowa, in northwestern Montana. A second project would also utilize mechanical treatments and prescribed fire to reduce fuel loadings in Douglas-fir, ponderosa pine, and grass fuel types that pose a high level of risk to the residents around the Rocky Boy's Indian Reservation communities of Box Elder Village, Box Elder Creek, Rocky Boy Townsite, Duck Creek, and Parker Canyon, in Central Montana. A third project would reduce fuels in about 1,300 acres of pine, juniper, oak, and grasses, by combining prescribed fire with mechanical fuels treatment techniques on Zuni Tribal forest and woodland resources in New Mexico. This project would create fuel breaks in large contiguous fuels that are at high risk for catastrophic wildfires. Finally, a fourth project will stabilize and rehabilitate 276,000 acres of White Mountain Apache Tribal lands severely damaged in the Rodeo-Chediski Fire. This project will reduce the potential threats to human life and property in surrounding communities, along with threats to cultural resources, water quantity and quality, and soil productivity.

Across the Nation, NPS is implementing numerous projects to support the goals of the NFP. Park superintendents use prescribed fire (including wildland fire), mechanical fuels treatments, and invasive species control to restore or maintain natural ecosystems, to mitigate the effects of past fire suppression policies, and to protect communities from catastrophic wildfires. NPS fire management and restoration efforts generally focus on restoring ecosystem processes rather than on the management of specific species. However, these projects provide important long-term habitat benefits to a variety of threatened or endangered species. For example, Great Smoky Mountains National Park is completing a 1,034-acre yellow pine restoration burn, the largest prescribed burn in the Park's history. The central purpose of the Park's use of fire is to replicate as nearly as possible the role that naturally occurring fires played in shaping and maintaining the Park's biologically diverse ecosystems, while also minimizing the risk of future wildfires. At Washita Battlefield National Historic Site, the use of prescribed fire is intended to restore and maintain grassland/prairie habitats in a healthy condition. The operation was an interagency effort between the FS and the NPS. Similarly, Gulf Islands National Seashore has conducted prescribed burns for habitat restoration and to reduce hazardous fuels. These burns both restore key vegetative communities and provide habitat for relocated gopher tortoises. Other projects have improved habitat for red-cockaded woodpeckers at Big Thicket National Preserve and bald eagles at Lavabeds National Monument. All of these fuels treatment projects will

enhance public safety for the communities around the Parks.

The BLM is proceeding with many NFP projects to restore dense pinyon pine and juniper forests and woodlands, nearly devoid of understory shrubs, grasses, and forbs, to a more natural savannah, or open woodland conditions. In the Farmington Field Office, New Mexico, the Pump Mesa project is a multiple phase project to open up the pinyon pine and juniper forest canopy by thinning, wood removal, and prescribed burning, to make space, sunlight, water, and nutrients available for the manual seeding of native understory species that were formerly present on the site. Densities of trees in the pinyon pine systems have increased to the point that large proportions of these woodlands have become highly combustible, supporting crown fires that can produce catastrophic habitat loss for wildlife and high risk to nearby communities. In the Richfield Field Office, the Praetor Slope Fuel Reduction project will mechanically displace patches of juniper and sagebrush to reduce the risk created by large, dense contiguous areas of fuel, while creating valuable deer and elk range, complete with islands and feathered woodlands that provide necessary animal cover. In the Central Montana Fire Management Zone, a number of small and moderate-sized prescribed burns, such as in Cow Creek, Little Bull Whacker, and Fergus Triangle, have been completed to increase wildlife habitat diversity, reduce fuel loads, and increase forage for both livestock and wildlife.

Endangered Species Act Section 7 Consultation

Section 7(a)(2) of the ESA requires that each Federal agency shall, in consultation with and with the assistance of the Service, insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in destruction or adverse modification of designated critical habitat. Section 7(b) of the ESA describes the consultation process, which is further developed in regulations at 50 CFR part 402.

The existing ESA section 7 regulations require an action agency to complete formal consultation with the Service on any proposed action that may affect a listed species or designated critical habitat, unless following either a biological assessment or informal consultation with the Service, the action agency makes a determination that a proposed action is "not likely to adversely affect" any listed species or designated critical habitat and obtains written concurrence from the Service for the NLAA determination. The alternative consultation process contained in these proposed counterpart regulations will allow the Service to provide training, oversight, and monitoring to an Action Agency through an alternative consultation agreement (ACA) that enables the Action Agency to make an NLAA determination for a project implementing the NFP without informal consultation or written concurrence from the Service.

Using the existing consultation process, the Action Agencies have consulted with the Service on many thousands of proposed actions that ultimately received written concurrence from the Service for NLAA determinations. Those projects had only insignificant or beneficial effects on listed species or posed a discountable risk of adverse effects. The concurrence process for such projects has diverted some of the consultation resources of the Service from projects in greater need of consultation and caused delays. The proposed counterpart regulations will effectively reduce these delays by increasing the Service's capability to focus on Federal actions requiring formal consultation by eliminating the requirement to provide written concurrence for actions within the scope of the proposed counterpart regulations.

The Action Agencies have engaged in thousands of formal and informal consultations with the Service in the 30 years since the passage of the ESA, and have developed substantial scientific, planning, mitigation, and other expertise to support informed decision-making and to meet their responsibilities under ESA section 7 to avoid jeopardy and contribute to recovery of listed species. To meet their obligations, the Action Agencies employ large staffs of qualified, experienced, and professional wildlife biologists, fisheries biologists, botanists, and ecologists to help design, evaluate, and implement proposed activities carried out under land use and resource management plans. All of the Action Agencies consult with the Service on actions that implement land use and resource management plans that contribute to the recovery of proposed and listed species and the ecosystems upon which they depend. In particular, the informal consultation and concurrence process has given the Action Agencies considerable familiarity with the standards for making NLAA determinations for their proposed actions.

Action Agencies have developed familiarity with the standards over time through various activities. The Action Agencies develop proposals and evaluate several thousand actions for possible effects to listed species and designated critical habitat. Agency biologists are members of listed species recovery teams, contribute to management plans that provide specific objectives and guidelines to help recover and protect listed species and designated critical habitat, and cooperate on a continuing basis with Service personnel. In many parts of the country, personnel from the Action Agencies and the Service participate in regular meetings to identify new management projects and the effects to proposed and listed species through formalized streamlined consultation procedures.

The Action Agencies' established biological expertise and active participation in the consultation process provides a solid base of knowledge and understanding of how to implement section 7 of the ESA. By taking advantage of this expertise within the Action Agencies, the proposed counterpart regulations process will help ensure more timely and efficient decisions on planned NFP actions while retaining the protection for listed species and designated critical habitat required by the ESA and other applicable regulations. The Service can rely upon the expertise of the Action Agencies to make NLAA determinations that are consistent with the ESA and its implementing regulations. Moreover, the Action Agencies are committed to implementing this authority in a manner that will be equally as protective of listed species and designated critical habitat as the current procedures that require written concurrence from the Service.

The Healthy Forests Initiative builds from the recognition that faster environmental reviews of proposed land management projects will provide greater benefits to the range, forest lands, and wildlife by reducing the risk of catastrophic wildfire while the reviews are pending. These proposed counterpart regulations provide an additional tool for accomplishing faster reviews. Streamlining the NLAA concurrence process offers a significant opportunity to accelerate NFP projects while providing equal or greater protection of the resources. Under current procedures, the Action Agencies already must complete and document a full ESA analysis to reach an NLAA determination. The proposed counterpart regulations permit a project to proceed following an Action

Agency's NLAA determination without an overlapping review by the Service, where the Service has provided specific training and oversight to achieve comparability between the Action Agency's determination and the likely outcome of an overlapping review by the Service. These counterpart regulations should significantly accelerate planning, review, and implementation of NFP actions, and by doing so, should contribute to achieving the habitat management and ecosystem restoration activities contemplated under the NFP.

Proposed Counterpart Regulations

Regulations at 50 CFR 402.04 provide that "the consultation procedures may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service." The preamble to the 1986 regulations for implementing section 7 of the ESA states that "such counterpart regulations must retain the overall degree of protection afforded listed species required by the [ESA] and these regulations. Changes in the general consultation process must be designed to enhance its efficiency without elimination of ultimate Federal agency responsibility for compliance with section 7." The approach proposed in these counterpart regulations is consistent with § 402.04 because it leaves the standards for making NLAA determinations unchanged. The proposed joint counterpart regulations establish an optional alternative process to conduct consultation under section 7 of the ESA for actions that the FS, BIA, BLM, FWS, or NPS might authorize, fund, or carry out to implement the NFP. The procedures outlined in the proposed counterpart regulations differ from the existing procedures in 50 CFR part 402 subparts A and B, § 402.13 and § 402.14(b), by allowing an Action Agency to enter into an ACA with the Service that will allow the Action Agency to make an NLAA determination on a proposed NFP project without informal consultation or written concurrence from the Service. Further, Action Agencies operating under these proposed counterpart regulations retain full responsibility for compliance with section 7 of the ESA.

Under the proposed counterpart regulations, the Action Agencies will enter into an ACA with either FWS, NMFS or both. The ACA will include: (1) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations; (2) a program for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency; (3) provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis on proposed actions; (4) provisions for the Action Agency to maintain a list of fire plan projects that received NLAA determinations under the agreement; and (5) a mutually agreed upon program for monitoring and periodic program evaluations. By following the procedures in these counterpart regulations and the ACA, the Action Agencies fulfill their ESA section 7 consultation responsibility for actions covered under these proposed regulations.

The purpose of the jointly developed training program between the Action Agency and the Service is to ensure that the Action Agency consistently interprets and applies the relevant provisions of the ESA and the regulations (50 CFR part 402) relevant to these counterpart regulations with the expectation that the Action Agency will reach the same conclusions as the Service. It is expected that the training program will be consistent among Action Agencies, subject to differing needs and requirements of each agency, and will rely upon the ESA Consultation Handbook as much as possible. The training program may include jointly developed guidelines for conducting the ESA section 7 effects analysis for the particular listed species and critical habitat that occur in the jurisdiction of the Action Agency requesting the agreement. Training may also emphasize the use of project design criteria for listed species where they have been developed between the Service and the Action Agency.

Because the Service maintains information on listed species, the Service may supply any new information it receives that would be relevant to the effects analysis that the Action Agencies will conduct to make the NLAA determinations. In addition, the Service will coordinate with the Action Agency when new listed species or designated critical habitat are proposed.

The Service will use monitoring and periodic program reviews to evaluate an Action Agency's performance under the ACA at the end of the first year of implementation and then at intervals specified in the ACA. The evaluation may be on a subunit basis (*e.g.*, a particular National Forest or BLM district) where different subunits of an Action Agency begin implementation of the ACA at different times. The Service will evaluate whether the implementation of this regulation by the Action Agency is consistent with the best available scientific and commercial information, the ESA and section 7 regulations. The result of the periodic program review may be to recommend changes to the Action Agency's implementation of the ACA. These recommendations could include suspending or excluding any participating Action Agency subunit, but more likely may include additional training. The Service will retain discretion for terminating the ACA if the requirements under the counterpart regulations are not met. However, any such suspension, exclusion, or termination will not affect the legal validity of NLAA determinations made prior to the suspension, exclusion, or termination.

Upon completion of an ACA, the Action Agency and the Service will implement the training program outlined in the ACA. At the Action Agency's discretion, the training program may be designed such that some subunits may begin implementing the ACA before agency personnel in other subunits are fully trained. The Action Agency will assume full responsibility for the adequacy of the NLAA determinations that it makes.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and effective as possible. We are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Prior to making a final determination on this proposed rule, we will take into consideration all relevant comments and additional information received during the comment period.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the address specified in **ADDRESSES.** You may also comment via the Internet to *healthyforests@fws.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 1018–AJ02" and your name and return address in your Internet message. If you do not receive confirmation from the system that we have received your Internet message, contact us directly at (703) 358–2106. Finally, you may hand-deliver comments to the address specified in **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 rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, available for public inspection in their entirety.

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant proposed rule because it may raise novel legal or policy issues, and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) This counterpart regulation 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. The counterpart regulation for the evaluation of conservation efforts when making listing decisions does not pertain to commercial products or activities or anything traded in the marketplace.

(b) This counterpart regulation is not expected to create inconsistencies with other agencies' actions. FWS and NMFS are responsible for carrying out the Act.

(c) This counterpart regulation is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this rule may raise novel legal or policy issues 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 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), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the Regulatory Flexibility Act, we certified to the Small Business Administration that these regulations would not have a significant economic impact on a substantial number of small entities. The purpose of the rule is to increase the efficiency of the ESA section 7 consultation process for those activities conducted to implement the NFP. The proposed changes will lead to the same protections for listed species as the section 7 consultation regulations at 50 CR part 402 and will only eliminate the need for the Action Agency to conduct informal consultation with and obtain written concurrence from the Service for those NFP actions that the Action Agency determines are "not likely to adversely affect" (NLAA) any listed species or designated critical habitat.

Regulations at 50 CFR 402.04 provide that "the consultation procedures may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service." The preamble to the 1986 regulations for implementing section 7 states that "such counterpart regulations must retain the overall degree of protection afforded listed species required by the [ESA] and these regulations. Changes in the general consultation process must be designed to enhance its efficiency without elimination of ultimate Federal agency responsibility for compliance with section 7."

Under the proposed counterpart regulations, the Action Agencies will enter into an Alternative Consultation Agreement (ACA) with either or both of the Services as appropriate. The ACA will include: (1) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations; (2) a program for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency; (3) provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis on proposed actions; (4) provisions for the Action Agency to maintain a list of fire plan projects that received NLAA determinations under the agreement; and (5) a mutually agreed upon program for monitoring and periodic program evaluations. The purpose of the training program is to ensure the Action Agency consistently interprets and applies the relevant provisions of the ESA and regulations (50 CFR 402), with the expectation that the Action Agency will reach the same conclusion as the Service.

The proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The proposed joint counterpart ESA section 7 regulations only apply to ESA section 7 determinations made by one of the five Federal Action Agencies that implement the NFP; (2) the proposed rule will only remove the requirement for the Action Agencies to conduct informal consultation with and obtain written concurrence from FWS or NMFS on those NFP actions they determine that are NLAA listed species or designated critical habitat; and (3) the proposed regulations are designed to reduce potential economic burdens on the Services and Action Agencies by improving the efficiency of the process. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small businesses, organizations, or governments pursuant to the RFA.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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

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

(a) These counterpart regulations will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. We expect that these counterpart regulations will not result in any significant additional expenditures by entities that develop formalized conservation efforts.

(b) These counterpart regulations will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. These counterpart regulations impose no obligations on State, local, or tribal governments.

Takings

In accordance with Executive Order 12630, these counterpart regulations do not have significant takings implications. These counterpart regulations pertain solely to ESA section 7 consultation coordination procedures, and the procedures have no impact on personal property rights.

Federalism

In accordance with Executive Order 13132, these counterpart regulations do not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Commerce regulations under section 7 of the ESA, we coordinated development of these counterpart regulations with appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose these counterpart regulations consistent with 50 CFR 402.04 and section 7 of the ESA.

Paperwork Reduction Act

This proposed rule would not impose any new requirements for collection of information that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This proposed rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

National Environmental Policy Act

These counterpart regulations have been developed by FWS and NMFS, jointly with FS, BIA, BLM, and NPS according to 50 CFR 402.04. The FWS and NMFS are considered the lead Federal agencies for the preparation of this proposed rule, pursuant to 40 CFR 1501. We have analyzed these counterpart regulations in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 and have determined that an environmental assessment will be prepared prior to finalization of the rule.

Government-to-Government Relationship With Indian Tribes

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); E.O. 13175; and the Department of the Interior's 512 DM 2, we understand that we must relate to recognized Federal Indian Tribes on a Government-to Government basis. However, these counterpart regulations do not directly affect Tribal resources. These counterpart regulations may have an indirect effect on Native American Tribes as the Bureau of Indian Affairs may, at its discretion, implement the procedures outlined in the counterpart regulations for those activities affecting Tribal resources that they may authorize, fund, or carry out under the NFP. The intent of these counterpart regulations is to streamline the consultation process; therefore, the extent of this indirect effect will be wholly beneficial.

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly the Service proposes to amend part 402, title 50 of the Code of Federal Regulations as follows:

PART 402—[AMENDED]

1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Add a new Subpart C to read as follows:

Subpart C—Counterpart Regulations for Implementing the National Fire Plan

Subpart C—Counterpart Regulations for Implementing the National Fire Plan

§ 402.30 Definitions.

The definitions in § 402.02 are applicable to this subpart. In addition, the following definitions are applicable only to this subpart.

Action Agency refers to the Department of Agriculture Forest Service (FS) or the Department of the Interior Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), or National Park Service (NPS).

Alternative Consultation Agreement (ACA) is the agreement described in § 402.33 of this subpart.

Fire Plan Project is an action determined by the Action Agency to be within the scope of the NFP as defined in this section.

National Fire Plan (NFP) is the September 8, 2000, report to the President from the Departments of the Interior and Agriculture entitled Managing the Impact of Wildfire on Communities and the Environment outlining a new approach to managing fires, together with the accompanying budget requests, strategies, plans, and direction, or any amendments thereto.

Service Director refers to the FWS Director or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

§ 402.31 Purpose.

The purpose of these counterpart regulations is to improve the consultation process under section 7 of

the ESA for Fire Plan Projects by providing an optional alternative to the procedures found in §§ 402.13 and 402.14(b) of this part. These regulations permit an Action Agency to enter into an Alternative Consultation Agreement (ACA) with the Service, as described in § 402.33, which will allow the Action Agency to determine that a Fire Plan Project is "not likely to adversely affect" (NLAA) a listed species or designated critical habitat without formal or informal consultation with the Service or written concurrence from the Service. An NLAA determination for a Fire Plan Project made under an ACA, as described in § 402.33, completes the Action Agency's statutory obligation to consult with the Service for that Project. In situations where the Action Agency does not make an NLAA determination under the ACA, the Action Agency would still be required to conduct formal consultation with the Service when required by § 402.14. This process will be as protective to listed species and designated critical habitat as the process established in subpart B of this part. The standards and requirements for formal consultation under subpart B for Fire Plan Projects that do not receive an NLAA determination are unchanged.

§ 402.32 Scope.

(a) Section 402.33 establishes a process by which an Action Agency may determine that a proposed Fire Plan Project is not likely to adversely affect any listed species or designated critical habitat without conducting formal or informal consultation or obtaining written concurrence from the Service.

(b) Section 402.34 establishes the Service's oversight responsibility and the standard for review under this subpart.

(c) Nothing in this subpart C precludes an Action Agency at its discretion from initiating early, informal, or formal consultation as described in §§ 402.11, 402.13, and 402.14, respectively.

(d) The authority granted in this subpart is applicable to an Action Agency only where the Action Agency has entered into an ACA with the Service. An ACA entered into with one Service is valid with regard to listed species and designated critical habitat under the jurisdiction of that Service whether or not the Action Agency has entered into an ACA with the other Service.

§ 402.33 Procedures.

(a) The Action Agency may make an NLAA determination for a Fire Plan Project without informal consultation or written concurrence from the Director if the Action Agency has entered into and implemented an ACA. The Action Agency need not initiate formal consultation on a Fire Plan Project if the Action Agency has made an NLAA determination for the Project under this subpart. The Action Agency and the Service will use the following procedures in establishing an ACA.

(1) *Initiation:* The Action Agency submits a written notification to the Service Director of its intent to enter into an ACA.

(2) *Development and Adoption of the Alternative Consultation Agreement:* The Action Agency enters into an ACA with the Service Director. The ACA will, at a minimum, include the following components:

(i) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations under this subpart C.

(ii) Procedures for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency.

(iii) A description of the standards the Action Agency will apply in assessing the effects of the action, including direct and indirect effects of the action and effects of any actions that are interrelated or interdependent with the proposed action.

(iv) Provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis of proposed actions.

(v) A mutually agreed upon program for monitoring and periodic program evaluation to occur at the end of the first year following signature of the ACA and periodically thereafter.

(vi) Provisions for the Action Agency to maintain a list of Fire Plan Projects for which the Action Agency has made NLAA determinations. The Action Agency will also maintain the necessary records to allow the Service to complete the periodic program evaluations.

(3) *Training:* Upon completion of the ACA, the Action Agency and the Service will implement the training program outlined in the ACA to the mutual satisfaction of the Action Agency and the Service.

(b) The Action Agency may at its discretion, allow any subunit of the Action Agency to implement this subpart as soon as the subunit has fulfilled the training requirements of the ACA, upon written notification to the Service. The Action Agency shall at all times have responsibility for the adequacy of all NLAA determinations it makes under this subpart.

(c) The ACA and any related oversight or monitoring reports shall be made available to the public.

§ 402.34 Oversight.

(a) Through the periodic program evaluation set forth in the ACA, the Service will determine whether the implementation of this regulation by the Action Agency is consistent with the best available scientific and commercial information, the ESA, and section 7 regulations.

(b) The Service Director may use the results of the periodic program evaluation described in the ACA to recommend changes to the Action Agency's implementation of the ACA. If and as appropriate, the Service Director may suspend any subunit participating in the ACA or exclude any subunit from the ACA.

(c) The Service Director retains discretion to terminate the ACA if the Action Agency fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the ACA. Termination, suspension, or modification of an ACA does not affect the validity of any NLAA determinations made previously under the authority of this subpart.

Dated: May 28, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Dated: May 27, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service, National Oceanic and Atmospheric Adminstration.

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Thursday,
June 5, 2003

Part V

Department of Agriculture

Forest Service

Department of the Interior

National Environmental Policy Act Determination Needed for Fire Management Activities; Categorical Exclusions; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

RIN 0596–AB99

National Environmental Policy Act Documentation Needed for Fire Management Activities; Categorical Exclusions

AGENCY: Forest Service, USDA, and Department of the Interior.

ACTION: Notice of final National Environmental Policy Act implementing procedures.

SUMMARY: The Department of Agriculture, Forest Service and the Department of the Interior give notice of revised procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These final implementing procedures are being issued in Forest Service Handbook 1909.15, Chapter 30, Section 31.2, and Department of the Interior Manual 516 DM, Chapter 2, Appendix 1, which describe categorical exclusions, *i.e.*, categories of actions, which do not individually or cumulatively have a significant effect on the human environment and therefore normally do not require further analysis in either an environmental assessment or an environmental impact statement. The revision adds two such categories of actions to the agencies' NEPA procedures: (1) Hazardous fuels reduction activities; and (2) rehabilitation activities for lands and infrastructure impacted by fires or fire suppression. The Departments reviewed the effects of over 2,500 hazardous fuel reduction and rehabilitation projects and concluded that these are categories of actions which do not individually or cumulatively have a significant effect on the human environment. The agencies have also conducted a review of peer-reviewed scientific literature identifying the effects of hazardous fuels reduction activities, which is available at *http://www.fs.fed.us/emc/hfi*. This combination of reviews give the agencies confidence that the categorical exclusions are appropriately defined. These two categorical exclusions will facilitate scientifically sound, efficient, and timely planning and decisionmaking for the treatment of hazardous fuels and rehabilitation of areas so as to reduce risks to communities and the environment caused by severe fires.

The hazardous fuels reduction category will apply only to activities identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan" (hereafter called 10-Year Comprehensive Strategy Implementation Plan). An example of the framework's structure is available at *http://www.fireplan.gov/reports/mou/fuelstreatment.pdf*. Moreover, these hazardous fuels reduction activities: (1) Will not be conducted in wilderness areas or where they would impair the suitability of wilderness study areas for preservation for wilderness; (2) will not include the use of herbicides or pesticides; (3) will not involve the construction of new permanent roads or other infrastructure; (4) will not include sales of vegetative material that do not have hazardous fuels reduction as their primary purpose; (5) will not exceed 1,000 acres for mechanical hazardous fuels reduction activities and will not exceed 4,500 acres for hazardous fuels reduction activities using fire; (6) will only be conducted in wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

Activities carried out under the rehabilitation category will take place only after a wildfire. These activities cannot use herbicides or pesticides, nor include the construction of new permanent roads or other infrastructure, and they must be completed within three years following a wildland fire. Activities carried out under the rehabilitation categorical exclusion will not exceed 4,200 acres.

Activities conducted under these categorical exclusions must be consistent with agency and Departmental procedures and with applicable land and resource management plans, and must comply with all applicable Federal, State, and Tribal laws for protection of the environment. These categorical exclusions will not apply where there are extraordinary circumstances, such as adverse effects on the following: threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; wetlands; impaired waters; and archaeological, cultural, or historic sites.

In response to comments on the proposed categorical exclusions, several revisions were made to the original proposal: (1) Grazing activities for the maintenance of fuel breaks were removed from the hazardous fuels reduction category; (2) the hazardous fuels reduction category was clarified to explicitly state that a proposed action could only include the sale of vegetative material where the primary purpose of hazardous fuels reduction; (3) one of the requirements for hazardous fuels reduction activities was revised to state that such activities must be identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan, rather than be consistent with the framework; (4) the hazardous fuels reduction category was modified to make the list of activities an exhaustive one instead of illustrative; (5)) the hazardous fuels reduction category was modified to limit its use to wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface; (6) hazardous fuels reduction activities using fire are limited to 4,500 acres; (7) mechanical hazardous fuels reduction activities are limited to 1,000 acres; (8) fire rehabilitation activities are limited to 4,200 acres; and (9) the definition of rehabilitation was revised to be consistent with the National Wildland Fire Coordinating Group interagency definition.

EFFECTIVE DATE: The categorical exclusions are effective June 5, 2003.

ADDRESSES: The new Forest Service categorical exclusions are set out in Interim Directive No. 1909.15–2003–1, available electronically via the Internet at *http://www.fs.fed.us/im/directives*. The new Department of the Interior categorical exclusions are set out in 516 DM, Chapter 2, Appendix 1, available electronically via the Internet at *http://elips.doi.gov/table.cfm*. Single paper copies are available by contacting Dave Sire, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250–1104 or Willie Taylor, Department of the Interior, Office of Environmental Policy and Compliance (Mail Stop 2342), 1849 C Street, NW., Washington, DC 20240. Additional information and analysis can be found at *http://www.fs.fed.us/emc/hfi*.

FOR FURTHER INFORMATION CONTACT: Dave Sire, USDA Forest Service, Ecosystem Management Coordination Staff, (202) 205–2935, or Willie Taylor, Department of the Interior, Office of Environmental Policy and Compliance, (202) 208–3891. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On August 22, 2002, President Bush established the

Healthy Forest Initiative, directing the Department of Agriculture and the Interior and the Council on Environmental Quality to improve regulatory processes to ensure more timely decisions, greater efficiency, and better results in reducing the risk of catastrophic wildfires by restoring forest health.

In response to this direction, the Departments of Agriculture and the Interior proposed two new categorical exclusions on December 16, 2002 (67 FR 77038). The first, addressing hazardous fuels reduction activities, is intended to better protect lives, communities, and ecosystems from the risk of high-intensity wildland fire. The second, addressing rehabilitation activities, is intended to better restore natural resources and infrastructure after a fire. The supplementary information section of the notice published in December contains comprehensive background information on the need, development, and rationale for these categorical exclusions. The specific language for the proposed categories of actions are set out for comment in the notice was as follows:

- Hazardous fuels reduction activities (prescribed fire, and mechanical or biological methods such as crushing, piling, thinning, pruning, cutting, chipping, mulching, grazing and mowing) when the activity has been identified consistent with the framework described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan." Such activities:
- Shall be conducted consistent with agency and Departmental procedures and land and resources management plans; and
- Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and
- Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure.
- Activities (such as reseeding or planting, fence construction, culvert repair, installation of erosion control devices, and repair of roads and trails) necessary for the rehabilitation of habitat, watersheds, historical, archeological, and cultural sites and infrastructure impacted by wildfire and/or wildfire suppresion. Such activities:
- Shall be conducted consistent with agency and Departmental procedures and land and resource management plans; and
- Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure.

Comments on the Proposal

Almost 39,000 responses in the form of letters, postcards, faxes, and e-mail messages were received during the comment period. These comments came from private citizens, elected officials, and groups and individuals representing businesses, private organizations, and Federal agencies. Responses consisted of nearly 1,900 individual letters and over 37,000 form letters.

Public comment on the proposal addressed a wide range of topics, many of which were directed generally at the President's Healthy Forest Initiative and hazardous fuels reduction. Many people supported the proposal or favored further expansion, while many other opposed the proposal or recommended further restrictions.

Comment: Some respondents voiced general agreement with the proposal. Some indicated that they think current analysis and documentation requirements are too burdensome and that the proposal would provide for more efficient management. Others believed that the proposal had appropriate limitations on the use of the categorical exclusions and that the agencies had done sufficient analysis to include that the categories of hazardous fuels reduction activities and fire rehabilitation activities do not individually or cumulatively have significant effects. Still others agreed that the collaboration requirements ensure that local affected communities will be involved.

Response: These comments were in support of the proposal and need no specific response. A summary of the remainder of public comments and the agencies' responses follows:

Comment: Some respondents stated that the proposal is not needed inasmuch as current laws and policies allow sufficient action to be taken to lower the forest fire risk in urban-wildland interface areas. They stated that agency policies already provide sufficient authority of using categorical exclusions.

Response: The Forest Service and the land management agencies within the Department of the Interior have various categorical exclusions for fire management in their NEPA procedures. Consequently, there are inconsistencies among agencies. Some agencies have the ability to categorically exclude some or all hazardous fuels reduction activities and some of or all fire rehabilitative activities while others cannot. For example, the U.S. Fish and Wildlife Service has utilized similar categories for fire management activities since 1997. In contrast, before the issuance of the categories set out in this notice, a jointly proposed Forest Service and Bureau of Land Management (BLM) hazardous fuels reduction activity using prescribed fire would have required BLM to prepare an environmental assessment, while the Forest Service may have categorically excluded such an action. These final categories provide a tool for more efficient planning of hazardous fuels reduction and fire rehabilitation activities. Having the same categories available to all of these land management agencies will facilitate inter-agency coordination and allow for more efficient planning and more timely decisions across agency jurisdictions. It will also provide greater consistency of practice. The addition of these categories, however, does not represent a substantial change for some agencies nor does it replace or prevent the use of existing categories with similar purposes. *See* "Comparision of USDA Forest Service and Department of the Interior Agency Categorical Exclusions" at *http://www.fs.fed.us/emc./hfi.*

Comment: Some respondents stated that the proposal inappropriately adopts a nationwide approach over a site-specific approach and that certain geographical regions or areas with specific ecological characteristics should not be included in the category. They suggested that fire does not play a significant role in some areas due to high precipitation and humidity. Suggestions included taking the Southern Appalachian forests, national monuments, Eastern forests, forests in the Pacific Northwest, old growth, and alpine forests out of these categories of actions.

Response: Data on hazardous fuels reduction and fire rehabilitation activities was collected from field units within the Forest Service, Bureau of Land Management, Bureau of Indian Affairs, Fish and Wildlife Service, and National Park Service, across the United States. Based on a review of this data, it is the professional judgment of the Departments that the categories of actions identified in the hazardous fuels reduction and fire rehabilitation categorical exclusions do not individually or cumulatively have significant effects on the human environment. The data represents a broad spectrum of hazardous fuels reduction activities across vegetation types, geographic regions, and agency jurisdictions. Indeed, it is this broad representation of activities that leads the

agencies to conclude that the hazardous fuels reduction and fire rehabilitation categories should not be restricted to any specific geographic area, vegetation type, or jurisdiction. Additional information is available at *http://www.fs.fed.us/emc/hfi.* The categorical exclusion are provided as a tool to improve planning efficiency.

The applicability of hazardous fuels reduction activities and the level of NEPA documentation appropriate to any given area is a matter for informed professional judgment on the part of the local resource manager. The hazardous fuels categorical exclusion has been modified to limit its use to areas in wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups, I, II, or III, outside the wildland-urban interface. Further, hazardous fuels reduction actions using this category will be identified through a collaborative process as described in "A Collaborative Approach for Reducing Wildland Fire risks to communities and the Environment 10-Year Comprehensive Strategy Implementation Plan" (hereafter called the 10-Year comprehensive Strategy implementation Plan). Therefore, if hazardous fuels reduction activities are not needed or appropriate, they are not likely to be identified through this process.

The rehabilitation category is to be used only for rehabilitation of resources and infrastructure after a wildfire, so it is already limited to those areas impacted by wildland fire and wildfire suppression. Further restricting this category to certain geographic areas may exclude areas that, while not typically susceptible to wildland fire, may be subject to wildland fire because of conditions such as extreme drought, blow down, or insect infestation.

Moreover, the two categories will not apply where there are extraordinary circumstances, such as adverse effects on the following: threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; wetlands; impaired waters; and archaeological, cultural, or historic sites.

Comment: Some respondents stated that the public cannot adequately comment until they have reviewed the results of the required Council on Environmental Quality (CEQ) consultation for the proposed categorical exclusions.

Response: Pursuant to regulations at 40 CFR 1505.1 and 1507.3, the USDA Forest Service and the Department of the Interior consulted with CEQ during the development of the categorical exclusions. Prior to the publication of these final categorical exclusions, CEQ provided written confirmation that amending the Forest Service and Department of the Interior NEPA procedures by adding the new categorical exclusions was in conformity with NEPA and the CEQ regulations.

Comment: Some respondents stated that the agencies should have provided addresses listing where hard copies of information can be obtained. These respondents said that they do not have access to the Internet and that they have not been able to obtain information.

Response: Two contacts and their phone numbers were provided in the **Federal Register** notice (67 FR 77038) as sources for additional information. Paper copies of the information were available on request from the two contacts.

Comment: Some respondents questioned why the public should have to cite specific laws, regulations, or policies when making comments.

Response: There was no request for the public to cite specific laws, regulations, or policies when making comments.

Comment: Some respondents stated that, according to the **Federal Register** notice, instructions for applying the proposed fire management categorical exclusions will not be issued until after the procedures are finally established; thus neither the agencies nor the public can comment on how, where, and how often these categorical exclusions will be utilized.

Response: The only instructions not yet produced are those providing Department of the Interior agencies guidance for the format and content of memos that will document the agency's use of either of these two categorical exclusions. Historically, requirements for documenting decisions concerning categorically excluded activities have varied across agencies within the Department of the Interior. The new Department of the Interior instructions will be consistent with existing Forest Service requirements and provide for standardized documentation for using the hazardous fuels reduction and fire rehabilitation categorical exclusions among agencies. The Forest Service requirements are available at *http://www.fs.fed.us/im/directives/fsh/1990.15/1909.15,30.txt.* The Department of Interior instruction can be found at *http://www.doi.gov/oepc/esms. html.*

Comment: Some respondents said they believe that the proposal will restrict public involvement and that timber harvest for purposes other than hazardous fuels reduction will be categorically excluded.

Response: The hazardous fuels reduction categorical exclusion explicitly states that it may only be used where the primary purpose of the project is hazardous fuels reduction. Moreover, it is restricted to activities identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan. As stated in the 10-Year Comprehensive Strategy Implementation Plan, "Local level collaboration should involve participants with direct responsibility for management decisions affecting public and/or private land and resources, fire protection responsibilities, or good working knowledge and interest in local resources. Participants should include Tribal representatives, local representatives, local representatives from Federal and State agencies, local governments, landowners and other stakeholders, and community-based groups with a demonstrated commitment to achieving the four goals described in the Comprehensive Strategy 10-Year Implementation Plan (improve fire prevention and suppression, reduce hazardous fuels, restore fire-adapted ecosystems, and promote community assistance). Existing resource advisory committees, watershed councils, or other collaborative entities may serve to achieve coordination at this level. Local involvement, expected to be broadly representative, is a primary source of planning, project prioritization, and resource allocation and coordination at the local level."

This requirement supports public involvement and collaboration, and helps ensure a focus on reducing wildland fire risks. Through such collaboration, actions believed necessary to abate the risk of high-intensity wildfire will be identified. This collaboration will, where appropriate, seek to address conflicts concerning alternative uses of resources and be used by the federal agencies to consider, as appropriate, reasonable alternatives to recommend courses of action. 42 U.S.C. 4332(2)(E). The hazardous fuels reduction category will utilize a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan even after the ten years of the 10-Year Comprehensive Strategy Implementation Plan have passed. In addition, the use of the hazardous fuels reduction category is limited to the reduction of fuels in the wildland-urban interface or in Condition Classes 2 or 3

in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

Comment: Some respondents asked the agencies to clarify the public involvement process for the rehabilitation categorical exclusion.

Response: Responsible officials will consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process, commensurate with public interest in a proposed action, regardless of how the analysis is documented.

Comment: Various respondents questioned the methodology used to gather and interpret activity information used in the agencies' conclusion that the proposed category of hazardous fuels reduction actions do not individually or cumulatively have a significant environmental effect on the human environment. Some do not believe there is sufficient evidence for this conclusion. Others suggest various biases are reflected in the activities selected. Some respondents suggested that the time period in which the data were collected from field units was too short to gather accurate data.

Response: To identify activities for review, the Forest Service relied on a national database implemented in October 2000. The database includes fuel hazard reduction and rehabilitation and stabilization projects accomplished in fiscal years 2001 and 2002. The Forest Service reviewed 100 percent of the completed projects in the database. The Department of the Interior, having comprehensive fuel hazard reduction and rehabilitation and stabilization project records dating back many years, chose a 100 percent sample of projects accomplished in fiscal year 2002 and a 10 percent random sample of projects accomplished in fiscal years 1998 through 2001. As the request of both the Forest Service and Department of the Interior, field units added additional hazardous fuels reduction and rehabilitation projects that had not been entered in their respective national databases. The information request was distributed to field units to verify and supplement the project information because that is the organizational level where project information would be readily available. Field units responded to questions about projects for which they had already reported accomplishments through their agency reporting systems. Field units responded with over 3,000 hazardous fuels reduction and fire rehabilitation projects. The information supplied included 30 different data items for each activity, including information on activity location and size, vegetation cover type, fuels treatment type, predicted environmental effects, actual environmental effects after activity completion, and mitigation measures. Over 2,400 of the projects reviewed had some form of validation of the environmental effects predicted, in the form of formal monitoring, forest plan monitoring, or personal observation. Some of these included multiple activities. Environmental effects included ecological, aesthetic, historic, cultural, economic, social, or health effects as defined in 40 CFR 1508.8. The agencies identified some inconsistencies and missing information in the data provided by the field units and followed up with specific units for clarification.

The agencies relied on the professional judgment of the responsible officials concerning the significance of environmental effects. The agencies believe that resource specialists and stakeholders involved in the design and analysis of each specific on-the-ground project were best qualified to identify resulting environmental effects or whether extraordinary circumstances were present.

Comment: Some respondents questioned the fire statistics presented in the proposal. Some said that the fire statistics fail to provide sufficient information to make any conclusions that justify the proposal.

Response: The fire statistics in the preamble to the proposal where drawn from the Administration's "Healthy Forests: An Initiative for Wildfire Prevention and Stronger Communities" and "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy." Statistics for past fire seasons are also available from the National Interagency Fire Center at *http://www.nifc.gov/stats.* The statistics were provided to explain why the agencies believed the proposal was necessary and timely. These statistics are not a basis for evaluating the significance of the environmental effects of hazardous fuels reduction or rehabilitation activities.

The proposal is focused on how the attendant environmental analyses will be documented. The CEQ regulations implementing NEPA direct agencies to reduce excessive paperwork by using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The agencies believe that the projects they reviewed provided ample information to define the two categorical exclusions.

Comment: Some respondents believe that the initiative is contrary to the Roadless Area Conservation Rule which prohibits road construction in roadless areas unless needed to protect public health and safety under an imminent threat of a catastrophic event that would cause the loss of life or property. Others say that roadless areas should be included in the proposed categorical exclusions.

Response: Categorically excluded actions must be consistent with applicable law, regulations and policy. The Roadless Area Conservation Rule (36 CFR 294) prohibits certain activities in inventoried roadless areas. Further, Forest Service NEPA procedures continue to require an environmental impact statement for proposals that would substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more (FSH 1909.15, Section 20.6(3)).

Comment: Some respondents state that the agencies should strengthen the proposed fire management categorical exclusions by adding a paragraph that specifies that they also apply in extraordinary circumstances in either Presidential Disaster Declaration areas, or areas where it is demonstrated that a high risk to human life, safety, property, or infrastructure exists.

Response: The categorical exclusions are based on the agencies' conclusion that these are categories of actions, which do not individually or cumulatively have a significant effect on the human environment. The need for emergency actionis not justification for a categorical exclusion. CEQ regulations provide for procedures that allow action in emergencies when an environmental impact statement would be required (40 CFR 1506.11).

Comment: Some respondents stated that the agencies should modify the initiative to specify that the proposed fire management categorical exclusions can be used in storm/wind damaged forest areas.

Response: The proposed categorical exclusion for hazardous fuels reduction may be used in storm/wind damaged areas as long as the criteria in the text of the categorical exclusion are met. The agencies do not believe that such additional specificity is necessary.

Comment: Some respondents suggest specific criteria to further define and limit the proposed categories of actions, *e.g.,* project goals, outcomes, acreage limitations, the number of activities within a single watershed, and the types of forests for which methods apply. Some respondents state that the

agencies should limit the size of the proposed fire management categorical exclusions to 40 acres or less and within one-half mile of communities. Some state that the agencies should limit activity size to no more than 250 acres, while others suggest that the agencies should restrict removal for a specific activity to 250,000 board feet.

Response: The categorical exclusions are limited to activities with a specific goal and outcome as suggested by some respondents. Accordingly, activities could include the sale of vegetative material only if hazardous fuels reduction is the primary purpose of the activity. The hazardous fuels categorical exclusion is limited to activities identified through a collaborative process as described in the 10-Year Comprehensive Strategy Implementation Plan. The collaborative process will identify areas that are a priority for treatment using the hazardous fuels reduction categorical exclusion.

Project data was collected from five land management agencies across the United States. The data represents the spectrum of hazardous fuels reduction and fire rehabilitation projects of different sizes across vegetation types, geographic regions, agency jurisdictions. Not all projects reviewed had post activity validation of the predicted environmental effects. The agencies focused on an analysis of the acreage figures from over 2,500 hazardous fuels reduction and rehabilitation activities where the environmental effects were predicted to not be significant and where those predictions were validated. Hazardous fuels reduction activities using fire, ranged in size from less than one acre to 90,000 acres. Mechanical hazardous fuels reduction activities, ranged in size from less than one acre to 11,690 acres. Fire rehabilitation activities, ranged in size from one acre to 39,000 acres.

In response to requests fromore specificity of limits, the agencies have further constrained the hazardous fuels categorical exclusion ot activities within wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

The wildland urban interface is defined in the Forest Service and Department of the Interior **Federal Register** notice "Urban Wildland Interface Communities Within the Vincinity of Federal Lands That Are at High Risk From Wildfire" published January 4, 2001 (66 FR 753), as an "interface community" and an "intermix community". For purposes of defining these communities, a structure is understood to be either a residence or a business facility, including Federal, State, and local government facilities. Structures do not include small improvements such as fences and wildlife watering devices.

The "interface community" exists where structures directly abut wildland fuels. The wildland interface community exists where humans and their development meet or intermix with wildland fuel. There is a clear line of demarcation between residential, business, and public structures and wildland fuels. Wildland fuels do not generally continue into the developed area. The development density for an interface community is usually 3 or more structures per acre, with shared municipal services. Fire protection is generally provided by a local government fire department with the responsibility to protect the structure from both an interior fire and an advancing wildland fire. An alternative definition of the interface community emphasizes a population density of 250 or more people per square mile.

The "intermix community" exists where structures are scattered throughout a wildland area. There is no clear line of demarcation; wildland fuels are continuous outside of and within the developed area. The development density in the intermix ranges from structures very close together to one structure per 40 acres. Fire protection districts funded by various taxing authorities normally provide life and property fire protection and may also have wildland fire protection responsibilities. An alternative definition of intermix community emphasizes a population density of between 28–250 people per square mile.

Based on coarse scale national data, Fire Condition Classes measure general wildfire risk as follows:

Condition Class 1. For the most part, fire regimes in this Fire Condition Class are within historical ranges. Vegetation composition and structure are intact. Thus, the risk of losing key ecosystem components from the occurrence of fire remains relatively low.

Condition Class 2. Fire regimes on these lands have been moderately altered from their historical range by either increased or decreased fire frequency. A moderate risk of losing key ecosystem components has been identified on these lands.

Fire Regime Groups are defined in the 10-Year Comprehensive Strategy Implementation Plan, which is available on a number of Web sites including *http://www.fs.fed.us/emc/hfi.* A fire regime is a generalized description of the role fire plays in an ecosystem. It is characterized by fire frequency, predictability, seasonality, intensity, duration, scale (patch size), as well as regularity or variability. Five combinations of fire frequency, expressed as fire return interval in fire severity, are defined as Groups I through V. Groups I and II include fire return intervals in the 0–35 year range. Group I includes ponderosa pine, other long needle pine species, and dry site Douglas-fir. Group II includes the drier grassland types, tall grass prairie, and some Pacific chaparral ecosystems. Groups III and IV include fire return intervals in the 35–100+ year range. Group III includes interior dry site shrub communities such as sagebrush and chaparral ecosystems. Group IV includes lodgepole pine and jack pine. Group V is the long interval (infrequent), stand replacement fire regime and includes temperate rain forest, boreal forest, and high elevation conifer species.

In response to requests to consider acreage limitations on the categorical exclusions for hazardous fuel reduction and fire rehabilitation activities, the agencies reviewed the data to determine prudential limits on the scope of these categorical exclusions. Although the data did not establish a relationship between acres treated and environmental effects, the agencies have elected to limit the categorical exclusion for hazardous fuels reduction activities using fire to 4,500 acres, hazardous fuels reduction activities using mechanical methods up to 1,000 acres, and fire rehabilitation activities to 4,200 acres. These acreages are well within the range of the data. This responds to public concerns while maintaining the effectiveness of the categorical exclusions as a management tool.

Using timber volume as a limitation, instead of acreage, does not reflect the size of an activity inasmuch as a small project in one part of the country may result in as much timber volume as a much larger project in another part of the country. Moreover, activities in the review that were identified as having significant environmental effects were not those of a particular activity, location, or size but were identified as having extraordinary circumstances, which precluded the use of a categorical exclusion.

These acreage limits for the hazardous fuels reduction and fire rehabilitation categories differ from those in a separate Forest Service proposal for three categorical exclusions for limited timber harvest (68 FR 1026). In conducting the review for its limited timber harvest categories, the Forest Service selected projects that would have qualified

under the agency's former Categorical Exclusion 4, which allowed up to 1 million board feet of salvage and 250,000 board feet of merchantable wood products. As previously discussed, volume per acre can vary considerably from place to place or by treatment method. However, by limiting timber harvests in the Forest Service's review for its limited timber harvest categorical exclusions to actions limited by a specified volume, the projects in the review were still inherently limited in acreage. Conversely, the activities reviewed for the hazardous fuels reduction and fire rehabilitation categorical exclusions were not constrained by a acreage or board feet limitations. Accordingly, the acreage limits proposed for the Forest Service's three limited timber harvest categorical exclusions are smaller than the acreage limits in these hazardous fuels and fire rehabilitation categorical exclusions. Since the Forest Service's limited timber harvest categorical exclusion data is constrained, it is not comparable to the hazardous fuels and fire rehabilitation categorical exclusions data.

Comment: Some respondents stated that the initiative contradicts the original intent of categorical exclusions, which is to expedite minor, routine administrative actions. According to these respondents, there will be more stringent requirements for administrative actions such as moving and trail maintenance than for vegetation management on hundreds of thousands of acres of land, under this initiative.

Response: Categorically excluded actions include those that are minor, routine, and administrative. Forest Service NEPA procedures do apply the term "routine" in reference to some of the actions that are currently categorically excluded. In addition, the categorical exclusions are intended to expedite actions that fit within categories of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required. In this case, the agencies have analyzed a substantial body of data. As the agencies' experience with environmental analysis for natural resource management activities grows, it stands to reason that additional categorical exclusions will be defined.

Comment: Some respondent said the application of extraordinary circumstances screens is insufficient and open to abuse. Others stated a belief that hazardous fuels reduction and fire rehabilitation actions automatically trigger the Department of the Interior's exceptions to categorical exclusions, including "controversy," "uncertainty," and "precedent for future action" and, as such, cannot be categorically excluded.

Response: When using these two categorical exclusions, the responsible officials will consider, on a project-by-project basis, whether or not any of the Department of the Interior's exceptions and Forest Service extraordinary circumstances apply. The responsible official will prepare a decision memo that will be available for public review.

Comment: Some respondents suggested that the agencies monitor categorically excluded hazardous fuels and rehabilitation activities actions to ensure that they do not have significant environmental effects.

Response: Monitoring would take place after the categories are established and after they are used for a particular action. Monitoring is not relied upon as a basis or rationale for establishing these categorical exclusions. Although the data established that the covered activities do not individually or cumulatively have a significant effect on the human environment, the agencies, nevertheless, recognize the need for a scientifically sound and consistent approach to environmental monitoring for both hazardous fuels reduction and rehabilitation actions and agree that a monitoring program should apply to a representative sampling of those hazardous fuels reduction and rehabilitation projects conducted using these new categorical exclusions. Therefore, guidance for the development of monitoring protocols, one for fuels treatments and one for rehabilitation actions, is being prepared. It will be peer reviewed and is scheduled for completion in May. Monitoring protocols will be prepared shortly thereafter. The agencies will monitor the effects of categorically excluded hazardous fuels reduction and fire rehabilitation activities to assess whether the categorical exclusions are being applied within their prescribed parameters and to confirm the agencies' assessment of their individual and cumulative environmental impacts.

Comments: Some respondents suggested changing the categorical exclusion language to specify that the proposed fire management categorical exclusions will be "guided by" rather than "be consistent with" the 10-Year Comprehensive Strategy Implementation Plan. They state that failure to implement such changes will result in new causes for appeals and litigation due to "inconsistency."

Response: The agencies have modified the proposal to limit it to activities identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan. The change was made to eliminate any confusion concerning consistency.

Comment: Some respondents stated the initiative's list of routine actions (*e.g.*, reseeding and replanting) is misleading inasmuch as the effects from the listed actions are not comparable to the effects that will be created by road construction, skid trail and landing construction, and timber harvest. Some respondents also stated that phrases such as "small combustibles," "overstocked stands," and "brush thinning" are inadequate with reference to likely timber harvest activities under the initiative.

Response: Reseeding and replanting are allowed under the fire rehabilitation category, which does not include skid trail and landing construction, or timber harvest. Fuel reduction activities involving the sale of vegetative material are allowed under the hazardous fuels category only where the primary purpose of the activity is hazardous fuels reduction. Thinning brush and overstocked stands characterize common tasks allowed under the hazardous fuels reduction categorical exclusion. The phrase "small combustibles" was not used in the proposed or final text. The examples provided in the proposal were intended to illustrate a range of possible activities. The text of the hazardous fuels reduction categorical exclusion defines the specific actions for which each may be applied.

The agencies' review of hazardous fuels reduction and fire rehabilitation projects encompassed the specific activities included in the two categorical exclusions. Hazardous fuels reduction activities reviewed involved broadcast burning and burning of piles, and mechanical treatments consisting of crushing, piling, thinning, pruning, cutting chipping, mulching, and mowing.

Comment: Some respondents assert that the stated requirements that activities must be consistent with land and resource management plans is misleading since Forest Service plans will be categorically excluded.

Response: Forest Service NEPA procedures do not presently provide a categorical exclusion for amendments to land and resource management plans. The Forest Service may, if it implements its proposed planning rule, identify a category of plan decisions which do not individually or cumulatively have a significant effect on the human environment and may, therefore, be

categorically excluded from NEPA documentation in an environmental assessment or an environmental impact statement. The public would have an opportunity to review and comment on such an amendment to the Forest Service handbook if such a categorical exclusion proposal is made.

It should be noted that under the proposed Forest Service planning regulations, new plans, plan revisions, and amendments continue to require a rigorous public involvement process. Categorical exclusions apply to the level of documentation required under CEQ's regulations implementing NPEA (40 CFR 150.4(p) and 1508.4). Any action that is not consistent with an applicable land and resource management plan's standards, guidelines, goals, and objectives would require a plan amendment. The Forest Service will continue to conduct the appropriate level of environmental analysis and disclosure commensurate with the significance of environmental effects, for both land and resource management plans and project-level planning.

Comment: Some respondents suggested that the agencies should clearly define such terms as "hazardous fuels," "primary purpose" "ecosystem integrity," and "adverse effect" as they pertain to extraordinary circumstances.

Response: "Hazardous fuels" consist of combustible vegetation (live or dead) such as grass, leaves, ground litter, plants, shrubs, and trees, that contribute to the threat or ignition, and high fire intensity and/or high rate of spread. The term "primary purpose" is not a term of art and has only the dictionary definition. Synonymous phrasing is that the "main reason" for the activity must be hazardous fuels reduction. "Ecosystem integrity" is defined in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy" as the completeness of an ecosystem that at geographic and temporal scales maintains its characteristic diversity of biological and physical components, composition, structure, and function. The use of the term "adverse effect" was used in conjunction with the agencies' descriptions of extraordinary circumstances in their NEPA procedures. Specific agency direction pertinent to identifying extraordinary circumstances may be found in Forest Service Handbook 1909.15, section 303.3 (67 FR 54622), and Department of the Interior Manual 516 DM 2, Appendix 2.

Comment: Some respondents commented that the proposal was misleading because it stated that the proposed hazardous fuels reduction categorical exclusion would not cover timber sales that do not have hazardous fuel reduction as their primary purpose, but then several pages later stated that products would be sold.

Responses: The intent of the statement concerning timber sales was to point out that only timber sales with hazardous fuel reduction as their primary purpose could be categorically excluded under the proposal. The categorical exclusion for hazardous fuels reduction allows for the sale of vegetative material as one method for removal. The sale of vegetative material includes all types of products from plant material, including biomass, posts, poles, and sawlogs. The hazardous fuels reduction categorical exclusion has been edited to add that activities may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

Comment: Some respondents suggested that, without NEPA analysis, categorically excluded actions would not consider the best available science and managers would be unaware of extraordinary circumstances that preclude the use of a categorical exclusion.

Response: The agencies have repeatedly conducted NEPA analyses for hazardous fuels reduction and fire rehabilitation projects using the best available science. Based upon the projects reviewed for these categorical exclusions, the agencies have concluded that these categorical exclusions describe categories of actions which do not individually or cumulatively have a significant effect on the human environment.

Consistent with existing direction, agencies must conduct sufficient review to determine that no extraordinary circumstances exist when using categorical exclusions. This determination includes appropriate surveys and analyses, using the best available science, attendant in appropriate consultation with Tribes and consultation with regulatory agencies, such as those required by the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, and Clear Air Act.

The agencies will take the additional measure of monitoring to determine that these categories are being appropriately used and to further validate the agencies' conclusions regarding environmental significance.

Comment: Some respondents stated that NEPA and other environmental laws have served the country well for years, and the agencies should follow these laws in conducting fuels reduction efforts. Respondents suggest that if rule changes are needed, they should be made through Congress, not through administrative actions.

Response: The agencies are not changing laws or regulations. The CEQ regulations implementing NEPA provide for three levels of environmental documentation: environmental impact statements; environmental assessments; and categorical exclusions. The agencies are following CEQ's regulations, which direct agencies to define categorical exclusions to reduce excessive paperwork. Activities conducted under those categories must be consistent with all applicable Federal, State, local, and Tribal laws and requirements imposed for protection of the environment.

Comment: Some respondents indicated that there should be no restriction on new road construction, while others believe that no roads should be constructed, as the absence of roads indicates an activity is too far from a community. Other respondents suggested that up to one mile of low-standard road should be allowed, while others believed that roads should only be constructed in rare cases.

Response: Hazardous fuels reduction activities and rehabilitation activities involving new permanent roads are not included in the proposed categorical exclusions. Proposals for activities that involve new permanent road construction would be analyzed and documented in an environmental assessment or an environmental impact statement.

Comment: Some respondents suggested that any road construction should only be carried out following a thorough environmental analysis. Others indicated that culverts should not be replaced or upgraded without a watershed analysis.

Response: The categorical exclusions provide only for construction of temporary roads. Where temporary road construction or culverts are being proposed, agencies must review the proposed action to ensure that no extraordinary circumstances exist.

Comment: Some respondents suggested that the categorical exclusions should specify that temporary roads will be constructed only where the project ensures that they will be reclaimed/obliterated upon activity completion.

Response: Whether temporary roads are needed and to what extent, along with how they are closed, reclaimed, and/or obliterated are project-specific decisions and therefore appropriately decided at the project level.

Comment: Some respondents asked the agencies to clarify the role of grazing

in the proposal. Other respondents suggest that the agencies should not allow grazing to be categorically excluded as a fuels reduction technique because grazing removes grasses, allowing woody vegetation to invade, which contributes to hotter, more intense fires.

Response: The grazing activity included in the proposed hazardous fuels reduction categorical exclusion, as the sole biological method, was intended to be limited to livestock grazing to maintain fuelbreaks. Subsequent review determined that only four of the projects reviewed involved livestock grazing for fuelbreak maintenance. While some agencies have effectively used livestock grazing to maintain fuelbreaks in certain circumstances without significant environmental effects, the agencies believe they have not gathered sufficient data for its inclusion in this categorical exclusion. The agencies will continue to review the effects of this type of activity. Therefore, the hazardous fuels reduction categorical exclusion has been modified to remove "biological" and "grazing" from the list of included activities.

Comment: Some respondents stated that some prescribed burns have resulted in unanticipated effects such as burns too cool/hot to meet objectives and increases in noxious weeds/non-target grasses.

Response: The agencies' review of hazardous fuels reduction and fire rehabilitation projects found 11 cases where the actual results were other than what was predicted. These cases reported that prescribed fires burned either cooler or hotter than anticipated. Cooler than expected burns resulted in less fuel being consumed by fire, and, therefore, not completely achieving the project's fuel reduction objective. Hotter than expected burns resulted in increased scorch of tree crowns and more tree mortality than predicted. In some instances undesirable grass species occupied the site after treatment. In each of these cases, however, the unanticipated effects were found not to be significant.

Comment: Some respondents asked that the categorical exclusion for rehabilitation be modified to include, but not be limited to, specific suggested activities such as fire and safety hazard tree removal, natural or mechanical soil rehabilitation, and rehabilitation of recreation sites.

Response: The rehabilitation categorical exclusion does not include removal of fire and safety hazard trees. Removal of fire hazards is addressed in the hazardous fuels reduction categorical exclusion. Safety hazard trees associated with roads, trails, recreation facilities, and administrative sites may be removed as part of routine maintenance of those facilities. Most agencies already categorically exclude these maintenance activities from further analysis and documentation in an environmental assessment or environmental impact statement. Post-fire soil rehabilitation, either natural or mechanical, and recreation site rehabilitation are included in the category of actions described in the rehabilitation categorical exclusion. The list of examples is not exhaustive.

Comment: Some respondents indicated a belief that the proposal for rehabilitation is unnecessary as existing legal frameworks provide for emergency fire rehabilitation.

Response: In January 2003, the Wildland Fire Leadership Council, a cooperative, interagency organization dedicated to achieving consistent implementation of the goals, actions, and policies in the National Fire Plan and the Federal Wildland Fire Management Policy, identified three types of fire recovery activities: Emergency stabilization; rehabilitation; and restoration. Emergency stabilization is defined as planned actions within one year of a wildland fire to stabilize and prevent unacceptable degradation to natural and cultural resources, to minimize threats to life or property resulting from the effects of a fire, or to repair/replace/construct physical improvements necessary to prevent degradation of land or resources. The rehabilitation categorical exclusion does not cover emergency stabilization. The Wildland Fire Leadership Council defines rehabilitation as "Post-fire efforts (<3 years) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire." The Wildland Fire Leadership Council defines restoration as the continuation of rehabilitation beyond three years. The rehabilitation categorical exclusion has been edited to be consistent with the Wildland Fire Leadership Council's definition of rehabilitation. The scope of fire rehabilitation activities allowed under the proposed categorical exclusion has not changed as a result of this new definition. What has changed is the time limit of three years for completion of those activities and a size limit of 4,200 acres.

Comment: Some respondents believe that rehabilitation activities should require an environmental impact statement. Others believe that these activities should not be carried out at all. They say the use of heavy equipment generates noise, air and water pollution, soil compaction, vegetation and habitat changes, and ecosystem modifications greater than those which follow fires. Still others cite research studies (*e.g.*, Beschta, *et al.*, 1995) that report that there is generally no ecological need to act, and that quick actions may create new problems.

Response: The agencies have repeatedly conducted NEPA analyses for fire rehabilitation projects using the best available science. Based upon approximately 300 fire rehabilitation projects reviewed, the agencies have concluded that the category of activities described do not individually or cumulatively have a significant effect on the human environment. When using the rehabilitation categorical exclusion, agencies must review the proposed action to ascertain whether extraordinary circumstances exist.

While the Beschta report focused on salvage logging, there are also statements on rehabilitation practices in the report. This report questions, in general, the effectiveness of installation of hard structures and their siting on the landscape. This report also criticizes introduction of non-native species. Situations such as steep slopes, drinking water protection, and threats of invasive species may influence the need to act in local situations. Years of research since the Beschta report have informed current choices of technologies. The utility of fire rehabilitation practices chosen and the need for these practices will be decided on a site-specific basis using current knowledge and technologies. Thus, the projects selected, based on local scientific expertise, will both meet the environmental protection goals for the projects and have no potential to individually or cumulatively have a significant effect on the human environment.

Comment: Some respondents requested that herbicide use be allowed under the fire rehabilitation categorical exclusion, while others oppose herbicide use and even want an explicit prohibition against herbicide use on future activities that follow categorically excluded actions.

Response: the agencies will continue to review and analyze new information on the effects of herbicides used for hazardous fuel reduction. At the present time, the agencies have elected to not include actions involving herbicide use.

Comment: Some respondents are concerned that 30 days was insufficient time to review the proposed categorical exclusions along with the other proposals. Others criticized the release

of the proposal during the Christmas holidays.

Response: The agencies extended the comment period through January 31, 2003.

Comment: Some respondents expressed frustration with e-mail errors near the comment period deadline.

Response: The office receiving e-mail comments notes that many e-mail comments were received during the final days of the comment period. The office receiving the e-mail comments analyzed e-mail server performance. No problems were identified.

Comment: Some respondents said they do not believe that the agencies should block e-mail originating from a third party e-mail generator. These respondents said that such e-mail generators are important to groups interested in the environment and that such blocking prevents voices from being heard.

Response: The Forest Service regrets any difficulty experienced in submitting comments. The Forest Service is committed to electronic government and is a participant in the Regulations.gov project, which will allow third-party e-mail generators to submit electronic comments. In the meantime, the Forest Service has provided maintainers of public comment web pages with a simple procedure that they can use to keep their messages from being blocked by the Forest Service's spam filter. For more information please contact Sandra Watts, (703) 605–4695.

Comment: Some respondents stated that agencies should accept and consider all comments and not just those deemed to be "original and substantive."

Response: The agencies agree and accepted and considered all comments. Each comment was considered on its own merits.

Comment: Some respondents said that the 10-Year Comprehensive Strategy Implementation Plan should have been included with the proposal.

Response: The 10-Year Comprehensive Strategy Implementation Plan is available on a number of Web sites including *http://www.fs.fed.us/emc/hfi.* In addition, two contacts were provided in the **Federal Register** notice for additional information. These contacts were available to provide more information on this strategy.

Comment: Some respondents expressed a desire for public hearings to record testimony.

Response: The agencies believe that the public comment opportunity provided was the most efficient means of gathering public input for a proposal of this nature and that public hearings were not necessary.

Comment: Some respondents wanted the agencies to specify which implementation tasks within the 10-Year Comprehensive Strategy Implementation Plan are addressed by the proposed fire management categorical exclusions.

Response: The categorical exclusions contribute to the implementation task, "Assess state and federal regulatory process governing projects and activities done in conformance with the 10-Year Comprehensive Strategy and Implementation Plan and identify measures to improve timely decision-making." This task is under "Goal Two—Reduce Hazardous Fuels."

Comment: Some respondents suggested that the agencies should provide opportunities for public involvement on the initiative following the release of the report from the General Accounting Office on the relationship between administrative appeals and fuels reduction activities.

Response: Because of controversy over whether appeals and litigation have delayed implementation of Forest Service hazardous fuels reduction activities, the General Accounting Office was requested to provide information to Congress on the number of decisions involving hazardous fuels reduction activities, the number of these decisions appealed or litigated, and the acreages affected. The agencies did not believe that this information would be helpful in defining these categorical exclusions, nor aid the public in commenting on the agencies' proposal.

Comment: Many respondents asked that the agencies adhere to various laws, executive orders, and agency policies such as: the Endangered Species Act, Clean Air Act, Clean Water Act, National Forest Management Act, Migratory Bird Treaty Act, National Historic Preservation Act, Forest Service Transportation System Management Policy, Northwest Forest Plan, the Grizzly Bear Recovery Plan, and executive orders on management of floodplains and wetlands, and Tribal consultation.

Response: The agencies agree. The level of NEPA consideration does not affect agency responsibility to follow applicable laws, regulations, executive orders, and policies. For example, categorically excluded hazardous fuels reduction and fire rehabilitation actions are reviewed for their potential to impact waters listed as impaired by State water quality agencies and for compliance with smoke management plans. When appropriate, the Forest Service and the Department of the Interior agencies conduct appropriate consultation with Federal, State, and Tribal agencies for hazardous fuels and fire rehabilitation actions. For example, agencies must consult with Tribal governments when an action may have Tribal implications, even though it may be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement. Agencies must also review the potential effects from these types of actions on threatened and endangered species and designated critical habitat and consult as appropriate with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (NOAA), Fisheries. Similarly, categorically excluded actions are reviewed for potential effects on properties protected by the National Historic Preservation Act along with appropriate consultation with State and Tribal Historic Preservation Officers. Such consultations help ensure that cumulative effects across jurisdictions will not be significant.

Comment: Some respondents stated that rehabilitation work should only be carried out in areas already consumed by fires.

Response: The agencies agree. The proposed and final categorical exclusion for rehabilitation activities state that it is for rehabilitation of habitat, watersheds, historical, archaeological, and cultural sites and infrastructure damaged by wildfire and/or wildfire suppression.

Comment: Some respondents said that agencies should follow the 10-Year Comprehensive Strategy Implementation Plan and that additional laws or regulations are not needed.

Response: The categorical exclusions are prepared in conformity with the law (NEPA) and CEQ regulations. They contribute to the implementation task under the 10-Year Comprehensive Strategy Implementation Plan's "Goal Two—Reduce Hazardous Fuels," which says, "Assess state and federal regulatory process governing projects and activities done in conformance with the 10-Year Comprehensive Strategy and Implementation Plan and identify measures to improve timely decision-making." In addition, the hazardous fuels reduction categorical exclusion will apply only to activities identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan.

Comment: Some respondents asked that the agencies work collaboratively with Federal and State agencies in developing proposed activities and

determining effects on wildlife resources prior to approval of specific activities.

Response: Hazardous fuels reduction activities will be identified collaboratively with governments and stakeholders, through a collaborative framework as described in 10-Year Comprehensive Strategy Implementation Plan.

Comment: Many respondents offered suggestions about Forest Service and Department of the Interior management and funding, where and how to focus hazardous fuels reduction efforts, the efficacy of various hazardous fuels treatments and post-fire rehabilitation measures, technologies for utilization of small-diameter trees, alternative fiber sources, fire suppression tactics, land acquisition, multiple-use, the President's Healthy Forests Initiative, and the 10-Year Comprehensive Strategy Implementation Plan.

Response: Respondents offered many creative and original suggestions that addressed issues beyond the proposal. The agencies provided these comments to appropriate personnel for their consideration.

Comment: Some respondents stated that the agencies should comply with Executive Order 12866 by assessing the economic costs and benefits of the initiative. Respondents say that this assessment should include the non-market costs of the initiative to landowners, businesses, communities, water quality, recreation, scenery, non-traditional forest products, and game.

Response: In compliance with Executive Order 12866, the agencies have determined that these categorical exclusions will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. The economic effect expected to result from this action is a reduction in the administrative burden of preparing unnecessary environmental assessments and findings of no significant impact, and benefits to the environment and nearby communities as a result of expeditious fuel reduction and post-fire rehabilitation activities. These benefits were not quantified due to the level of uncertainty associated with the amount of time saving and the number of projects that would use these categorical exclusions.

Conclusion

The USDA Forest Service and the Department of the Interior find that the categories of action defined in the categorical exclusions presented at the end of this notice do not individually or cumulatively have a significant effect on the human environment. The agencies' findings is first predicated on the reasoned expert judgment of the responsible officials who made the original findings and determinations in the hazardous fuels and fire rehabilitation projects reviewed; the resource specialists who validated the predicted effects of the reviewed activities through monitoring or personal observation of the actual effects; synthesis of peer-reviewed scientific publications; and finally, the agencies' belief that the profile of the past hazardous fuels reduction and fire rehabilitation activities represents the agencies' past practices and is indicative of the agencies' future activities.

Regulatory Certifications

Environmental Impact

These categorical exclusions add direction to guide field employees in the USDA Forest Service and the Department of the Interior regarding procedural requirements for National Environmental Policy Act (NEPA) documentation for fire management activities. The Council on Environmental Quality does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: Those that require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are internal procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3, and the USDA Forest Service and the Department of the Interior have provided an opportunity for public review and have consulted with the Council on Environmental Quality during the development of these categorical exclusions. The determination that establishing categorical exclusions do not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill.1999), aff'd, 230 F.3d 947, 954–55 (7th Cir. 2000).

Regulatory Impact

These categorical exclusions have been reviewed under Departmental procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, this action is subject to OMB review under Executive Order 12866 and OMB has reviewed these categorical exclusions at both the proposed and final stages.

This action to add two categorical exclusions to the agencies' NEPA procedures will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. This action may interfere with an action taken or planned by another agency or raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, this action has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that the categorical exclusions will not have a significant economic impact on a substantial number of small entities as defined by the act because it will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism

The agencies have considered these categorical exclusions under the requirements of Executive Order 13132, Federalism, and have concluded that they conform with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agencies have determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

These categorical exclusions do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

No Takings Implications

These categorical exclusions have been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed categorical exclusions do not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform

In accordance with Executive Order 12988, it has been determined that these categorical exclusions do not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agencies have assessed the effects of these categorical exclusions on State, local, and Tribal governments and the private sector. These categorical exclusions do not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

These categorical exclusions have been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that these categorical exclusions do not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

These categorical exclusions do not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, impose no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: May 29, 2003.

For the Forest Service, U.S. Department of Agriculture.

Sally D. Collins,

Associate Chief.

Dated: May 29, 2003.

For the U.S. Department of the Interior:

P. Lynn Scarlett,

Assistant Secretary—Policy, Management, and Budget.

Categorical Exclusions

Note: The USDA Forest Service and the Department of the Interior have issued the categorical exclusions in their respective NEPA procedures. The categorical exclusions appear in Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures, ID 1909.15–2003–1, and Department of the Interior Manual 516 DM, Chapter 2, Appendix 1, Departmental Categorical Exclusions. Reviewers who wish to view the entire chapter 30 of FSH 1909.15 may obtain a copy electronically from the USDA Forest Service directives page on the World Wide Web at *http://www.fs.fed.us/im/directives/*. Reviewers who wish to view the Department of the Interior Manual 516 DM may obtain a copy electronically from the Department of the Interior page at *http://elips.doi.gov/table.cfm*.

Following is the text of the two categorical exclusions:

- Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:
  - Shall be limited to areas (1) in wildland-urban interface and (2) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;
  - Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;"
  - Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans;
  - Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness;
  - Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.
- Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:
  - Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans;
  - Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and
  - Shall be completed within three years following a wildland fire.

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Federal Register

Thursday,
June 5, 2003

Part VI

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA89

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: We're issuing an interim rule to amend our regulation at 31 CFR part 210 (part 210), which governs the use of the Automated Clearing House (ACH) system by Federal agencies. Part 210 adopts, with some exceptions, the ACH rules (ACH Rules) developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH system by Federal agencies. We're amending part 210 to address changes that NACHA has made to the ACH Rules during the past year. We are requesting public comment on all aspects of the interim rule.

DATES: The interim rule is effective July 7, 2003. Comments on the interim rule must be received by August 4, 2003. The incorporation by reference of the publication listed in the interim rule is approved by the Director of the Federal Register as of July 7, 2003.

ADDRESSES: You can download the interim rule at the following World Wide Web address: *http://www.fms.treas.gov/ach*. You may also inspect and copy the interim rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

You may send comments on the interim rule electronically to the following address: *210comments@fms.treas.gov*. You may also mail your comments to Stephen M. Vajs, Director, Risk Management Division, Financial Management Service, U.S. Department of the Treasury, Room 423, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Donald J. Skiles, Senior Financial Program Specialist, at (202) 874–6994 or *donald.skiles@fms.treas.gov;* Natalie H. Diana, Senior Attorney, at (202) 874–6680 or *natalie.diana@fms.treas.gov;* or Stephen M. Vajs, Director, Risk Management Division, at (202) 874–1229 or *steve.vajs@fms.treas.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Part 210 governs the use of the ACH system by Federal agencies. The ACH system is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend part 210 in order to address changes that NACHA periodically makes to the ACH Rules or to revise the regulation as otherwise appropriate.

We're issuing an interim rule amending part 210 to reflect certain changes that NACHA has made to the ACH Rules since the publication of NACHA's 2002 rule book. The interim rule addresses the following seven NACHA rulemaking actions: (1) Voting on ACH Rule Amendments; (2) Rules Enforcement; (3) Accounts Receivable (ARC) Entry and Internet-Initiated (WEB) Entry Warranties; Re-presented Check (RCK) Entries Eligible Items; (4) Change Codes; ARC Stop Payments; ARC Individual Name Field; (5) Unauthorized Corporate Debits; Copies of Authorization; Definitions of Point-of-Purchase (POP) Entries and RCK Entries; Destroyed Check (XCK) Entry Check Serial Number Field; ACH Operator Edit Criteria; Elimination of Automated Return (RET) Entry Code; (6) Audit Requirements and (7) Telephone-Initiated (TEL) Reporting. We are requesting comment on all of these topics.

As discussed above, part 210 incorporates the ACH Rules, with certain exceptions. Each year NACHA publishes a new rule book that reflects the changes to the ACH Rules that have been approved since the publication of the previous rule book. Part 210 currently provides that any amendment to the ACH Rules published in NACHA's 2002 rule book that takes effect after March 15, 2002 will not apply to Federal government ACH entries unless we publish a notice of acceptance of the amendment in the **Federal Register**. 31 CFR 210.3(b)(2). NACHA published its 2003 rule book earlier this year. We're publishing this interim rule in order to incorporate in part 210 all of the amendments to the ACH Rules set forth in NACHA's 2003 rule book (including the supplement thereto approved February 27, 2003 and effective June 13, 2003), other than those relating to rules enforcement, ARC and WEB warranties, audit requirements, and TEL reporting.

We have not previously sought comment on the issues addressed in this interim rule. We are requesting comment on all aspects of the interim rule discussed below.

1. Voting on ACH Rule Amendments

NACHA has amended its rules by eliminating a provision that allows certain depository financial institutions that are members of a Regional Payments Association to vote directly with NACHA on amendments to the rules. Amendments to the ACH Rules will continue to be voted on by NACHA's Payments Association members and Direct Financial Institution members. This rule amendment became effective January 1, 2003.

Federal agencies do not vote on ACH Rule amendments and this rule change does not affect Federal agencies' use of the ACH system. There is no need to provide an exception to this ACH Rule for Federal agencies and we therefore are accepting this ACH rule change.

2. Rules Enforcement

NACHA has amended its rules regarding the enforcement process for violations of the ACH Rules, including the fines that may be imposed when a financial institution violates the ACH Rules. Specifically, this ACH Rule amendment:

- Eliminates the second warning provided to an alleged offender before a recurrence is considered for a fine;
- Increases the amounts of the fines assessed for violations of the ACH rules;
- Enables recurrences to be tracked not only to the Originating Depository Financial Institution (ODFI) and its Originator, but also to any third-party service provider that is responsible for the violation;
- Extends the time period for subsequent violations to be counted as recurrences of the initial violation;
- Requires that ACH Operators provide statistical data on ACH returns to NACHA on a monthly basis to address potential fraud; and
- Enables NACHA staff to present an alleged rules violation that significantly harms other financial institutions to the ACH Rules Enforcement Panel immediately for its review and consideration.

These changes became effective on June 14, 2002.

The national system of fines does not apply to ACH entries originated or received by Federal agencies. 31 CFR 210.2(d)(3). Accordingly, we are not incorporating in Part 210 these changes to the enforcement provisions of the ACH Rules.

3. ARC and WEB Warranties; RCK Eligible Items

NACHA has amended the ACH Rules to (1) clarify the warranty provisions associated with the ARC and WEB applications, and (2) clarify that items eligible to be re-presented as RCK entries must contain a pre-printed check serial number.

When NACHA replaced the PPD Accounts Receivable Truncated Check Debit Entry pilot program with the ARC entry application, the legal foundation for the application was modified from a legal framework based on check law to one based on Regulation E. During development of the ACH Rules governing ARC entries, however, a key component of an ODFI's liability was omitted with regard to an ODFI's breach of warranty that causes a Receiving Depository Financial Institution (RDFI) to be out of compliance with Regulation E. NACHA therefore has amended the ACH Rule 2.9.3.5 (Liability for Breach of Warranty) to expand the subsection governing the ODFI's liability for breach of warranty for ARC entries to specifically include claims, demands, loss, liability, or expenses incurred by the RDFI resulting from its inability to comply with Regulation E because of a violation of the Rules by the ODFI.

Similarly, as a result of an oversight during the development of the ACH Rules governing WEB entries, no specific provision was included to explicitly address an ODFI's breach of liability associated with WEB entries. NACHA has amended ACH Rule 2.10.2 to specifically address ODFI liabilities for breaches of warranty associated with WEB entries.

NACHA also has amended the ACH Rules to clarify that an item that is truncated and transmitted as an RCK entry must contain a pre-printed check serial number. The ACH Rules related to electronic check applications (*i.e.*, ARC and POP entries) require that an eligible source document used for the application contain a pre-printed check serial number. However, no similar requirement was explicitly stated in the electronic check rules for RCK entries. To avoid operational problems and to provide consistency among electronic check applications, NACHA has added an explicit requirement that to be eligible for truncation and transmission as an RCK entry, an item must contain a pre-printed check serial number. These ACH Rules changes became effective on September 13, 2002.

Under part 210, the ACH Rules addressing warranties for ARC and WEB entries are not applicable to ACH entries originated or received by Federal agencies. *See* 31 CFR 210.2(d)(6), (7) (excluding ACH Rule 2.9 and 2.10 from the definition of Applicable ACH Rules). The liability of Federal agencies to RDFIs in connection with the origination of unauthorized debit entries is set forth at 31 CFR 210.6(d). Pursuant to 31 CFR 210.6(d), an agency's liability in connection with the origination of an ACH debit entry is limited to the amount of the entry. Accordingly, we are not incorporating in part 210 NACHA's rule changes related to breach of warranties for ARC and WEB entries. We are, however, incorporating in part 210 the ACH Rule amendment requiring that an item that is truncated and transmitted as an RCK entry contain a pre-printed check serial number.

4. Change Codes; ARC Stop Payments; ARC Individual Name Field

NACHA has amended the ACH rules to remove certain codes, create a new return reason code for ARC entries and remove a requirement for ARC entries. Specifically, the amendment removed Notification of Change Codes C10 (Incorrect Company Name), C11 (Incorrect Company Identification), and C12 (Incorrect Company Name and Company identification), because these codes were seldom used by RDFIs.

The amendment also created new Return Reason Code R38 for a stop payment on the source document related to an ARC entry to separate it from Return Reason Code R08. Prior to the amendment, Return Reason Code R08 had two timeframes associated with its use: two days for a stop payment order placed on an ACH debit entry and sixty days for a stop payment order placed on a source document (check) related to an ARC entry. The use of two return time frames associated with one return reason code was confusing to many ACH participants and was inconsistent with other Return Reason Codes. Return Reason Code R08 (Stop Payment) will retain the standard two-day return time frame for stop payments placed on ACH entries.

The amendment also modified the Individual Name Field of the ARC Entry to make it optional to include the individual's name in this field. Prior to the amendment, the Individual Name Field was a required field for ARC entries. In an automated processing environment, where electronic capture of source document information is required, capture of the consumer's name is not possible without manual intervention. The purpose of the rule amendment was to decrease the manual processing required to originate ARC entries and to improve the efficiency with which ARC entries may be originated by making the Individual Name Field in the ARC Entry an optional field, as is the case with POP entries.

These rule amendments became effective on March 14, 2003. We believe that these rule changes improve the operational efficiency of the ACH system and improve the consistency of the rules that govern the system. Therefore, we are incorporating all of these ACH Rule changes in part 210.

5. Unauthorized Corporate Debits; Copies of Authorization; Definitions of POP and RCK Entries, XCK Check Serial Number Field; ACH Operator Edit Criteria; Elimination of RET Code

NACHA has amended the ACH Rules to (1) revise Return Reason Code R29 (Corporate Customer Advises Not Authorized); (2) clarify the right of an RDFI to request a copy of a Receiver's authorization both before and after receiving an entry; (3) establish a 10-banking day timeframe for an ODFI to provide an RDFI with a copy of an authorization when requested by the RDFI; (4) clarify that an ODFI must provide a copy of an authorization to the RDFI without charge; (5) clarify the definitions of POP and RCK entries to define them as Single-Entry transactions; (6) modify the Check Serial Number Field within the XCK format to make it a mandatory field; (7) update the ACH Operators' batch rejection edit criteria regarding valid transaction codes to incorporate loan and general ledger transactions; and (8) eliminate the RET Standard Entry Class Code.

Return Reason Code R29

This rule amendment clarified Return Reason Code R29, Corporate Customer Advises Not Authorized. The prior description of Return Reason Code R29 stated, "the RDFI has been notified by the Receiver (non-consumer) that the Originator of a given transaction has not been authorized to debit the Receiver's account." Some ACH participants were misinterpreting the intended use of this return reason code because of its wording. Return Reason Code R29 is used to return a specific ACH debit entry that was not authorized by the corporate Receiver. NACHA did not intend that this return reason code be used to revoke a corporation's authorization for all future ACH debit entries. This amendment clarified Return Reason Code R29 by removing the reference in the description to the Originator of the entry, stating, "the RDFI has been notified by the Receiver (non-consumer) that a specific transaction has not been authorized by the Receiver."

Right to Request a Copy of Authorization

This rule amendment clarified that an RDFI may request a copy of an authorization both before AND after receiving an ACH entry, by removing the phrase "Prior to acting as an RDFI for a Receiver" from Article Four, Subsection 4.1.1 (Right to Information Regarding Entries). Prior to the amendment, Article Four, Subsection 4.1.1 stated that "Prior to acting as an RDFI for a Receiver, the RDFI may request, in writing, that an ODFI provide a copy of the Receiver's authorization * * *" NACHA's intent was that under this section, in addition to requesting a copy of an authorization after an RDFI has received an ACH entry, an RDFI may also request a copy of an authorization prior to receiving the first ACH entry. NACHA has reworded the section because some ODFIs misinterpreted it, believing that an RDFI is only permitted to request a copy of an authorization prior to receiving an ACH entry.

Time Frame to Produce Copy of Authorization

NACHA has amended the ACH rules to require that the ODFI provide a copy of an authorization within 10 banking days of receiving a written request for the copy from the RDFI. Prior to the amendment, the ACH Rules did not define a specific time frame for an ODFI to provide a copy of an authorization to the RDFI.

Copy of Authorization to RDFI Without Charge

NACHA has amended the ACH Rules to clarify that an ODFI may not charge the RDFI for providing either the original or a copy of an authorization. Prior to this amendment, the ACH Rules did not explicitly state that the ODFI must provide either the original or a copy of an authorization to the RDFI without charge.

Single-Entry Transactions

This rule amendment modified the ACH Rules to define POP and RCK entries as Single-Entry transactions. Prior to the amendment, the ACH Rules defined specific one-time debits (*i.e.*, ARC entries, TEL entries, and certain WEB entries) as Single-Entry debits. Other one-time debit transactions (*i.e.*, RCK and POP), which were developed prior to use of the defined term "Single Entry," were described as non-recurring debits. This amendment provides consistency among the definitions of similar one-time debit entries.

Check Serial Number Field

This rule amendment modified the Check Serial Number Field of the XCK format to make this a mandatory field, making it consistent with other electronic check applications. The amendment also requires that the information in this field for an XCK entry be included by the RDFI on a consumer's periodic statement. Prior to this amendment, the Check Serial Number Field for XCK was optional, not edited by the ACH Operators, and not required to be included on the consumer's periodic statement.

Automatic Batch Rejection Edit

This rule amendment updated the description of the ACH Operator edit concerning transaction codes for Notifications of Change to reflect all applicable transaction codes. Specifically, the transaction codes 41, 46,51, and 56 were added for Standard Entry Class Code COR. Prior to the amendment, in Appendix Three, Section 3.5 (Automatic Batch Rejection) of the ACH Rules, the description of the ACH Operator edit for valid transaction codes for Notifications of Change did not list the transaction codes for general ledger or loan entries (series 40 and 50).

RET Standard Entry Class Code

This rule amendment eliminated the RET Standard Entry Class Code because of the low volume of paper return conversion currently performed by the ACH Operators and the low volume of entries processed using this SEC Code. The RET Standard Entry Class Code was used by ACH Operators to convert paper returns into electronic format on behalf of an ACH participant when the original SEC Code was unavailable. The ACH Operators currently require that the original Standard Entry Class Code be provided. As a result, use of the RET Standard Entry Class Code for converted returns became unnecessary.

The foregoing eight amendments to the ACH Rules became effective on March 14, 2003. We believe that these rule changes improve the operational efficiency of the ACH system and improve the clarity and consistency of the rules that govern the system. Therefore, we are incorporating all of these ACH Rule changes into part 210.

6. Audit Requirements

NACHA has updated the rules compliance audit requirements of Appendix Eight of the ACH Rules to include (1) provisions related to new ACH products and applications, and (2) additional provisions designed to strengthen the audit requirements. This rule amendment became effective on March 14, 2003.

Federal agencies are not subject to the audit requirements of Appendix Eight. 31 CFR 210.2(d)(3). Accordingly, we are not incorporating these changes to the audit requirements into part 210.

7. TEL Reporting

NACHA has amended the ACH Rules to allow NACHA, in cases where the return rate for unauthorized TEL transactions appears to exceed 2.5%, the right to request an ODFI to provide NACHA with specific information relating to Originators of those TEL entries. Under the new rule, ODFIs are obligated to provide the requested information within 10 banking days of receipt of NACHA's written request to the Chief Operating Officer of the financial institution. Failure to provide the requested information in a timely manner will constitute willful disregard of the ACH Rules and will subject ODFIs to applicable fines. This amendment becomes effective on June 13, 2003.

We are not incorporating this ACH Rule change into part 210. We do not believe that Federal agencies are experiencing excessive return rates for unauthorized TEL transactions. Moreover, Federal agencies are subject to various requirements regarding the privacy of information they maintain, including the Privacy Act, which restrict the disclosure of information regarding individuals who enter into TEL transactions.

II. Section-by-Section Analysis

Section 210.2(d)

We are amending the definition of "applicable ACH rules" at § 210.2(d). Current § 210.2(d) defines applicable ACH rules to mean the ACH Rules with an effective date on or before March 15, 2002, as published in Parts II, III, and IV of the "2002 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," with certain exceptions. We are amending § 210.2(d) to refer to the ACH Rules with an effective date on or before June 13, 2003.

The effect of this amendment to § 210.2(d) is to incorporate in Part 210 the following changes to the ACH Rules:

- Voting on ACH Rule Amendments;
- RCK Eligible Items;
- Change Codes; ARC Stop Payments; ARC Individual Name Field; and
- Unauthorized Corporate Debits; Copies of Authorization; Definitions of POP and RCK Entries, SCK Check Serial Number Field; ACH Operator Edit Criteria; Elimination of RET Code.

We are also adding a new subsection (7) to § 210.2(d), which excludes ACH

Rule 2.11.3 from the definition of applicable ACH rules. The effect of this amendment is to provide an exception to NACHA's TEL reporting requirements for Federal agencies. Because the ACH Rules relating to rules enforcement, ARC and WEB warranties, and audit requirements are already excluded from the definition of applicable ACH Rules, no change to part 210 is necessary in order to exclude from Part 210 NACHA's amendments to those ACH Rules.

Section 210.3(b)

We are amending subsection 210.3(b), "Incorporation by reference—applicable ACH Rules," by replacing the references to the ACH Rules as published in the 2002 rule book with references to the ACH Rules as published in the 2003 rule book.

III. Procedural Requirements

Request for Comment

We invite public comment on all aspects of this interim rule.

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the interim rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make the rule easier to understand.

Notice and Comment and Effective Date

We find that good cause exists for issuing the interim rule without prior notice and comment. Under the Administrative Procedure Act, an agency is permitted to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. 5 U.S.C. 553(b)(B). We believe that it is important to address the publication of new ACH Rules as quickly as possible in order to mitigate the uncertainty and inconvenience to financial institutions and agencies that would result from a time lag in responding to NACHA's rule changes. When we proposed to address changes to the ACH Rules by reviewing and responding to rule changes on an annual basis, we received many comments expressing concern over the potential consequences of such a time lag. Those consequences include uncertainty as to the rules governing government ACH transactions, as well as the inability of financial institutions to segregate the processing of those transactions.

Executive Order 12866

The interim rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required for the interim rule, it is not subject to the provisions of the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. Although the Unfunded Mandates Reform Act of 1995 does not apply to the interim rule, we have determined that it will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year.

Executive Order 13132—Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies, including FMS, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has federalism implications. Under the Order, a regulation has federalism implications if it has "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." In the case of a regulation that has federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

In general, the Executive Order requires the agency to adhere strictly to Federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

The interim rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Authority and Issuance

■ For the reasons set forth in the preamble, part 210 of title 31 of the Code of Federal Regulations is amended as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. Revise § 210.2(d) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before June 13, 2003, as published in Parts II, III, and IV of the "2003 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," including the supplement thereto approved February 27, 2003 and effective June 13, 2003, except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4; 2.2.1.10; Appendix Eight and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of "Effective Entry Date" in Appendix Two);

(6) ACH Rule 2.10.2.2 (requiring that originating depository financial

institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries); and

(7) ACH Rule 2.11.3 (requiring reporting regarding unauthorized Telephone-initiated entries).

* * * * *

■ 3. Revise § 210.3(b) to read as follows:

* * * * *

(a) *Incorporation by reference—applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before June 13, 2003, as published in Parts II, III, and IV of the "2003 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," including the supplement thereto approved February 27, 2003 and effective June 13, 2003. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the "2003 ACH Rules" are available from NACHA—The Electronic Payments Association, 13665 Dulles Technology Drive, Suite 300, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002; and the Financial Management Service, 401 14th Street, SW., Room 420, Washington, DC 20227.

(2) Any amendment to the applicable ACH Rules that takes effect after June 13, 2003, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** notice expressly accepting such amendment.

Dated: May 29, 2003.

Richard L. Gregg,

Commissioner.

[FR Doc. 03–13833 Filed 6–4–03; 8:45 am]

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Vol. 68, No. 108

Thursday, June 5, 2003

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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 JUNE 5, 2003

COMMODITY FUTURES TRADING COMMISSION

Foreign futures and foreign options transactions:
- Foreign non-narrow-based security indexes traded on board of trade; information submission guidance; published 6-5-03

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- California; published 6-5-03

FARM CREDIT ADMINISTRATION

Farm credit system:
- Loan policies and operations—
  - Capital adequacy; miscellaneous amendments; published 6-5-03

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Mississippi; published 5-27-03

Ports and waterways safety:
- Biscayne Bay, Miami, FL; safety zone; published 6-4-03

INTERIOR DEPARTMENT

Indian Affairs Bureau

Land and water:
- Indian Reservation Roads Program; published 6-5-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- McDonnell Douglas; published 5-1-03
- MORAVAN a.s.; published 6-2-03

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
- Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act; implementation—
  - Tire safety information; published 6-5-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Nectarines and peaches grown in—
- California; comments due by 6-9-03; published 4-9-03 [FR 03-08650]

Onions (sweet) grown in—
- Washington and Oregon; comments due by 6-9-03; published 4-9-03 [FR 03-08648]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:
- Medical records maintenance; comments due by 6-10-03; published 4-11-03 [FR 03-08928]

Viruses, serums, toxins, etc.:
- Veterinary biological products; actions by licensees and permitees to stop preparation, distribution, sale, etc.; comments due by 6-9-03; published 4-9-03 [FR 03-08599]

AGRICULTURE DEPARTMENT

Farm Service Agency

Special programs:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
- Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
- Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
- Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Loan eligibility provisions; comments due by 6-9-03; published 4-9-03 [FR 03-08646]
- Minor Program loans; comments due by 6-9-03; published 4-9-03 [FR 03-08597]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Northeast multispecies; comments due by 6-10-03; published 5-23-03 [FR 03-13013]
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 6-13-03; published 5-16-03 [FR 03-12315]

DEFENSE DEPARTMENT

Acquisition regulations:
- Tangible item marking and valuing; contractor possession of government property; comments due by 6-9-03; published 5-12-03 [FR 03-11726]

ENERGY DEPARTMENT

Polygraph Examination Regulations; counterintelligence polygraph program; comments due by 6-13-03; published 4-14-03 [FR 03-09009]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:
- Federal operating permit programs—
  - California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11910]
  - California agricultural sources; fee payment deadlines; comments due by 6-12-03; published 5-13-03 [FR 03-11911]

Air pollution; standards of performance for new stationary sources:
- Stationary gas turbines; comments due by 6-13-03; published 5-28-03 [FR 03-13416]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Mississippi; comments due by 6-11-03; published 5-12-03 [FR 03-11751]

Air quality implementation plans; approval and promulgation; various States:
- Illinois; comments due by 6-12-03; published 5-13-03 [FR 03-11749]

Hazardous wastes:
- Identification and listing—
  - Hazardous waste mixtures; wastewater treatment exemptions (headworks exemptions); comments due by 6-9-03; published 4-8-03 [FR 03-08154]

Solid wastes:
- Project XL (eXcellence and Leadership) program; site-specific projects—
  - Anne Arundel County Millersville Landfill, Severn, MD; comments due by 6-12-03; published 5-13-03 [FR 03-11909]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
- Current good manufacturing practice—
  - Dietary supplements and dietary supplement ingredients; comments due by 6-11-03; published 3-13-03 [FR 03-05401]

Human drugs and biological products:
- Bar code label requirements; comments due by 6-12-03; published 3-14-03 [FR 03-05205]

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 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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S. 243/P.L. 108–28

Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29

Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30

To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

Last List May 30, 2003

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