Federal Register

1–3–03 Friday
Vol. 68 No. 2 Jan. 3, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

1–3–03
Vol. 68 No. 2
Pages 255–458

Friday
Jan. 3, 2003

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	202–741–6005
Assistance with Federal agency subscriptions	202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register

Vol. 68, No. 2

Friday, January 3, 2003

Agriculture Department
See Forest Service

Arctic Research Commission
NOTICES
Meetings, 351

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 351

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Navy Department

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 389–390

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Lambda-cyhalothrin, 283–291
Mesotrione, 269–273
S-metolachlor, 274–283
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Stationary combustion turbines, surface coating of metal cans, and primary magnesium refining, 329
Solid wastes:
State underground storage tank program approvals—
Pennsylvania, 329–331
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 365–366
Weekly receipts, 365
Municipal solid waste landfill permit programs; adequacy determinations:
Northern Mariana Islands, 366–368
Pesticide, food, and feed additive petitions:
Imazethapyr, 370–374
Pesticide registration, cancellation, etc.:
Bayer CropScience et al., 368–370
Superfund; response and remedial actions, proposed settlements, etc.:
Johnstown Landfill Site, NY, 374–375

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 257–259
Airworthiness standards:
Special conditions—
Raytheon Aircraft Co. Model HS.125 Series 700A airplanes, 255–257
Class D airspace, 259–260
Class E2 and Class E5 airspace, 261–262
Class E airspace, 260–264
Standard instrument approach procedures, 264–266
PROPOSED RULES
Airworthiness directives:
Airbus, 302–305, 315–319
Boeing, 308–315, 324–328
McDonnell Douglas, 305–308, 320–322
Raytheon, 322–324
Class E airspace, 328–329
NOTICES
Aeronautical land-use assurance; waivers:
Laurinburg-Maxton Airport, NC, 396
Piedmont Triad International Airport, NC, 396

Federal Election Commission
RULES
Bipartisan Campaign Reform Act; implementation:
Electioneering communications and independent expenditures, national political party committees, and principal campaign committees; reporting requirements
Transmittal to Congress, 403–421
Coordinated and independent expenditures; transmittal to Congress, 420–458
NOTICES
Meetings; Sunshine Act, 375

Federal Energy Regulatory Commission
RULES
Practice and procedure:
Paper filing requirements of FERC Form Nos. 2, 2-A, and 6; elimination, 266–269

Federal Reserve System
NOTICES
Banks and bank holding companies:
Permissible nonbanking activities, 375

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Flat-tailed horned lizard; withdrawn, 331–348
NOTICES
Endangered and threatened species:
Recovery plans—
Sonora tiger salamander, 386–387
Environmental statements; availability, etc.:
Incidental take permits—
Williamson County, TX; golden-cheeked warbler, 387

Food and Drug Administration
NOTICES
Reports and guidance documents; availability, etc.:
Smallpox vaccine recipients; donors deferral, blood and blood products quarantine and retrieval, and contacts; recommendations, 377–378

Foreign Assets Control Office
NOTICES
Sanctions; blocked persons, specially designated nationals, terrorists, and narcotics traffickers, and foreign terrorist organizations:
Additional designations of terrorism-related blocked persons, 398–400

Forest Service
NOTICES
Environmental statements; notice of intent:
Sequoia National Forest, CA, 349–350
Meetings:
Opal Creek Scenic Recreation Area Advisory Council, 350
Resource Advisory Committees—
Lincoln County, 350
Plumas County, 350–351

Harry S. Truman Scholarship Foundation
NOTICES
Eligible institutions of higher education; nominations, 375

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 375–376
Meetings:
Public Health Emergency Preparedness, Secretary's Council, 376–377

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 378

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 385–386
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 386

Immigration and Naturalization Service
PROPOSED RULES
Enhanced Border Security and Visa Entry Reform Act of 2002; implementation:
Arrival and departure manifests; advance electronic submission requirements, 292–302

Interior Department
See Fish and Wildlife Service

International Trade Administration
NOTICES
Antidumping:
Forged stainless steel flanges from—
India, 351–352
Heavy forged hand tools from—
China, 352–353
In-shell raw pistachios from—
Iran, 353–355

Justice Department
See Immigration and Naturalization Service

Labor Department
See Employment Standards Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 387–389

Medicare Payment Advisory Commission
NOTICES
Meetings, 390–391

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 378
National Institute of Allergy and Infectious Diseases, 379
National Institute of Environmental Health Sciences, 379–380
National Institute of Neurological Disorders and Stroke, 379–380
Scientific Review Center, 380–381

National Oceanic and Atmospheric Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Educational Partnership Program—
Minority Serving Institutions; Environmental Entrepreneurship Program, 355–359
Weather Research Program—
Joint Hurricane Testbed opportunities for transfer of research and technology into tropical cyclone analysis and forecast operations, 359–364

Navy Department
NOTICES
Environmental statements; notice of intent:
Naval Air Weapons Station China Lake, CA, 364–365

Nuclear Regulatory Commission
NOTICES
Decommissioning plans; sites:
Green Mountain Ion-Exchange Site, WY, 392–393
Environmental statements; availability, etc.:
Duke Energy Corp., 393–394
Envirocare of Utah, Inc., 394–395
Applications, hearings, determinations, etc.:
Pacific Gas & Electric Co., 391–392

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
National Toxicology Program—
Genetically modified rodent models for cancer hazard identification; substances selection for study and interpreting and communicating results, 381–382

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 395

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 382–384
Grants and cooperative agreements; availability, etc.:
Substance Abuse Prevention Center—
Prevention Technologies Application Centers, 384–385

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 396–397

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Foreign Assets Control Office
RULES
Government Securities Act regulations:
Large position rules; reporting requirements; correction, 402
NOTICES
Agency information collection activities:
Proposed collection; comment request, 397–398

Utah Reclamation Mitigation and Conservation Commission
NOTICES
Environmental statements; availability, etc.:
Central Utah project—
Duchesne and Strawberry Rivers; rehabilitation or replacement of diversion dams, 400–401

Separate Parts In This Issue

Part II
Federal Election Commission, 403–458

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.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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.

8 CFR
Proposed Rules:
217.....292
231.....292
251.....292

11 CFR
100 (2 documents).....404, 421
102.....421
104.....404
105.....404
108.....404
109 (2 documents).....404, 421
110.....421
114.....421

14 CFR
25.....255
39.....257
71 (6 documents).....259, 260, 261, 262, 263
97.....264
Proposed Rules:
39 (9 documents).....302, 305, 308, 311, 315, 317, 320, 322, 324
71.....328

17 CFR
420.....402

18 CFR
260.....266
357.....266
385.....266

40 CFR
180 (3 documents).....269, 274, 283
Proposed Rules:
63.....329
281.....329

50 CFR
Proposed Rules:
17.....331

Rules and Regulations

Federal Register
Vol. 68, No. 2
Friday, January 3, 2003

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM242, Special Conditions No. 25–225–SC]

Special Conditions: Raytheon Aircraft Company Model HS.125 Series 700A Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc. These modified airplanes will have a novel and unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an Electronic Flight Instrument System (EFIS) for display of critical flight parameters (altitude, airspeed, and attitude) to the crew. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 23, 2002. Comments must be received on or before February 3, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM242, 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. NM242.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, 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 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 preamble 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 these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, 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 July 25, 2002, Elliott Aviation Technical Products Development, Inc., Quad City Airport, Moline, Illinois 61266–0100, applied for a supplemental type certificate (STC) to modify Raytheon Aircraft Company Model HS.125 Series 700A airplanes approved under Type Certificate No. A3EU. The HS.125 Series 700A airplanes are executive type transports that have two aft mounted turbine engines, a maximum passenger load of 15 passengers, and a maximum operating speed of 280 to 320 KTS depending on the fuel loading configuration. The modification incorporates the installation of the Rockwell Collins FDS 2000 Electronic Flight Instrument System (EFIS). This system uses flat information display panels for display of critical flight parameters (heading and attitude) to the crew. These displays can be susceptible to disruption to both command and response signals as a result of electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. This disruption of signals could result in the loss of all critical flight information displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Elliott Aviation Technical Products Development, Inc., must show that the Raytheon Aircraft Company Model HS.125 Series 700A airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Raytheon Aircraft Company Model HS.125 Series 700A airplanes include 14 CFR part 25 effective February 1, 1965, as amended

by Amendments 25–2 and 25–20, as described in Type Certificate Data Sheet A3EU.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model HS.125 Series 700A 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, the Raytheon Aircraft Company Model HS.125 Series 700A airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Elliott Aviation Technical Products Development, Inc., apply at a later date for a supplemental type certificate to modify any other model included Type Certificate No. A3EU to incorporate the same novel or unusual design feature, 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

As noted earlier, the modified Raytheon Aircraft Company Model HS.125 Series 700A airplanes will incorporate the Rockwell Collins FDS 2000 Electronic Flight Instrument System (EFIS). Because these advanced systems use electronics to a far greater extent than the original flight and navigation systems, they may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc. These special conditions will require that the new EFIS that performs critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionic/electronic and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF. in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability: As discussed above, these special conditions are applicable to Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc. Should Elliott Aviation Technical Products Development, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A3EU to incorporate the same novel or unusual design feature, 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 Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on this airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been

submitted in response to the prior opportunities for comment described above.

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 Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Elliott Aviation Technical Products Development, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on December 23, 2002.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–63 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–84–AD; Amendment 39–13005; AD 2002–26–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires a one-time inspection to identify all alloy steel bolts on the body station 1480 bulkhead splice, and corrective action if necessary; and provides for optional terminating action for certain requirements of that AD. This amendment requires accomplishment of the previously optional terminating action. The actions specified by this AD are intended to prevent cracked or broken bolts, which could result in structural damage and rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 7, 2003.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 8, 2002 (67 FR 19641, April 23, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–08–10, amendment 39–12718 (67 FR 19641, April 23, 2002), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on June 21, 2002 (67 FR 42204). The action proposed to continue to require a one-time inspection to identify all alloy steel bolts on the body station (BS) 1480 bulkhead splice, and corrective action if necessary. That action also proposed to mandate the previously optional terminating action.

Comments

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

Request to Remove Paragraph (f)

One commenter asks that paragraph (f) of the proposed AD be removed. The commenter states that paragraph (c) of the proposed AD conflicts with paragraph (f) because paragraph (f) states, "As of the effective date of this AD, no person may install an alloy steel bolt on the BS 1480 bulkhead splice on any airplane." The commenter notes that Boeing Alert Service Bulletin 747–53A2390, Revision 1, is referenced as the applicable source of service information in AD 2001–11–06, amendment 39–12248 (66 FR 31124, July 16, 2001); that AD is specified in paragraph (c) of the proposed AD. The commenter adds that paragraph (c) allows reinstallation of alloy steel bolts following a magnetic particle inspection, which creates the conflict between paragraphs (c) and (f).

The FAA partially agrees with the commenter. We agree that there is some inconsistency between the requirements of paragraphs (c) and (f) of the proposed AD, but we do not agree that paragraph (f) should be removed. The inspections to identify alloy steel bolts, as required by paragraph (a) of the proposed AD, are one-time only. An operator could install new alloy steel bolts in areas previously identified as having Inconel 718 bolts after doing the inspection. Unless proper records are maintained, an operator will not know whether the repetitive inspections of alloy steel bolts with no cracking, which is corrective action for the inspection required by paragraph (a), would apply. For clarification, we have changed paragraph (f) in this final rule to state, "Except as provided by paragraph (c) of this AD: As of the effective date of this AD, no person may install an alloy steel bolt on the BS 1480 bulkhead splice on any airplane."

Request to Change Paragraph (a)

One commenter asks that paragraph (a) of the proposed AD be changed to remove the term "detailed methods" as an inspection that can be used for identification of an alloy steel bolt. The commenter states that the referenced service bulletin contains no detailed instructions for identifying the bolts by a detailed visual inspection. The commenter adds that an operator may be able to identify the bolt by a visual inspection, but only if the operator knows the bolt codes marked on the heads of the alloy steel bolts.

We do not agree with the commenter. On page 34 of the referenced service bulletin, instructions are provided for a detailed inspection, including the bolt codes for identifying alloy steel bolts for

Groups 3 and 4 airplanes. No change to the final rule is necessary in this regard.

Request to Change Paragraph (d)

One commenter asks that paragraph (d) of the proposed AD be changed so the wording is similar to that specified in paragraphs (b)(2) and (b)(3) of the proposed AD. The commenter states that paragraph (d) would require installation of Inconel 718 bolts per Boeing Alert Service Bulletin 747–53A2477. This requirement could contradict the requirements in AD 2001–11–06, which requires that inspections and repairs be done per Boeing Alert Service Bulletin 747–53A2390, Revision 1. Service Bulletin 747–53A2390, Revision 1, provides for the installation of several different sizes of Inconel 718 bolts, depending on which level of repair may be required, but the bolts may not be the same bolts specified in Service Bulletin 747–53A2477. The commenter adds that such inconsistency will lead to many requests for alternative methods of compliance.

We do not agree with the commenter that paragraph (d) of the proposed AD could contradict the requirements in AD 2001–11–06. The applicability section of this AD excludes airplanes on which the bulkhead splice areas have been modified in accordance with Plan "B" of AD 2001–11–06. If an operator has replaced alloy steel bolts with Inconel 718 bolts per Plan "B," no further action is required by this final rule. No change to the final rule is necessary in this regard.

Reporting Requirement

The service bulletin recommends that inspection findings be submitted to the manufacturer. However, this AD does not require that operators submit reports of inspection findings.

Conclusion

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

Cost Impact

There are approximately 582 airplanes of the affected design in the worldwide fleet. The FAA estimates that 178 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 2002–08–10 takes approximately 58 work hours per airplane to accomplish (including access and close), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $619,440, or $3,480 per airplane.

The terminating action required in this AD action will take approximately 86 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts could cost as much as approximately $1,414 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $1,170,172, or $6,574 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12718 (67 FR 19641, April 23, 2002), and by adding a new airworthiness directive (AD), amendment 39–13005, to read as follows:

2002–26–17 Boeing: Amendment 39–13005. Docket 2002–NM–84–AD. Supersedes AD 2002–08–10, Amendment 39–12718.

Applicability: Model 747 series airplanes, certificated in any category, line numbers 1 through 750 inclusive, excluding airplanes on which the bulkhead splice areas have been modified in accordance with Plan "B" of AD 2001–11–06, amendment 39–12248.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracked or broken bolts, which could result in structural damage and rapid depressurization of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 2002–08–10

Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Inspect the BS 1480 bulkhead splice to identify all alloy steel bolts by using a magnet or, if applicable, detailed methods, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally

supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes on which the bulkhead splice inspection specified by AD 2001–11–06 has NOT been accomplished within 15 months before May 8, 2002 (the effective date of AD 2002–08–10, amendment 39–12718): Inspect within 90 days after May 8, 2002.

(2) For airplanes on which the bulkhead splice inspection specified by AD 2001–11–06 HAS been accomplished within 15 months before May 8, 2002: Inspect within 18 months since the most recent inspection.

Corrective Actions

(b) For each alloy steel bolt found during the inspection required by paragraph (a) of this AD: Before further flight, inspect those bolts using torque test or ultrasonic methods to detect cracks or breakage, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD.

(1) For each uncracked and unbroken alloy steel bolt found: Repeat the inspection specified by paragraph (b) of this AD thereafter at least every 18 months, until the terminating action of paragraph (d) of this AD is accomplished.

(2) For any cracked or broken bolt found: Before further flight, replace it with an Inconel 718 bolt. Such replacement terminates the requirements of this AD for that bolt only.

(3) If any cracked or broken bolt is found anywhere along the splice during any inspection required by paragraph (b) of this AD: Before further flight, reinspect, using ultrasonic methods, any remaining alloy steel bolts that were initially inspected using torque test methods, and replace any cracked or broken bolt with an Inconel 718 bolt. Such replacement terminates the requirements of this AD for that bolt only.

Magnetic Particle Inspection

(c) Plan "A" inspections required by AD 2001–11–06 are acceptable for compliance with the inspection requirements of paragraph (b) of this AD, provided a magnetic particle inspection and applicable corrective actions are performed on any alloy steel bolt removed during any Plan "A" inspection before the bolt is reinstalled. The magnetic particle inspection and corrective actions must be performed in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD.

New Requirements of This AD

Terminating Action

(d) Within 6 years after the effective date of this AD: Replace all alloy steel bolts in the BS 1480 bulkhead splice with Inconel 718 bolts, in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, except as required by paragraph (e) of this AD. Replacement of all alloy steel bolts terminates the requirements of this AD.

Exceptions to Service Information

(e) If Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002, specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Part Installation

(f) Except as provided by paragraph (c) of this AD: As of the effective date of this AD, no person may install an alloy steel bolt on the BS 1480 bulkhead splice on any airplane.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2477, dated February 28, 2002. This incorporation by reference was approved previously by the Director of the Federal Register as of May 8, 2002 (67 FR 19641, April 23, 2002). Although the service bulletin references a reporting requirement and completion of the attached Evaluation Form, such reporting and evaluation are not required by this AD. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on February 7, 2003.

Issued in Renton, Washington, on December 24, 2002.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–27 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13980; Airspace Docket No. 02–AEA–12]

Amendment of Class D Airspace; Norfolk NAS, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Norfolk NAS, Norfolk, VA by lowering the upper limits. This action is necessary to insure continuous altitude coverage for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC April 17, 2003

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 24, 2002 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by lowering the upper limit of Class D airspace from 2500 feet mean sea level (MSL) up to but no including 2,000 feet MSL at Norfolk NAS, Norfolk, VA, was published in the **Federal Register** (67 FR 65323–6524). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations for airspace extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9K, dated august 30, 2002 and effective September 16, 2002. The Class D airspace designation listed in this document will be published in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) extends Class D airspace from the surface of the earth up to but not including 2,000 feet MSL for aircraft conducting IFR operations at Norfolk NAS, Norfolk, VA. The previous Class D airspace ceiling was 2,500 feet.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

2. The incorporation by reference in CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated august 30, 2002, and effective September 16, 202, is amended as follows:

Paragraph 5000 Class D Airspace Areas Extending Upward From the Surface of the Earth

* * * * *

AEA VA D Norfolk NAS, VA [REVISED]

NAS Norfolk (Chambers), Norfolk, VA
(Lat. 36°56′15″N., long. 76°17′25″W.)

That airspace extending upward from the surface to but no including 2,000 feet MSL within a 4.3-mile radius of NAS Norfolk (Chambers) excluding that airspace southeast of a line connecting the 4.3-mile radius of Norfolk NAS and the 5-mile radius of Norfolk International Airport.

* * * * *

Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–66 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13945; Airspace Docket No. 02–AEA–15]

Amendment of Class E Airspace; Wrightstown, NJ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Flying W Airport from the Wrightstown, NJ Class E Airspace description. The affected Class E–5 airspace for the airport will be consolidated into the Philadelphia, PA Class E Airspace description contained in Docket No. FAA–2002–13944; Airspace Docket No. 02–AEA–03, effective March 20, 2003.

DATES: Effective date: March 20, 2003.

Comment Date: Comments must be received on or before January 10, 2003.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seveth Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13945/Airspace Docket No. 02–AEA–15 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of Wrightstown, NJ Class E Airspace, by deleting Flying W Airport and incorporating that airspace into the Philadelphia, PA class E Airspace description, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the description of Wrightstown, NJ Class E airspace area by removing the airspace designations for Flying W Airport and consolidating that airspace areas into the Philadelphia, PA description. The proliferation of airports with Instrument Flight Rule (IFR) operations in the vicinity of Philadelphia, PA has resulted in overlap of numerous Class E airspace areas and confused charting. This action clarifies the airspace and diminishes the scope and complexity of charting. The IFR airports within those areas would be incorporated into the Philadelphia, PA class E airspace area. Accordingly, since this action merely consolidates airspace areas into one airspace designation and has no consequential impact, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

Inconsideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[Amended]

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending From 700 Feet or More Above the Surface of the Earth

* * * * *

AEA NJ E5 Wrightstown, NJ [Revised]

Lakewood Airport, NJ
(Lat. 40°04′00″N., long. 74°10′40″W.)
McGuire AFB, NJ
(Lat. 40°00′56″N., long. 74°35′37″W.)
Trenton-Robbinsville Airport, NJ
(Lat. 40°12′50″N., long. 74°36′07″W.)
Allaire Airpot, NJ
(Lat. 40°11′13″N., long. 74°07′30″W.)
Robert J. Miller Airpark, NJ
(Lat. 39°55′39″N., long. 74°17′33″W.)
Lakehurst (Navy) TACAN
(Lat. 40°02′13″N., long. 74°21′12″W.)
Colts Neck VOR/DME
(Lat. 40°18′42″N.. long. 74°09′36″W.)
Coyle VORTAC
(Lat. 39°49′02″N., long. 74°25′54″W.)
Robbinsville VORTAC
(Lat. 40°12′08″N., long. 74°29′43″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lakewood Airport and within a 10.5-mile radius of McGuire AFB and within an 11.3-mile radius of the Lakehurst (Navy) TACAN extending clockwise from the Lakehurst (Navy) TACAN 310° radial to the 148° radial and within 4.4 miles each side of the Coyle VORTAC 031° radial extending from the VORTAC to 11.3 miles northeast and within 2.6 miles southwest and 4.4 miles northeast of the Lakehurst (Navy) TACAN 148° radial extending from the TACAN to 12.2 miles southeast and within a 6.4-mile radius of Trenton-Robbinsville Airport and within 5.7 miles north and 4 miles south of the Robbinsville VORTAC 278° and 098° radials extending from 4.8 miles west to 10 miles east of the VORTAC and within a 6.7-mile radius of Allaire Airport and within 1.8 miles each side of the Colts Neck VOR/DME 167° radial extending from the Allaire Airport 6.7-mile radius to the VOR/DME and within 4 miles each side of the 312° bearing from the Allaire airport extending from the 6.7-mile radius of the airport to 9 miles northwest of the airport and within a 6.5-mile radius of Robert J. Miller Air Park and within 1.3 miles each side of the Coyle VORTAC 044° radial extending from the 6.5-mile radius of Robert J. Miller Air Park to the VORTAC, excluding the portions that coincide with the Atlantic City, NJ, Princeton, NJ. Old Bridge NJ, Philadelphia, PA, Class E airspace areas.

* * * * *

Dated: Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–65 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–8]

Establishment of Class E2 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace designated as a surface area (E2) for Ainsworth Municipal Airport, NE and modifies Class E airspace extending upward from 700 feet above the surface of the earth (E5) at Ainsworth, NE. Class E2 and additional E5 controlled airspace are needed to contain aircraft executing instrument flight procedures and provide a safer operating environment at Ainsworth, NE. This action establishes Class E airspace designated as a surface area and modifies Class E airspace extending upward from 700 feet above the surface of the earth at Ainsworth, NE.

EFFECTIVE DATE: 0901 UTC, February 20, 2003.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, August 23, 2002, the FAA proposed to amend 14 CFR part 71 to establish and modify Class E airspace at Ainsworth, NE (67 FR 21576). The proposal was to establish Class E2 and Class E4 airspace and to modify Class E5 airspace at Ainsworth, NE. A correction to this proposal was issued on Wednesday, November 13, 2002, that combined proposed Class E2 and Class E4 airspace areas under the single heading of Class E2 (67 FR 28832). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E2 airspace designations are published in paragraph 6002 and Class E5 airspace designations in paragraph 6005, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes and modifies Class E airspace at Ainsworth, NE to provide adequate controlled airspace for aircraft executing instrument flight procedures. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 Ainsworth, NE

Ainsworth Municipal Airport, NE
(Lat. 42°34′45″ N., long. 99°59′35″ W.)
Within a 4.3-mile radius of Ainsworth Municipal Airport; within 2.4 miles each side of the Ainsworth VOR/DME 197° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles south of the airport; and within 2.4 miles each side of the Ainsworth VOR/DME 348° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles north of the airport.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ACE NE E5 Ainsworth, NE [Revised]

Ainsworth Municipal Airport, NE
(Lat. 42°34′45″ N., long. 99°59′35″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Ainsworth Municipal Airport and within 3.9 miles each side of the 179° bearing from the airport extending from the 7.4-mile radius to 9.6 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on December 19, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–62 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13981; Airspace Docket No. 02–AEA–18]

Establishment of Class E Airspace; Crisfield, MD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Crisfield, MD. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Crisfield Municipal Airport, Crisfield, MD under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 1, 2002, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of Crisfield Municipal Airport, Crisfield, MD was published in the **Federal Register** (67 FR 66592–66593). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before December 2, 2003. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6-mile radius of Crisfield Municipal Airport, Crisfield, MD.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administrations Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

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

* * * * *

AEA MD E5, Crisfield, MD [NEW]

Crisfield Municipal Airport, MD
(Lat. 38°01′01″N, long. 75°49′44″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Crisfield Municipal Airport, Crisfield, MD.

* * * * *

Issued in Jamaica, New York on December 18, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–64 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13944; Airspace Docket No. 02–AEA–03]

Amendment of Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration [FAA] DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Philadelphia, PA. The proliferation of airports within a thirty mile radius of Philadelphia International Airport with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace has made this action necessary. This action consolidates the Class E–5 airspace designations for twenty six airports and results in the recision of fourteen separate Class E–5 descriptions through separate rulemaking action. The area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 24, 2002, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by consolidating existing Class E–5 airspace designations in the Philadelphia complex and incorporating those areas into the Philadelphia, PA descriptions was published in the **Federal Register** (67 FR 65324–65325). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from the surface are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002 and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 ft above the surface for aircraft conducting IFR operations within the Philadelphia, PA Class E–5 airspace description.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Philadelphia, PA (Revised)

Philadelphia International Airport
(Lat. 39°52′19″N., long. 75°14′28″W.)
Chester County G. O. Carlson Airport, PA
(Lat. 39°58′44″N., long. 75°51′56″W.)
New Castle County Airport, DE
(Lat. 39°40′43″N., long. 75°36′24″W.)
Summit Airpark, DE
(Lat. 39°31′13″N., long. 75°43′14″W.)
Millville Municipal Airport, NJ
(Lat. 39°22′04″N., long. 75°04′20″W.)

That airspace extending upward from 700 feet above the surface within a 31-mile radius of Philadelphia International Airport extending clockwise from a 225° bearing to a 307° bearing from the airport and within a 37-mile radius of Philadelphia International Airport extending from a 307° bearing to a 053° bearing from the airport and within a 33-mile radius of Philadelphia International Airport extending from a 053° bearing to a 173° bearing from the airport and within a 10-mile radius of Philadelphia International Airport extending from a 173° bearing from the airport to a 225° from the airport and within a 7-mile radius of Chester County G.O. Carlson Airport and within a 6.7 mile radius of New Castle County Airport and within a 8-mile radius of Summit Airpark and within a 6.5-mile radius of Millville Municipal Airport, excluding the airspace that coincides with the Wrightstown, NJ; Pittstown, NJ; Princeton, NJ; Reading, PA; Allentown, PA; and Elkton, MD Class E airspace areas.

* * * * *

Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–67 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13947; Airspace Docket No. 02–AEA–14]

Amendment of Class E Airspace; Pennsylvania, New Jersey, Delaware

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final Rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Wilmington, DE; Coatsville, PA; Toughkenamon, PA;

Pottstown, PA; Doylestown, PA; Quakertown, PA; Collegeville, PA; North Philadelphia, PA; Perkasie, PA; Berlin, NJ, Cross Keys, NJ; Vincentown, NJ; Hammonton, NJ; and Millville, NJ. The affected Class E–5 airspace for the airports included in these descriptions will be consolidated into the Philadelphia, PA airspace description contained in Docket No. FAA–2002–13944; Airspace Docket No. 02–AEA–03, effective March 20, 2003.

DATES: Effective date: March 20, 2003.

Comments Date: Comments must be received on or before January 10, 2003.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13497/Airspace Docket No. 02–AEA–14 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Docket Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of Class E airspace within Delaware, Pennsylvania, and New Jersey, by consolidating that airspace into one description, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of Class E airspace in the Philadelphia, PA area by removing the airspace designations for Wilmington, DE; Coatsville, PA; Toughkenamon, PA; Pottstown, PA; Doylestown, PA; Quakertown, PA; Collegeville, PA; North Philadelphia, PA; Perkasie, PA; Berlin, NJ; Cross Keys, NJ; Vincentown, NJ; Hammonton, NJ; and Millville, NJ and consolidating those airspace areas into the Philadelphia, PA description. The proliferation of airports with Instrument Flight Rule (IFR) operations in the vicinity of Philadelphia, PA has resulted in overlap of numerous Class E airspace areas and confused charting. This action clarifies the airspace and diminishes the scope and complexity of charting. The IFR airports within those areas will be incorporated into the Philadelphia, PA Class E airspace area. Accordingly, since this action merely consolidated these airspace areas into one airspace designation and has inconsequential impact on aircraft operations in the area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[Amended]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA DE E5 Wilmington, DE [Removed]
AEA PA E5 Coatsville, PA [Removed]
AEA PA E5 Toughkenamon, PA [Removed]
AEA PA E5 Pottstown, PA [Removed]
AEA PA E5 Doylestown, PA [Removed]
AEA PA E5 Quakertown, PA [Removed]
AEA PA E5 Collegeville, PA [Removed]
AEA PA E5 North Philadelphia, PA [Removed]
AEA PA E5 Perkasie, PA [Removed]
AEA–NJ E5 Berlin, NJ [Removed]
AEA NJ E5 Cross Keys, NJ [Removed]
AEA NJ E5 Vincentown, NJ [Removed]
AEA NJ E5 Hammonton, NJ [Removed]
AEA NJ E5 Millville, NJ [Removed]

* * * * *

Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–69 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30346; Amdt. No. 3037]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective January 3, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 2003.

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

For Examination—

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

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

3. The Flight Inspection Area Office which originated the SIAP; or,

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on December 20, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective January 23, 2003*

Naples, FL, Naples Muni, RNAV (GPS) RWY 5, Amdt 1
Brunswick, GA, Malcolm McKinnon, RNAV (GPS) RWY 4, Orig
Brunswich, GA, Malcolm McKinnon, RNAV (GPS) RWY 22, Orig
Brunswich, GA, Malcolm McKinnon, GPS RWY 4, Orig, CANCELLED
Brunswich, GA, Malcolm McKinnon, GPS RWY 22, Orig, CANCELLED
Rexburg, ID, Rexburg-Madison County, RNAV (GPS) RWY 35, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, ILS RWY 12R, Amdt 7
Newburgh, NY, Stewart Intl, ILS RWY 9, Amdt 10
Kinston, NC, Kinston Rgnl Jetport at Stallings Field, VOR RWY 23, Amdt 15
Maxton, NC, Laurinburg-Maxton, NDB RWY 5, Amdt 1
Maxton, NC, Laurinburg-Maxton, ILS RWY 5, Amdt 1
Maxton, NC, Laurinburg-Maxton, RNAV (GPS) RWY 5, Orig
Maxton, NC, Laurinburg-Maxton, RNAV (GPS) RWY 23, Orig
Pinehurst/Southern Pines, NC, Moore County, ILS RWY 5, Orig
Pinehurst/Southern Pines, NC, Moore County, RNAV (GPS) RWY 23, Orig
Southern Pines, NC, Moore County, ILS RWY 5, Orig, CANCELLED
Southern Pines, NC, Moore County, GPS RWY 23, Orig-B, CANCELLED
Washington, NC, Warren Field, RNAV (GPS) RWY 5, Orig
Washington, NC, Warren Field, RNAV (GPS) RWY 17, Orig
Washington, NC, Warren Field, RNAV (GPS) RWY 23, Orig
Washington, NC, Warren Field, RNAV (GPS) RWY 35, Orig
Washington, NC, Warren Field, GPS RWY 5, Orig, CANCELLED
Manchester, NH, Manchester, ILS RWY 35, Orig
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 5, Orig
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 7, Amdt 1
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 23, Orig
Farmington, NM, Four Corners Regional, VOR RWY 23, Orig
Farmington, NM, Four Corners Regional, VOR RWY 25, Amdt 10
Farmington, NM, Four Corners Regional, VOR/DME RWY 5, Orig
Akron, OH, Akron-Canton Regional, ILS RWY 1, Amdt 37
North Bend, OR, North Bend Muni, MLS RWY 22, Orig, CANCELLED
Newport News, VA, Newport News/Williamsburg Intl, LOC BC RWY 25, Amdt 13E, CANCELLED
Newport News, VA, Newport News/Williamsburg Intl, ILS RWY 7, Amdt 31
Newport News, VA, Newport News/Williamsburg Intl, RNAV (GPS) RWY 7, Amdt 1
Gillette, WY, Gillette-Campbell County, LOC/DME BC RWY 16, Amdt 3A, CANCELLED

* * * *Effective March 20, 2003*

Hays, KS, Hays Regional, NDB RWY 34, Amdt 3
Hays, KS, Hays Regional, RNAV (GPS) RWY 34, Amdt 1
Humboldt, TN, Humboldt Muni, VOR/DME-A, Amdt 5

The FAA published the following procedure in Docket No. 30343; Amdt No. 3035 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 240, Page 76678; dated Friday, December 13, 2002) under section 97.23 effective January 23, 2003 which is hereby rescinded:

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

[FR Doc. 03-97 Filed 1-2-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 260, 357 and 385

[Docket No. RM03-3-000; Order No. 628]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Elimination of the Paper Filing Requirements of FERC Form Nos. 2, 2-A and 6; Order No. 628

Issued December 26, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to eliminate the paper filing requirements of Form Nos. 2 (Form 2), 2-A (Form 2-A), and 6 (Form 6). Commencing with the calendar year 2002 report filing due March 31, 2003 for the Form 2-A and Form 6, and April 30, 2003 for the Form 2, only electronic submission using Commission-provided software will be required. The elimination of the paper submissions yields significant benefits to the respondents and the Commission. These benefits include reduced printing and handling costs and an overall reduction in filing burden for the respondents, and a reduction in processing and maintenance costs incurred by the Commission.

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

FOR FURTHER INFORMATION CONTACT:
James M. Krug (Technical Information), Office of Markets, Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502-8419, *james.krug@ferc.gov*.
Bolton Pierce (Electronic System), Office of Markets Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502-8803, *bolton.pierce@ferc.gov*.
Julia Lake (Legal Information), Office of General Counsel, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502-8370, *julia.lake@ferc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. This Final Rule revises parts 260, 357 and 385 of the Commission's regulations to require only the electronic filing of the FERC Form No. 2 "Annual Report for Major Natural Gas Companies" (Form 2), FERC Form No. 2-A "Annual Report for Nonmajor Natural Gas Companies" (Form 2-A) and FERC Form No. 6 "Annual Report of Oil Pipeline Companies" (Form 6). Commencing with the reports for calendar year 2002, due no later than March 31, 2003 for the Form 2-A and Form 6, and April 30, 2003 for the Form 2, there will be no further requirement for paper copy filings. The Commission has determined that the elimination of the paper copies of the Forms 2, 2-A and 6 will provide significant benefits to both the respondents and the Commission. These benefits include reduced printing and handling costs and an overall reduction in filing burden for the respondents, and a reduction in processing and maintenance costs incurred by the Commission.

II. Background

Forms 2 and 2-A

2. Forms 2 and 2-A data are collected pursuant to Sections 8 and 10 of the Natural Gas Act (NGA). Section 8 of the NGA [1] gives the Commission the authority to issue regulations and rules requiring natural gas companies to make, keep and preserve accounts, records, correspondence, memoranda, papers and books. Section 10 of the NGA [2] gives the Commission authority through rules and regulations to require periodic and special reports. The Commission's Forms 2 and 2-A filing requirements are found at 18 CFR 260.1 and 260.2.

3. Forms 2 and 2-A collect general corporate information that includes: Summary financial information, balance sheets and income statements and supporting information, gas plant information, operating expenses and statistical data. The information is used in the continuous review of the financial condition of jurisdictional natural gas companies, in various rate proceedings and in the Commission's audit program. Forms 2 and 2-A data

[1] 15 U.S.C. 717g.
[2] 15 U.S.C. 717i.

are also used to compute annual charges which are assessed against each jurisdictional natural gas company and which are necessary to recover the Commission's annual costs.

4. Form 2 is filed by respondents determined to be "Major Companies." A respondent is defined as a "Major Company" if it meets the following requirement: having combined gas transported or stored for a fee that exceeds 50 million Dth in each of the three previous calendar years. For the Form 2–A, a respondent is defined as a "Non Major Company" if it meets the following requirement: has total annual gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years, and it is not classified as "Major."

5. The Forms 2 and 2–A are annual submissions from approximately 62 and 48, jurisdictional natural gas companies, respectively. Earlier this year, the Office of Management and Budget (OMB) approved 3-year extensions for both Forms.

Form 6

6. In 1977, the responsibility to regulate oil pipeline companies was transferred to the Commission from the Interstate Commerce Commission (ICC).[3] In accordance with the transfer of authority, the Commission was delegated the responsibility under section 1 of the Interstate Commerce Act (ICA)[4] to regulate the rates and charges for transportation of oil by pipeline and establish the valuation of those pipelines, and under section 20 of the ICA to require pipelines to file annual and other reports of information necessary to exercise its statutory responsibilities.[5]

7. Section 357.2 of the Commission's regulations requires every pipeline carrier subject to the provisions of section 20 of the ICA to file, on or before March 31 of each year, copies of Form 6 "Annual Report of Oil Pipeline Companies."[6] The amount of information a Form 6 respondent submits is based on its jurisdictional operating revenues for each of the three preceding calendar years:

(a) Those carriers having annual jurisdictional operating revenues of $500,000 or more for each of the three previous calendar years must prepare and file with the Commission a complete Form 6.

(b) Those carriers having annual jurisdictional operating revenues greater than $350,000 but less than $500,000 for each of the three previous calendar years must prepare and file page 1 of Form 6, "Identification and Attestation Schedule," page 301, "Operating Revenue Accounts (Account 600)," and page 700, "Annual Cost of Service Based Analysis Schedule."

(c) Those carriers having annual jurisdictional operating revenues of $350,000 or less for each of the three previous calendar years must prepare and file page 1 of Form 6, "Identification and Attestation Schedule" and page 700, "Annual Cost of Service Based Analysis Schedule."

8. The Form 6 collects general corporate information that includes: summary financial information, balance sheets and income statements and supporting information, operating expenses and plant statistical data. The information is used in the continuous review of the financial condition of jurisdictional companies, in various rate proceedings and in the Commission's audit program. Form 6 data is also used to compute annual charges which are assessed against each jurisdictional oil pipeline and which are necessary to recover the Commission's annual costs.

9. The Form 6 is an annual submission from approximately 171 jurisdictional oil pipeline companies. In 2001, the Office of Management and Budget (OMB) approved a 3-year extension for the Form.

III. Discussion

10. In this Final Rule, the Commission is eliminating the requirement to file paper copies of Forms 2, 2–A and 6, and now will require only electronic copies.

11. Current filing regulations for the Forms 2, 2–A and 6 require the respondents to use Commission-distributed submission software[7] to produce both electronic and paper submissions of the forms. The submission software provides a user interface for data entry, printing, and uploading of the electronic filing to the Commission. The electronic submission—which is in a database format that is compatible with many off-the-shelf commercial software programs—is processed and made available to staff and the public within 24 hours after filing. The electronic filing is then used to create an electronic version (PDF) of the paper forms that can be accessed through the Commission's document retrieval system (the Federal Energy Regulatory Records Information System (FERRIS)). Alternatively, interested persons can view and print paper copies of the electronically filed data by using the Commission's Form 2/2–A or Form 6 viewer software which is also available for download on the FERC's Web site.

12. With the availability of the Form 2/2–A and Form 6 submission software, the Form 2/2–A and Form 6 viewer software and FERRIS, there is no need for paper submissions of Forms 2, 2–A and 6. The Commission will continue to provide staff and the public access and the ability to print copies of these Forms, however. The Commission's elimination of the paper submissions of the Forms 2, 2–A and 6 thus should not have an adverse impact on users of the Forms.

13. This Final Rule is part of the Commission's ongoing efforts to revise and streamline its existing reporting requirements, reduce the filing burden on reporting companies, and meet the Paperwork Reduction Act of 1995.

14. Notice and comment procedures are not necessary in this rulemaking docket because the Commission is not changing the contents of the Forms 2, 2–A and 6, but merely elimininating the paper filing requirements.

IV. Environmental Statement

15. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[8] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended,[9] and also for information gathering, analysis, and dissemination.[10] This Final Rule does not substantially change the effect of the regulations being amended. In addition, this Final Rule involves information gathering, analysis and dissemination. Therefore, this Final Rule falls within the categorical exemption provided in the Commission's regulations. Consequently, neither an environmental

[3] Section 402(b) of the Department of Energy Reorganization Act (DOE Act) 42 U.S.C. 7172(b), provides that: "there are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer of component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline."

[4] 49 App. U.S.C. 1 (1998).

[5] 49 App. U.S.C. 20 (1988).

[6] 18 CFR 357.2

[7] Forms 2/2A and 6 submission software are Windows 95/98/2000/ME/NT/XP compatible and can be downloaded from the FERC's Web site at: *http://www.rimsweb2.ferc.fed.us/form2* and *http://www.rimsweb2.ferc.fed.us/form6*.

[8] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[9] 18 CFR 380.4(a)(2)(ii).

[10] 18 CFR 380.4(a)(5).

impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

16. In *Mid-Tex Elect. Coop.* v. *FERC*, 773 F.2d 327 (DC. Cir. 1985), the court found that Congress, in passing the Regulatory Flexibility Act (RFA),[11] intended agencies to limit their consideration under the RFA "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.*

17. This Final Rule will reduce the reporting burden for all reporting companies, including small reporting companies. The Commission also finds that most of the filing companies regulated by the Commission do not fall within the RFA's definition of a small entity.[12] The Commission therefore certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

18. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (collections of information) imposed by an agency. The information collection requirements in this Final Rule are contained in Form 2, "Annual Report for Major Natural Gas Companies" (OMB Control No. 1902–0028), FERC Form 2–A "Annual Report for Nonmajor Natural Gas Companies" (OMB Control No. 1902–0030), and Form 6 "Annual Report of Oil Pipeline Companies" (OMB Control No. 1902–0022). Form 2 most recently received OMB approval on March 29, 2002, for the period through March 31, 2005. Form 2–A received OMB approval on April 2, 2002, for the period through April 30, 2005. Form 6 received OMB approval on March 29, 2001, for the period through March 31, 2004.

19. The elimination of the paper submissions is part of the Commission's ongoing program to reduce reporting burdens. As explained below, the shift to a paperless filing of the Forms 2, 2–A and 6 will reduce the burden on regulated companies for reporting and maintaining information under the Commission's Forms 2, 2–A and 6 regulations.

20. The regulated entity shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Title: FERC Form No. 2, "Annual Report for Major Natural Gas Companies"; FERC Form No. 2–A, "Annual Report for Nonmajor Natural Gas Companies"; FERC Form No. 6, "Annual Report of Oil Pipeline Companies".

Action: Revision of Currently Approved Collections of Information.

OMB Control Nos.: 1902–0022, 1902–0028 and 1902–0030.

Respondents: Jurisdictional Natural Gas and Oil Pipeline Companies.

Frequency of Responses: Annually.

Reporting Burden: Form 2: With the elimination of the paper submission, the Commission estimates a savings of $560 per respondent due to reduced printing and handling costs. For the Federal government, the cost savings for the Form 2 will be $10,000 due to a reduction in processing and maintenance costs.

Form 2–A: With the elimination of the paper submission, the Commission estimates a savings of $354 per respondent due to reduced printing and handling costs. For the Federal government, the cost savings for the Form 2–A will be $6,000 due to a reduction in processing and maintenance costs.

Form 6: With the elimination of the paper submission, the Commission estimates a savings of $369 per respondent due to reduced printing and handling costs. For the Federal government, the cost savings for the Form 6 will be $3,748 due to a reduction in processing and maintenance costs.

21. The proposed paperless filing requirements conform to the Commission's plan for efficient information collection, communication and management within the natural gas and oil pipeline industries. These changes will continue to contribute to well-informed decision-making and streamlined workload processing.

22. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 502–8415; Fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.*

23. For the submission of comments concerning the collection of information and the associated burden estimates, please send your comments to the contact listed above or to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7856; Fax: (202) 395–7285).

VII. Document Availabilty

24. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

25. From the Commission's Home Page on the Internet, this information is available in FERRIS. The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number (excluding the last three digits of this document) in the document number field.

26. User assistance is available for FERRIS and the Commission's Web site during regular business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Please e-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VIII. Effective Date and Congressional Notification

27. This Final Rule will take effect February 3, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[13] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[14]

List of Subjects

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

[11] 5 U.S.C. 601–612.

[12] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[13] 5 U.S.C. 804(2).

[14] 5 U.S.C. 801(a)(1)(A).

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends parts 260, 357 and 385, Chapter I, Title 18, of the Code of Federal Regulations, as follows:

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 260.1, paragraph (b) is revised to read as follows:

§ 260.1 FERC Form No. 2, Annual report for Major natural gas companies

* * * * *

(b) *Filing requirements.* Each natural gas company, as defined in the Natural Gas Act (15 U.S.C. 717, *et seq.*) which is a major company (a natural gas company whose combined gas transported or stored for a fee exceeded 50 million Dth in each of the three previous calendar years) must prepare and file with the Commission, on or before April 30 following the close of each calendar year, FERC Form No. 2. Newly established entities must use projected data to determine whether FERC Form No. 2 must be filed. The form must be filed in electronic format only, as indicated in the general instructions set out in that form. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426. One copy of the report must be retained by the respondent in its files.

3. In § 260.2, paragraph (b) is revised to read as follows:

§ 260.2 FERC Form No. 2–A, Annual report for Nonmajor natural gas companies

* * * * *

(b) *Filing requirements.* Each natural gas company, as defined by the Natural Gas Act, not meeting the filing threshold for FERC Form No. 2, but having total gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years, must prepare and file with the Commission, on or before March 31 following the close of each calendar year, FERC Form No. 2–A. Newly established entities must use projected data to determine whether FERC Form No. 2–A must be filed. The form must be filed in electronic format only, as indicated in the general instructions set out in that form. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426. One copy of the report must be retained by the respondent in its files.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

4. The authority citation for part 357 continues to read as follows:

Authority: 42 U.S.C. 7101–7352, 49 U.S.C. 60502, 49 App. U.S.C. 1–85 (1988).

5. In § 357.2, paragraph (c)(3) is revised to read as follows:

§ 357.2 FERC Form No. 6, Annual Report of Oil Pipeline Companies

* * * * *

(c) *What to submit.* * * *

(3) The form must be filed in electronic format only pursuant to § 385.2011 of this chapter, beginning with report year 2002, due on or before March 31, 2003.

PART 385—RULES OF PRACTICE AND PROCEDURE

6. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

7. In § 385.2011, paragraph (c)(3) is revised to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

* * * * *

(c) *What to file.* * * *

(3) With the exception of the Form Nos. 1, 2, 2–A and 6, the electronic media must be accompanied by the traditional prescribed number of paper copies.

* * * * *

[FR Doc. 03–153 Filed 1–2–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0303; FRL–7282–4]

Mesotrione; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of mesotrione in or on corn, pop, grain and corn, pop, stover. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective January 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0303, must be received on or before March 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0303. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of August 7, 2002 (67 FR 51270) (FRL–7186–5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 2F6443 and 2E6465) by IR-4, 681 US Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Sygenta Crop Protection Inc., the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.571 be amended by establishing a tolerance for residues of the herbicide mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on corn, pop grain and corn, pop stover at 0.01 parts per million (ppm).

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of mesotrione on corn, pop grain and corn, pop stover at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by mesotrione is discussed in Unit III.A. of the final rule on the Mesotrione Pesticide Tolerance published in the **Federal Register** of June 21, 2001 (66 FR 33187) (FRL–6787–7).

B. Toxicological Endpoints

A summary of the toxicological endpoints for mesotrione used for human risk assessment is discussed in Unit III.B. of the final rule on Mesotrione Pesticide Tolerance published in the **Federal Register** of June 21, 2001 (66 FR 33187). A chronic aggregate risk assessment is appropriate for mesotrione and was performed by EPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.517) for the residues of mesotrione, in or on the following raw agricultural commodities: Field corn: Grain, fodder and forage, each at 0.01 ppm. A section 18 registration was granted to the State of Wisconsin for time-limited tolerances (expires June 2004) for sweet corn: Kernel, forage and stover at 0.01, 0.5 and 2.0, respectively. Risk assessments conducted by EPA to assess dietary exposures from mesotrione are discussed in Unit III C.1 on the final rule of Mesotrione Pesticide Tolerance published in the **Federal Register** of June 21, 2001 (66 FR 33187).

2. *Dietary exposure from drinking water.* GENEEC and SCI-GROW models were used for the estimated environmental concentrations (EECs) of mesotrione for acute and chronic exposures. See Unit III C.2 for discussion in the final rule of Mesotrione Pesticide Tolerance published in the **Federal Register** of June 21, 2001 (66 FR 33187).

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Mesotrione is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is quantitative evidence of increased susceptibility demonstrated in the oral prenatal developmental toxicity studies in rats, mice, and rabbits. Delayed ossification was seen in the fetuses at doses below those at which maternal toxic effects were noted. Maternal toxic effects in the rat were decreased body weight gain during treatment and decreased food consumption and in the rabbit, abortions and GI effects.

3. *Conclusion.* There is a complete toxicity data base for mesotrione and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA safety factor (10x) is retained in assessing the risk posed because there is quantitative evidence of increased susceptibility of the young exposed to mesotrione in the prenatal developmental toxicity studies in mice, rats, and rabbits and in the multi-generation reproduction study in mice, there is qualitative evidence of increased susceptibility of the young exposed to mesotrione in the multi-generation reproduction study in rats; and a Developmental Neurotoxicity Study is required to assess the effects of tyrosinemia on the developing nervous system exposed to mesotrione.

E. Aggregate Risks and Determination of Safety

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

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

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Acute doses and endpoints were not selected for the general U.S. population (including infants and children) or the females 13-50 years old population subgroup for mesotrione; therefore, acute dietary risk is not expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to mesotrione from food will utilize 2.1% of the cPAD for the U.S. population, 4.4% of the cPAD for infants (<1 year old) and 5.0% of the cPAD for children 1-6 years old. There are no residential uses for mesotrione that result in chronic residential exposure to mesotrione. In addition, there is potential for chronic dietary exposure to mesotrione in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table:

AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO MESOTRIONE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0 007	2.1	4.3	0.1 5	24
Infants (<1 year old)	0.0 007	4.4	4.3	0.15	6.7
Children (1-6 years old)	0.0 007	5.0	4.3	0.15	6.7

AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO MESOTRIONE—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Females (13-50 years old)	0.0 007	1.6	4.3	0.15	20.7

3. *Aggregate cancer risk for U.S. population.* In accordance with the EPA Draft Guidelines for Carcinogen Risk Assessment (July, 1999), the Agency classified mesotrione as "not likely to be carcinogenic to humans" by all routes of exposure based upon lack of evidence of carcinogenicity in rats and mice; therefore, cancer risk is not expected.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to mesotrione residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high pressure liquid chromatography) is available to enforce the tolerance expression. Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, Environmental Protection Agency, 701 Mapes Road, Fort George G. Mead, MD 20755–5350; telephone number (410) 305–2905; griffith.francis@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/Maximum Residue Levels for mesotrione residues. Thus, harmonization is not an issue at this time.

V. Conclusion

Therefore, the tolerance is established for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on corn, pop, grain and corn, pop, stover at 0.01 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0303 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 4, 2003.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0303, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII

file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

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

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.571 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.571 Mesotrione.

(a) * * *

Commodity	Parts per million
* * *	* *
Corn, pop, grain	0.01
Corn, pop, stover	0.01

* * * * * *

[FR Doc. 03–4 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0331; FRL–7283–2]

S-metolachlor; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on sweet potatoes. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sweet potatoes. This regulation establishes a maximum permissible level for residues of s-metolachlor in this food commodity. The tolerance will expire and is revoked on December 31, 2004. Although the exemption was granted for the active ingredient s-metolachlor and the time-limited tolerance is being set for s-metolachlor, the Agency has determined that residues of concern for s-metolachlor are the same as those for metolachlor. and therefore, the tolerance is being included under 40 CFR 180.368 but under its own section in paragraph (b). Metabolites of metolachlor are assumed to be toxicologically equivalent to parent metolachlor. The Agency has determined that the residues of concern for plant and animal commodities are metolachlor and its metabolites, determined as the derivatives CGA-37913 and CGA-49751.

DATES: This regulation is effective January 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0331, must be received on or before March 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Andrew Ertman,Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:(703)308–9367; e-mail address: sec-18-mailbox@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), Departments of Agriculture, Environment, etc.

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0331. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the" **Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_(_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on sweet potatoes at 0.2 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for S-metolachlor on Sweet Potatoes and FFDCA Tolerances

The States of Louisiana and Mississippi requested the use of s-metolachlor on sweet potatoes to control sedges due to an increased pressure from these weed species and a lack of effective registered alternatives. EPA has authorized under FIFRA section 18 the use of s-metolachlor on sweet potatoes for control of sedges in Louisiana and Mississippi. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of s-metolachlor in or on sweet potatoes. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2004, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sweet potatoes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether s-metolachlor meets EPA's registration requirements for use on sweet potatoes or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of s-metolachlor by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Louisiana and Mississippi to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for s-metolachlor, contact the Agency's Registration Division at the address provided under FOR FURTHER INFORMATION CONTACT.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

The Agency has determined that the residues of concern for plant and animal commodities are metolachlor and its metabolites, determined as the derivatives CGA-37913 and CGA-49751. Metabolites of metolachlor are assumed to be toxicologically equivalent to parent metolachlor. The residues of concern for s-metolachlor are the same as those for metolachlor.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of s-metolachlor and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on sweet potatoes at 0.2 ppm.

EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

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

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL

to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 $x10^{-6}$ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

S-metolachlor, [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], is a member of the chloroacetanilide class of herbicides. In this risk assessment the term s-metolachlor will refer to a metolachlor product which is enriched in the S-isomer. The term metolachlor will refer to a racemic mixture of the R and S isomers.

Toxicological endpoints have been selected for metolachlor and s-metolachlor for use in human health risk assessments. The Agency has determined that metolachlor and s-metolachlor are of comparable toxicity, and therefore, studies with both chemicals were used interchangeably for toxicology endpoint selection.

A summary of the toxicological endpoints for s-metolachlor used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR S-METOLACHLOR FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age)	NOAEL = 300 mg/kg/day UF = 100 Acute RfD = 3.0 mg/kg/day	FQPA SF = 1x aPAD = acute RfD/FQPA SF = 3.0 mg/kg/day	Prenatal developmental toxicity study in rats LOAEL = 1,000 mg/kg/day based on death, clinical signs of toxicity (clonic and/or tonic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive salivation) and decreased body weight gain
Acute Dietary (General population including infants and children)	NOAEL = 300 mg/kg/day UF = 100 Acute RfD = 3.0 mg/kg/day	FQPA SF = 1x aPAD = acute RfD/FQPA SF = 3.0 mg/kg/day	Prenatal developmental toxicity study in rats LOAEL = 1,000 mg/kg/day based on death, clinical signs of toxicity (clonic and/or tonic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive salivation) and decreased body weight gain
Chronic Dietary (All populations)	NOAEL = 9.7 mg/kg/day UF = 100 Chronic RfD = 0.1 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD/FQPA SF = 0.1 mg/kg/day	Chronic study in dogs LOAEL = 33.0 mg/kg/day based on decreased body weight gain in females
Short-Term Dermal (1 to 7 days) (Residential)	Hazard was not identified for quantification of risk. No systemic toxicity was seen at the limit dose (1,000 mg/kg/day) following dermal applications and there is no concern for developmental toxicity in rats or rabbits.		
Intermediate-Term Dermal (1 week to several months) (Residential)	Hazard was not identified for quantification of risk. No systemic toxicity was seen at the limit dose (1000 mg/kg/day) following dermal applications and there is no concern for developmental toxicity in rats or rabbits.		
Long-Term Dermal (several months to lifetime) (Residential)	dermal (or oral) study NOAEL= 9.7 mg/kg/day (dermal absorption rate = 58% when appropriate)	LOC for MOE = 100 (Residential)	Chronic toxicity study in dogs LOAEL = 33.0 mg/kg/day based on decreased body weight gain in females
Short-Term Inhalation (1 to 7 days) (Residential)	Inhalation (or oral) study NOAEL= 50 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Prenatal developmental toxicity study in rats LOAEL = 500 mg/kg/day based on increased incidence of clinical signs, decreased body weight/body weight gain, food consumption, and food efficiency
Intermediate-Term Inhalation (1 week to several months) (Residential)	Inhalation (or oral) study NOAEL = 8.8 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Subchronic (6 month) toxicity study in dogs LOAEL based on decreased body weight gain

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR S-METOLACHLOR FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Long-Term Inhalation (several months to lifetime) (Residential)	Inhalation (or oral) study NOAEL= 9.7 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Chronic toxicity study in dogs LOAEL = 33.0 mg/kg/day based on decreased body weight gain in females
Cancer (oral, dermal, inhalation)	Metolachlor has been classified as a Group C, possible human carcinogen. This classification was based on the occurrence of liver tumors in rats at the highest dose level tested (150 mg/kg/day). The carcinogenic risks for metolachlor have been quantitated using a non-linear approach, with a NOAEL of 15 mg/kg/day. However, the NOAEL of 15 mg/kg/day that was established based on liver tumors in rats is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. It is assumed that the chronic dietary endpoint is protective for cancer dietary exposure. Therefore, a separate cancer aggregate risk assessment was not conducted, and cancer DWLOC values were not calculated.		

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

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* S-metolachlor, [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], is a member of the chloroacetanilide class of herbicides. In this risk assessment the term s-metolachlor will refer to a metolachlor product which is enriched in the S-isomer. The term metolachlor will refer to a racemic mixture of the R and S isomers. Currently, there are permanent tolerances for metolachlor (40 CFR 180.368) on a variety of crops and animal commodities. These tolerances range from 0.02 ppm to 30 ppm. There are also time-limited tolerances (in conjunction with section 18 uses) on grass, spinach, and tomatoes. Risk assessments were conducted by EPA to assess dietary exposures from metolachlor and s-metolachlor in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The analyses assumed tolerance-level residues (with the exception of those with DEEM default processing factors) and 100% crop treated for all commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The analyses assumed tolerance-level residues (with the exception of those with DEEM default processing factors) and 100% crop treated for all commodities.

iii. *Cancer.* Metolachlor has been classified as a Group C, possible human carcinogen. This classification was based on the occurrence of liver tumors in rats at the highest dose level tested (150 mg/kg/day). The carcinogenic risks for metolachlor have been quantitated using a non-linear approach, with a NOAEL of 15 mg/kg/day. However, the NOAEL of 15 mg/kg/day that was established based on liver tumors in rats is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. It is assumed that the chronic dietary endpoint is protective for cancer dietary exposure. Therefore, a separate cancer aggregate risk assessment was not conducted, and cancer DWLOC values were not calculated.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for s-metolachlor in drinking water. Because the Agency does not have comprehensive monitoring data for both parent and the degradates of concern in drinking water, exposure from drinking water is being addressed through modeled estimated environmental concentrations (EECs) and the use of drinking water levels of comparison (DWLOCs). This assessment includes concentrations of parent metolachlor and the degradates metolachlor ethanesulfonic acid (ESA) and metolachlor oxanilic acid (OA). Although it was determined by the Agency that the ESA and OA metabolites appear to be less toxic than parent metolachlor, they are included in this risk assessment because they were found in greater abundance than the parent in water monitoring studies.

The surface water EECs were derived from the National Water Quality Assessment Database (parent) and the FIRST Model (ESA and OA metabolites). The SCI-GROW Model was used to generate all ground-water EECs For a screening-level assessment for surface water EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

Since the models used are considered to be screening tools in the risk

assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to metolachlor and s-metolachlor they are further discussed in the aggregate risk sections below.

Based on the National Water Quality Assessment Database (parent) and the FIRST Model (ESA and OA metabolites) and SCI-GROW models the estimated environmental concentrations (EECs) of parent metolachlor and its degradates for acute exposures are estimated to be 201 parts per billion (ppb) (parent: 77.6 ppb, ESA: 31.9 ppb, and OA: 91.4 ppb) for surface water and 103 ppb (parent: 5.5 ppb, ESA: 65.8 ppb, and OA: 31.7 ppb) for ground water. The EECs for chronic exposures are estimated to be 92 ppb (parent: 4.3 ppb, ESA: 22.8 ppb, and OA: 65.1 ppb) for surface water and 103 ppb (parent: 5.5 ppb, ESA: 65.8 ppb, and OA: 31.7 ppb) for ground water.

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

i. *Handlers.* Metolachlor and s-metolachlor are registered (as an emulsifiable concentrate formulation) for use on lawn, turf (including sod farms), golf courses, sports fields, and ornamental gardens. Although metolachlor is not labeled as a restricted-use pesticide, it is not intended for homeowner purchase or use. On this basis, a residential handler is not expected to be exposed to residues of metolachlor and s-metolachlor. Therefore, a residential handler assessment was not conducted.

ii. *Postapplication.* There is potential for postapplication exposure to adults and children resulting from the use of metolachlor/s-metolachlor on residential lawns. Although the use sites for metolachlor and s-metolachlor vary from golf courses to ornamental gardens, the residential lawn scenario represents what the Agency considers to be the likely upper-end of possible exposure. Postapplication exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings.

Postapplication exposure is considered to be short-term (one to 30 days of exposure) only, based on a label specification of a six week interval before the re-application of metolachlor/s-metolachlor. The registrant has also indicated a label revision to limit application to one time per season.

A short-term dermal endpoint was not selected because no systemic toxicity was seen at the limit dose of 1,000 mg/kg/day. As a result, a dermal risk assessment was not conducted and dermal risks are assumed to be minimal. Postapplication inhalation exposure is expected to be minimal since metolachlor and s-metolachlor are only applied in an outdoor setting, the vapor pressure is low (2.8×10^{-5} mm Hg at 25°C), and the label specifies that residents should not re-enter treated areas until after sprays have dried.

The following postapplication incidental oral scenarios which result from application to lawns and turf have been identified:

a. Short-term oral exposure to toddlers and children following hand-to-mouth exposure;

b. Short-term oral exposure to toddlers and children following object-to-mouth exposure; and

c. Short-term oral exposure to toddlers and children following soil ingestion. The term "incidental" is used to distinguish the inadvertent oral exposure of small children from exposure that may be expected from treated foods or residues in drinking water.

As the FQPA safety factor for the protection of children and infants was reduced to 1x, a target MOE value of 100 has been identified for residential assessments. MOE values greater than 100 are not considered to be of concern to the Agency. MOE estimates are based on the dose level of 50 mg/kg/day established for short-term oral risk assessment.

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

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

C. Safety Factor for Infants and Children

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

2. *Developmental toxicity studies*—i. *Prenatal developmental toxicity study—Metolachlor—Rat.* The maternal toxicity LOAEL was 1,000 mg/kg/day based on an increased incidence of death, clinical signs of toxicity (clonic and/or toxic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive lacrimation) and decreased body weight gain. The NOAEL was 300 mg/kg/day.

The developmental toxicity LOAEL was conservatively established at 1,000 mg/kg/day based on slightly decreased number of implantations per dam, decreased number of live fetuses/dam, increased number of resorptions/dam and significant decrease in mean fetal body weight. The NOAEL was 300 mg/kg/day.

ii. *Prenatal developmental toxicity study—S-metolachlor—Rat.* The maternal toxicity NOAEL was 50 mg/kg/day with a LOAEL of 500 mg/kg/day based on increased clinical signs of toxicity, decreased body weights and body weight gains and reduced food consumption and reduced food efficiency.

No significant treatment related developmental toxicity was noted at the dose levels tested. The developmental toxicity NOAEL was equal to or greater

than 1,000 mg/kg/day, the highest dose tested (HDT); a LOAEL was not reached.

iii. *Prenatal developmental toxicity study—Metolachlor—Rabbit.* The maternal toxicity LOAEL was 360 mg/kg/day based on an increased incidence of clinical observations (persistent anorexia) and decreased body weight gain. The NOAEL was 120 mg/kg/day. The developmental toxicity LOAEL was not established. The NOAEL was 360 mg/kg/day.

iv. *Prenatal developmental toxicity study—S-metolachlor—Rabbit.* The maternal toxicity NOAEL was 20 mg/kg/day with a LOAEL of 100 mg/kg/day based on clinical signs of toxicity.

No significant treatment related developmental toxicity was noted at the dose levels tested. The developmental toxicity NOAEL was equal to or greater than 500 mg/kg/day, HDT; a LOAEL was not reached.

3. *Reproductive toxicity study.* No reproduction studies with s-metolachlor are available, however, in the two-generation reproduction study with metolachlor in rats, there was no evidence of parental or reproductive toxicity at approximately 80 mg/kg/day, HDT. At this dose, there was a minor decrease in fetal body weight beginning at lactation day 4; the NOAEL was approximately 25 mg/kg/day. Since a similar body weight decrease was not seen on lactation day 0, the cause of the effect on later lactation days was most likely due to exposure of the pups to metolachlor in the diet and/or milk and therefore is not evidence of an increased quantitative susceptibility in post-natal animals.

The parental toxicity LOAEL was not established. The NOAEL was 1000 ppm (F0 males/females: 75.8/85.7 mg/kg/day; F1males/females: 76.6/84.5 mg/kg/day).

The reproductive toxicity LOAEL was not established. The NOAEL was 1000 ppm (F0 males/females: 75.8/85.7 mg/kg/day; F1males/females: 76.6/84.5 mg/kg/day).

The offspring LOAEL was conservatively established at 1000 ppm (F0 males/females: 75.8/85.7 mg/kg/day; F1males/females: 76.6/84.5 mg/kg/day) based on decreased body weight in F1 and F2 litters. The NOAEL is 300 ppm (F0 males/females: 23.5/ 26.0 mg/kg/day; F1males/females: 23.7/25.7 mg/kg/day).

4. *Prenatal and postnatal sensitivity.* The data bases for prenatal developmental toxicity for metolachlor and s-metolachlor are considered complete. The prenatal developmental studies in the rat and rabbit with both metolachlor and s-metolachlor revealed no evidence of a qualitative or quantitative susceptibility in fetal animals. No significant developmental toxicity was observed in most studies even at the HDT.

The data base for reproductive toxicity of metolachlor is considered complete. No reproduction studies with s-metolachlor are available. In the two-generation reproduction study with metolachlor in rats, there was no evidence of parental or reproductive toxicity at approximately 80 mg/kg/day, HDT. At this dose, there was a minor decrease in fetal body weight beginning at lactation day 4; the NOAEL was approximately 25 mg/kg/day. Since a similar body weight decrease was not seen on lactation day 0, the cause of the effect on later lactation days was most likely due to exposure of the pups to metolachlor in the diet and/or milk and therefore is not evidence of an increased quantitative susceptibility in post-natal animals.

5. *Conclusion.* There is a complete toxicity data base for s-metolachlor when bridged with the database for metolachlor and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because:

i. The toxicological database is complete for FQPA assessment;

ii. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to in utero and/or postnatal exposure;

iii. A developmental neurotoxicity study is not required; and

iv. The dietary (food and drinking water) and residential exposure assessments will not underestimate the potential exposures for infants and children.

D. Aggregate Risks and Determination of Safety

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

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

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to s-metolachlor in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of s-metolachlor on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to s-metolachlor will occupy <1 % of the aPAD for the U.S. population, <1 % of the aPAD for females 13 years and older, <1 % of the aPAD for all infant and children subpopulations. In addition, despite the potential for acute dietary exposure to s-metolachlor in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of s-metolachlor in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 2 of this unit:

TABLE 2.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO S-METOLACHLOR

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)*	Ground Water EEC (ppb)*	Acute DWLOC (ppb)
U.S. Population	3.0	< 1	201	103	1.0 x 105
All Infants (< 1 year old)	3.0	<1	201	103	3.0 x 104
Children (1-6 years old)	3.0	<1	201	103	3.0 x 104
Children (7-12 years old)	3.0	<1	201	103	3.0 x 104
Females (13-50 years old)	3.0	<1	201	103	9.0 x 104
Males (13-19 years old)	3.0	<1	201	103	1.0 x 105
Males (20+ years old)	3.0	<1	201	103	1.0 x 105
Seniors (55+ years old)	3.0	<1	201	103	1.0 x 105

* Represents the combined value of parent plus the ESA and OA degradates.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to s-metolachlor from food will utilize 2 % of the cPAD for the U.S. population, 2 % of the cPAD for all infants < 1 year old and 3 % of the cPAD for children 1-6 years old. Based the use pattern, chronic residential exposure to residues of s-metolachlor is not expected. In addition, despite the potential for chronic dietary exposure to s-metolachlor in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of s-metolachlor in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO S-METOLACHLOR

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.1	2	92	103	3400
All Infants (< 1 year old)	0.1	2	92	103	980
Children (1-6 years old)	0.1	3	92	103	970
Children (7-12 years old)	0.1	2	92	103	980
Females (13-50 years old)	0.1	1	92	103	3000
Males (13-19 years old)	0.1	2	92	103	3400
Males (20+ years old)	0.1	1	92	103	3500
Seniors (55+ years old)	0.1	1	92	103	3500

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

For metolachlor and s-metolachlor, potential short-term, non-occupational risk scenarios include oral exposure of children to treated lawns. In this aggregate short-term risk assessment, exposure from food, drinking water, and residential lawns has been considered. Since only children have the potential for non-occupational, short-term risk, they are the only population subgroup included below. Short-term DWLOC values have been calculated for both metolachlor and s-metolachlor, with the only difference in the calculations being different oral exposure values for metolachlor vs. s-metolachlor (based on different application rates).

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 640 for metolachlor and 1000 for s-metolachlor for children 1-6 years old (the only population sub-group of concern. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of s-metolachlor in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4 of this unit:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO METOLACHLOR AND S-METOLACHLOR

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Children (1-6); Metolachlor	640	100	92	103	4,200
Children (1-6); S-Metolachlor	1,100	100	92	103	4,500

4. *Intermediate-term risk.* An intermediate-term aggregate risk assessment considers potential exposure from food, drinking water, and non-occupational (residential) pathways of exposure. However, for metolachlor, no intermediate-term non-occupational exposure scenarios (greater than 30 days exposure) are expected to occur. Therefore, intermediate-term DWLOC values were not calculated, and an intermediate-term aggregate risk assessment is not required.

5. *Aggregate cancer risk for U.S. population.* An aggregate cancer risk assessment considers potential carcinogenic exposure from food, drinking water, and non-occupational (residential) pathways of exposure. Metolachlor has been classified as a Group C, possible human carcinogen. This classification was based on the occurrence of liver tumors in rats at the highest dose level tested (150 mg/kg/day). The HED Cancer Assessment Review Committee has recommended that carcinogenic risks for metolachlor be quantitated using a non-linear approach, with a NOAEL of 15 mg/kg/day. However, the NOAEL of 15 mg/kg/day that was established based on liver tumors in rats is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. It is assumed that the chronic dietary endpoint is protective for cancer dietary exposure. Therefore, a separate cancer aggregate risk assessment was not conducted, and cancer DWLOC values were not calculated.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to s-metolachlor residues.

V. Other Considerations

A. Analytical Enforcement Methodology

The Pesticide Analytical Manual (PAM) Vol. II, lists a GC/NPD method (Method I) for determining residues in/on plants and a GC/MSD method (Method II) for determining residues in livestock commodities. These methods determine residues of metolachlor and its metabolites as either CGA-37913 or CGA-49751 following acid hydrolysis.

B. International Residue Limits

No maximum residue limits (MRLs) for either metolachlor or S-metolachlor have been established or proposed by Codex, Canada, or Mexico for any agricultural commodity; therefore, no compatibility questions exist with respect to U.S. tolerances.

VI. Conclusion

Therefore, the tolerance is established for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on sweet potatoes at 0.2 ppm.

VII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0331 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 4, 2003.

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

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

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box

360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2002–0331, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Regulatory Assessment Requirements

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

IX. Submission to Congress and the Comptroller General

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

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

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

2. Section 180.368 is amended by designating the existing paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*

(1) * * *

(2) Time-limited tolerances are established for the combined residues (free and bound) of the herbicide s-metolachlor [(S)-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ Revocation Date
Sweet potato	0.2	12/31/04

* * * * *

[FR Doc. 03–5 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0335; FRL–7285–2]

Lambda-cyhalothrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (S)-α-cyano-3- phenoxybenzyl-(Z)-(1S,3S) -3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3- phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in or on wild rice, grass forage, and grass hay. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on wild rice and pasture grass. This regulation establishes maximum permissible levels for residues of lambda-cyhalothrin and its epimer in these food commodities. The tolerances will expire and are revoked on December 31, 2005.

DATES: This regulation is effective January 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0335, must be received on or before March 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703)308–9367; e-mail address: sec-18-mailbox@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0335. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the" **Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_(_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's

electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide lambda-cyhalothrin and its epimer, in or on wild rice at 1.0 parts per million (ppm), grass forage at 5.0 ppm and grass hay at 6.0 ppm. These tolerances will expire and are revoked on December 31, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Lambda-Cyhalothrin on Wild Rice and Pasture Grass and FFDCA Tolerances

The State of Minnesota requested the use of lambda-cyhalothrin on wild rice to control unusually high populations of riceworms because the registered alternatives were ineffective. The State of New York requested the use of lambda-cyhalothrin to control alfalfa weevil (*Hypera postica*), Armyworms (*Spodoptera spp.*) and Potato leafhopper (*Empoasca fabae*) on alfalfa/clover/grass mixed stands. The use of insecticides is the only practical means of controlling the three major pests that infest alfalfa/clover/grass mixed stands and there are no pesticides registered to control insect pests in these stands of mixed of alfalfa/clover/grass. Experts estimate a 35% yield loss if these mixed stands are not protected. EPA has authorized under section 18 of FIFRA the use of lambda-cyhalothrin on wild rice for control of rice borers in Minnesota and pasture grass for control of alfalfa weevil, armyworms and potato leafhoppers on alfalfa/clover/grass mixed stands in New York. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of lambda-cyhalothrin in or on wild rice and grass forage and grass hay. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with section 18 of FIFRA. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2005, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on wild rice, grass forage and grass hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether lambda-cyhalothrin meets EPA's registration requirements for use on wild rice and pasture grass or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of lambda-cyhalothrin by a State for special local needs under section 24(c) of FIFRA. Nor do these tolerances serve as the basis for any States other than Minnesota and New York to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 of FIFRA as identified in 40 CFR part 166. For additional information regarding the emergency exemption for lambda-cyhalothrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D) of the FFDCA , EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of lambda-cyhalothrin and to make a determination on aggregate exposure, consistent with section

408(b)(2) of the FFDCA, for time-limited tolerances for the combined residues of lambda-cyhalothrin and its epimer in or on wild rice at 1.0 ppm, grass forage at 5.0 ppm and grass hay at 6.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

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

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for lambda-cyhalothrin used for human risk assessment is shown in the following Table 1:

TABLE 1.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR LAMBDA-CYHALOTHRIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General population including infants and children)	NOAEL = 0.5 mg/kg/day UF = 100 Acute RfD = 0.005 mg/kg/day	FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.005 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 3.5 mg/kg/day based on clinical signs of neurotoxicity (ataxia) observed from day 2, three to seven hours post-dosing.
Chronic Dietary (All populations)	NOAEL = 0.1 mg/kg/day UF = 100 Chronic RfD = 0.001 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.001 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Incidental Oral Short- and Intermediate-Term (1–30 Days and 1–6 Months) Residential Only	NOAEL = 0.1	LOC for MOE = 100 (Residential)	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Dermal (All Durations;- Short-Term (1 to 7 days) - Intermediate- Term (1 week to several months) - Long-Term (several months to lifetime) (Residential)	dermal (or oral) study NOAEL= 10 mg/kg/day	LOC for MOE = 100 (Residential)	21–Day dermal toxicity study in the rat (lambda-cyhalothrin) LOAEL = 50 mg/kg/day based on clinical signs of neurotoxicity (observed from day 2) and decreased body weight and body weight gain
Inhalation (All Durations; - Short-Term (1 to 7 days) - Intermediate-Term (1 week to several months) - Long-Term (several months to lifetime) (Residential)	inhalation (or oral) study NOAEL= 0.3 µg/L (0.08 mg/kg/day) (inhalation absorption rate = 100%).	LOC for MOE = 100 (Residential)	21–Day inhalation study in rats (lambda-cyhalothrin) LOAEL = 3.3 µg/L (0.90 mg/kg/day) based on clinical signs of neurotoxicity, decreased body weight gains, increased incidence of punctuate foci in the cornea, slight reductions in cholesterol in females and slight changes in selected urinalysis parameters.
Cancer (oral, dermal, inhalation)			Classification: Group D chemical (not classifiable as to human carcinogenicity)

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

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Currently established tolerances for residues of lambda-cyhalothrin are listed under 40 CFR 180.438 and include permanent tolerances on plants ranging from 0.01 ppm on soybeans to 6.0 ppm on alfalfa hay, corn forage, and tomato pomace (dry or wet). Tolerances are also established on animal commodities ranging from 0.01 ppm in eggs, poultry meat, and poultry meat by-products (mbyp) to 5.0 ppm in milk fat (reflecting 0.2 ppm in whole milk). The Agency has recently established additional tolerances for lambda-cyhalothrin on a number of commodities ranging from 0.05 ppm on sugarcane to 3.0 ppm on peanut hay. Risk assessments were conducted by EPA to assess dietary exposures from lambda-cyhalothrin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. A refined Tier 3 probabilistic acute dietary risk assessment was conducted for all currently registered and proposed lambda-cyhalothrin food uses. For the acute dietary risk analysis the entire distribution of residue field trial data was used for not-blended or partially-blended commodities; average residue field trial data was used for blended commodities; information from cooking and processing studies were used when available; and market share data for proposed and established tolerances was used.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. For the chronic dietary risk analysis the average of the residue field trials, information from cooking and processing studies, and market share data were used.

iii. *Cancer.* The data base for carcinogenicity is considered complete, and no additional studies are required at this time. The requirements for oncogenicity studies in the rat and the mouse with lambda-cyhalothrin have been satisfied by a combined chronic/oncogenicity study in rats and an oncogenicity study in mice, both conducted with cyhalothrin. Lambda-cyhalothrin has been classified as a Group D chemical (not classifiable as to human carcinogenicity) with regards to its carcinogenic potential.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

A detailed description of how the Agency used PCT information in this assessment can be found in the lambda-cyhalothrin pesticide tolerance document published on September 27, 2002 (67 FR 60902; FRL–7200–1) in Unit III.C.1.iv.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which lambda-cyhalothrin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for lambda-cyhalothrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of lambda-cyhalothrin.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to

produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to lambda-cyhalothrin they are further discussed in the aggregate risk sections below. The compounds to be regulated in drinking water are lambda-cyhalothrin and degradate XV (parent hydroxylated in the 4-position of the phenoxy ring).

Based on the FIRST, PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of lambda-cyhalothrin and its degradate XV for acute exposures are estimated to be 0.62 parts per billion (ppb) for surface water (0.51 ppb lambda-cyhalothrin and 0.11 ppb degradate XV) and 0.012 ppb (0.006 ppb lambda-cyhalothrin and 0.006 ppb degradate XV) for ground water. The EECs for chronic exposures are estimated to be 0.098 ppb for surface water (0.09 ppb lambda-cyhalothrin and 0.008 ppb degradate XV) and 0.012 ppb for ground water (0.006 ppb lambda-cyhalothrin and 0.006 ppb degradate XV).

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The residential exposure/risk assessment evaluated both proposed and existing uses for lambda-cyhalothrin. Existing uses on turf, in gardens, on golf courses, and for structural pest control were qualitatively assessed, but a quantitative calculation was only completed for postapplication exposure on treated turf because this scenario is expected to have the highest associated exposures. This screening level tool is protective for all residential exposures, even the handler scenarios, because the dose levels for children playing on treated lawns are thought to exceed those expected for all other scenarios. For postapplication exposure, all residential MOEs were well above the Agency target MOE of 100 for the inhalation, dermal, and oral routes and therefore do not exceed EPA's level of concern (range 700 to 14,700). Additionally, when total MOEs were aggregated, MOEs were still not of concern (MOEs for children = 500 and for adults = 3,000).

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

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

C. Safety Factor for Infants and Children

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

2. *Developmental toxicity studies.* In a developmental toxicity study in rats, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 15 mg/kg/day based on uncoordiniated limbs, reduced body weight gain and food consumption. The developmental NOAEL was 15 mg/kg/day, highest dose tested (HDT) and the developmental LOAEL was >15 mg/kg/day.

In a developmental toxicity study in rabbits, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 30 mg/kg/day based on reduced body weight gain and food consumption. The developmental NOAEL was 30 mg/kg/day, HDT and the developmental LOAEL was >30 mg/kg/day.

3. *Reproductive toxicity study.* In a 3–generation reproduction study in rats, the parental/offspring NOAEL was 1.5 mg/kg/day and the LOAEL was 5.0 mg/kg/day based on decreased parental body weight and body weight gain during premating and gestation periods and reduced pup weight and weight gain during lactation. The reproductive NOAEL was 5.0 mg/kg/day (HDT)

4. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with cyhalothrin and there is no evidence of increased susceptibility of young rats in the reproduction study with cyhalothrin.

5. *Conclusion.* Through the use of bridging data, the toxicology database for lambda-cyhalothrin is complete. The Agency has determined that the special FQPA safety factor should be reduced to 1x because as noted above, there is no evidence of increased susceptibility of rat or rabbit fetuses following in utero exposure in the developmental studies with cyhalothrin and there is no evidence of increased susceptibility of young rats in the reproduction study

with cyhalothrin. The Agency concluded there are no residual uncertainties for pre- and/or postnatal exposure. The RfDs and other endpoints established for risk assessment are protective of pre-/postnatal toxicity following exposure to cyhalothrin.

D. Aggregate Risks and Determination of Safety

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

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

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to lambda-cyhalothrin in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of lambda-cyhalothrin on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to lambda-cyhalothrin will occupy 41% of the aPAD for the U.S. population, 24% of the aPAD for females 13 years and older, 71% of the aPAD for all infants <1 year old and 82% of the aPAD for children 1-6 years old. In addition, despite the potential for acute dietary exposure to lambda-cyhalothrin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of lambda-cyhalothrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 2 of this unit:

TABLE 2.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	aPAD mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population (total)	0.005	40.86	0.62	0.012	103
All Infants (<1 year)	0.005	71.22	0.62	0.012	14
Children 1-6 years	0.005	82.36	0.62	0.012	9
Children 7-12 years	0.005	46.09	0.62	0.012	27
Females 13-50	0.005	23.83	0.62	0.012	114
Males 13-19	0.005	27.61	0.62	0.012	127
Males 20+ years	0.005	21.69	0.62	0.012	137
Seniors 55+	0.005	21.85	0.62	0.012	137

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to lambda-cyhalothrin from food will utilize 8.2% of the cPAD for the U.S. population, 11.7% of the cPAD for all infants < 1 year old and 21.8% of the cPAD for children 1-6 years old. Based the use pattern, chronic residential exposure to residues of lambda-cyhalothrin is not expected. In addition, despite the potential for chronic dietary exposure to lambda-cyhalothrin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of lambda-cyhalothrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (total)	0.001	8.2	0.098	0.012	32
All Infants (< 1 year)	0.001	11.7	0.098	0.012	9

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO LAMBDA-CYHALOTHRIN— Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Children 1-6 years	0.001	21.8	0.098	0.0 12	8
Children 7-12 years	0.001	12.9	0.098	0.012	9
Females 13-50	0.001	5.7	0.098	0.012	28
Males 13-19	0.001	7.9	0.098	0.012	32
Males 20+ years	0.001	6.0	0.098	0.012	33
Seniors 55+	0.001	5.8	0.098	0.012	33

3. *Short and intermediate-term risk.* Aggregate risk for short- and intermediate-term durations of exposure includes food, drinking water, and residential exposure pathways. The residential exposure pathway includes dermal, inhalation, and incidental oral (hand-to-mouth-type inadvertent exposure) routes of exposure. This aggregate risk assessment included lawn post-application exposure, considered the scenario with the highest potential for exposure and is a day 0 screening level assessment.

Lambda-cyhalothrin is currently registered for use(s) that could result in short and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for lambda-cyhalothrin.

Using the exposure assumptions described in this unit for short and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 879 for adults, 239 for children 1-6, and 302 for infants <1 year old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of lambda-cyhalothrin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4 of this unit:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR SHORT AND INTERMEDIATE-TERM EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short and Intermediate-Term DWLOC (ppb)
Adults	879	100	0.098	0.012	31
Child (1-6)	239	10 0	0.0 98	0 .012	6
Infant (<1 yr)	302	100	0.098	0.012	7

5. *Aggregate cancer risk for U.S. population.* Lambda-cyhalothrin has been classified as a Group D chemcial (not classifiable as to human carcinogenicity) with regards to its carcinogenic potential.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to lambda-cyhalothrin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no Codex, Canadian, or Mexican MRLs established for residues of lambda-cyhalothrin in plant or animal commodities. Codex MRLs for cyhalothrin are established for several commodities which are unrelated to this action. Therefore, a discussion of compatibility with U.S. tolerances is not relevant at this time.

VI. Conclusion

Therefore, the tolerances are established for the combined residues of lambda-cyhalothrin and its epimer in or on wild rice at 1.0 ppm, grass forage at 5.0 ppm and grass hay at 6.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made.

The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0335 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 4, 2003.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2002–0335, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10,

1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

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

2. Section 180.438 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.438 Lambda-cyhalothrin; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*

* * *

Commodity	Parts per million	Expiration/ Revocation Date
* * *	* *	* *
Grass, forage	5.0	12/31/05
Grass, hay	6.0	12/31/05
Rice, wild	1.0	12/31/05

* * * * *

[FR Doc. 03–6 Filed 1–2–03; 8:45am]

BILLING CODE 6560–50–S

Proposed Rules

Federal Register
Vol. 68, No. 2
Friday, January 3, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Parts 217, 231 and 251

[INS No. 2182–01]

RIN 1115–AG57

Manifest Requirements Under Section 231 of the Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173), which requires the submission of arrival and departure manifests electronically in advance of an aircraft or vessel's arrival in or departure from the United States. This rule also proposes to require manifest data on certain passengers and voyages previously exempt from this requirement. This rule is necessary to provide the U.S. Immigration and Naturalization Service (Service) with advance notification of information necessary for the identification of passengers, crewmembers and any other occupant transported. This information will assist in the efficient inspection of passengers and crewmembers, and is necessary for the effective enforcement of the immigration laws.

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2182–01 on your correspondence. Comments may be submitted electronically to the Service at *insregs@usdoj.gov*. Comments submitted electronically must include INS No. 2182–01 in the subject heading so that the comments can be electronically transmitted to the appropriate program office for review. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael J. Flemmi, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street NW., Room 5237, Washington, DC 20536, telephone number (202) 305–9247.

SUPPLEMENTARY INFORMATION:

What Manifest Requirements Are Imposed By Section 231 of the Immigration and Nationality Act (Act)?

On November 28, 2001, Congress passed section 115 of the Department of Justice Appropriations Act of 2002 (Title I of Pub. L. 107–77), which authorized the Attorney General to impose by regulation requirements for submitting electronic arrival and departure lists or manifests by any public or private carrier transporting persons to and from the United States. Prior to the passage of section 115 of Public Law 107–77, section 231 of the Act did not explicitly address the electronic submission of such information. On May 14, 2002, section 115 of Public Law 107–77 was superseded when Congress enacted section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173).

Section 402 of Public law 107–173 amended section 231 of the Act by requiring that commercial carriers transporting passengers to or from the United States deliver arrival and departure manifest information electronically to the Service, beginning no later than January 1, 2003. The carrier must submit an arrival manifest prior to the commercial vessel or aircraft's arrival at a port-of-entry in the United States. In addition, with certain exceptions, carriers must provide departure manifest information before the departure of a commercial vessel or aircraft from the United States.

Section 231(c) of the Act, as amended by section 402, provides specific elements that must be included in arrival and departure manifests. Section 402 also eliminated prior statutory exemptions from the manifest requirements of section 231 of the Act previously applicable to alien crewmembers and persons arriving from or departing to foreign contiguous territory by air.

Finally, section 402 raised the penalty for failure to comply with manifest requirements to $1,000 per violation. Under section 231(f) of the Act, as amended, the Service may impose a fine on a carrier for each person for whom an accurate and full manifest is not submitted.

How Are Arrival and Departure Manifests and Lists Currently Collected for Passengers?

Arrival and departure manifests are currently submitted as follows: in the form of a separate Form I–94, Arrival-Departure Record, or as a Form I–94W, Nonimmigrant Visa Waiver Arrival-Departure Record, or as a Form I–94T, Arrival-Departure Record (Transit Without Visa) (collectively Form I–94) for each passenger not exempt from the manifest requirements. The Form I–94 is a perforated numbered card and is composed of an arrival portion collected by the Service at the time of arrival and a departure portion that is returned to the alien passenger. Upon departure, the reverse-side of the departure portion must be completed by the departure carrier at the time of the alien's departure and submitted to the Service at the port-of-departure. In accordance with 8 CFR 231.2, the outbound carrier currently has 48 hours to submit the departure Form I–94 to the Service. The Service enters Form I–94 data into the Nonimmigrant Information System (NIIS), thus recording the alien's arrival and departure into and out of the United States.

Which Passengers Are Currently Exempt From the Passenger Manifest Requirements?

Service regulations at 8 CFR part 231 currently provide that manifests in the form of a Form I–94 do not have to be submitted for the following passengers: United States citizens, lawful permanent resident aliens of the United States, immigrants to the United States, and certain in-transit passengers. Service regulations also exempt the manifest requirements for aircraft and vessels arriving in the United States directly from Canada, or departing to Canada. Vessels or aircraft arriving in the U.S. Virgin Islands directly from the British Virgin Islands, or departing the U.S. Virgin Islands directly to the

British Virgin Islands, are similarly exempt from the manifest requirements.

What Are the Current Arrival and Departure Manifest Requirements for Crewmembers?

Currently, crew arrival and departure manifest requirements are governed solely by section 251 of the Act and Service regulations at 8 CFR part 251. Arrival and departure manifests for vessels may be submitted on Form I–418, Passenger List-Crew List, while aircraft may satisfy this requirement by submission of a United States Customs Service Form 7507 or on the International Civil Aviation Organization's General Declaration. Pursuant to section 251(d) of the Act, the Service may impose a fine of $220 (as adjusted for inflation) for each crewmember for whom an accurate and full manifest is not submitted

How Does the New Law Change the Requirements for Crewmembers?

Prior to the enactment of section 115 of the Department of Justice Appropriations Act of 2002, and later, section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002, the scope of section 231 of the Act was limited to alien and U.S. citizen passengers. Section 231 of the Act, as amended by section 402, no longer contains such restrictions. Section 402 authorizes the collection of information not only on passengers being transported to or from the United States on commercial aircraft or vessels but on crewmembers and other occupants transported on such conveyances. Accordingly, the Service is using its authority under section 231 of the Act, as amended, to require electronic arrival and departure manifest information on crewmembers of commercial aircraft or vessels that are transporting passengers to or from the United States.

Will Carriers Be Required To Submit Electronic Manifest Information for Other Classes of Individuals Who Are Not Currently Included in the Manifest Requirement?

Yes. This rule proposes to require that electronically transmitted arrival and departure manifests be submitted for all passengers and crewmembers transported on commercial aircraft or vessels, including passengers who are United States citizens, Canadian citizens, lawful permanent resident aliens of the United States, immigrants to the United States, in-transit passengers, and persons on vessels or aircraft arriving in the United States directly from Canada or departing the United States directly to Canada as well as persons arriving in the U.S. Virgin Islands directly from the British Virgin Islands or departing the U.S. Virgin Islands directly to the British Virgin Islands.

What Is the Advance Passenger Information System (APIS)?

The APIS is a system where commercial air carriers collect and submit biographical data from a passport, visa or other travel document at a foreign port and transmit this information electronically to the Service and the United States Customs Service (USCS) in advance of the commercial aircraft's arrival in the United States. The Service began implementing APIS in conjunction with the USCS in 1989 as an effort to meet airport inspection challenges which included increased passenger volumes, especially during peak hours and seasons, combined with staffing and facilities limitations.

A Memorandum of Understanding (MOU) governs the administration of the APIS program and is a formal agreement between the three U.S. Federal Inspection Services (FIS) agencies (USCS, the Service, and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA–APHIS)) and participating air carriers. The APIS MOU specifies national performance standards for all parties. Under this MOU, the airlines agreed to send advance passenger information to the Government agencies and in return, the FIS agencies agreed to expedite the processing of APIS flights. Pursuant to the MOU, as carriers provided additional and more accurate passenger information, the FIS agencies would improve their processing times.

Currently, over 140 carriers are signatories to the APIS MOU, and two Governments (Australia and New Zealand) electronically transmit APIS data to the USCS Data Center in Newington, Virginia. Once this rule becomes effective, the need for this MOU will be superceded.

Prior to the enactment of section 115 of the Aviation and Transportation Security Act, Public Law 107–71, 115 Stat. 597 (2001), the electronic transmission of such manifest data was voluntary.

What Data Elements Must Be Submitted by a Carrier?

Section 231(c) of the Act, as amended, provides that the following information must be provided for each person listed on a manifest required to be submitted in accordance with section 231 (a) or (b): Complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; United States visa number, date, and place of visa issuance, where applicable; alien registration number, where applicable; United States address while in the United States; and such other information as the Attorney General, in consultation with the Secretaries of State and the Treasury, determines is necessary for the identification of the persons transported, for the enforcement of the immigration laws, and to protect public safety and national security.

Under some circumstances, however, not all of this information must be submitted. For example, a passport number and visa information may be omitted in the event a Canadian national is exempt from the passport and visa requirement under 8 CFR 212.1. The visa information may be omitted in the event a passenger under the Visa Waiver Program is exempt from the visa requirement under 8 CFR part 217. A passport number and visa information may be omitted in the event a U.S. citizen is exempt from the passport and visa requirement under 22 CFR part 53. All of the other data elements, however, will be required. The Service will notify the carrier industry of any policy or operational issues that affect the APIS program.

Will the Transmission of Data in Accordance With the Current APIS Program Satisfy the Proposed Rule's Electronic Manifest Requirement?

As noted previously, section 231(c) of the Act, as amended by the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173), prescribes specific information that must be included in arrival and departure manifests. The current data elements transmitted via APIS do not contain all of the elements that are statutorily required by section 231(c) of the Act, as amended.

The proposed rule includes the following statutorily-mandated manifest information that is not currently collected under the APIS system:

(1) Place of visa issuance;

(2) The United States address while in the United States; and

(3) The country of residence.

It is important to note, however, that all items listed above are currently required on the paper Form I–94, which has legally sufficed for this arrival manifest. This rule proposes to amend only the format and time frame by which this information must be provided. The proposed rule requires that this information be submitted by the air and sea carriers to the Service via the USCS APIS system.

What Is EDIFACT?

The Electronic Data Interchange for Administration, Commerce, and Trade (EDIFACT) is the technical message format that allows for the transmission of the APIS data elements to the U.S. government in a standardized way. There are two EDIFACT versions, (1) The United States EDIFACT format (US EDIFACT); and (2) the United Nations EDIFACT (UN EDIFACT) format. The USCS developed the US EDIFACT message format between 1989 and 1992 in cooperation with the governments of Australia and New Zealand during the initial implementation of the Advance Passenger Information System. The US EDIFACT standard is being used to transmit the current APIS information. The following US EDIFACT technical documentation and guidelines are available from the USCS: (1) Advanced Passenger Information for Airlines; (2) Advance Passenger Information (API) Guidelines for Customs and Air Carriers, and (3) US EDIFACT Overview. Carriers currently transmit APIS information using the US EDIFACT format. The amount of information that can be transmitted through the APIS system, via the US EDIFACT for now is limited. This format cannot accommodate the new data elements such as US address, visa number, date, and place of issuance, and country of issuance that are required by section 402 of Public Law 107–173. Given these limitations in the US EDIFACT format, the Service anticipates the carriers will convert their reservation or computer systems to the UN EDIFACT format which can accommodate the required additional data elements. Additional information on UN EDIFACT can be located at the following Web site: *http://www.unece.org/trade/untdid/welcome.htm*.

Converting to the UN EDIFACT format will improve the accuracy and efficiency of data, and comply with the new additional data element requirements. The USCS expects to upgrade the APIS system to accept the UN EDIFACT format in January 2003. The USCS will provide UN EDIFACT documentation and guidelines in the near future.

The Air Transport Association (ATA), International Air Transport Association (IATA), and the governments of Canada, Mexico, New Zealand, Australia, and United Kingdom all support the conversion to APIS UN EDIFACT format in an effort to establish a worldwide format standard for the electronic transmission of arrival and departure manifests.

In 2003, the Service anticipates the carriers will convert their systems from the US EDIFACT format to the UN EDIFACT format to facilitate their transmission of the new data element requirements. Until carriers convert their systems to the UN EDIFACT format, the APIS system will be able to accommodate both the US EDIFACT and the UN EDIFACT format transmissions. This conversion is not expected to affect small entities since the USCS is developing a Web-based APIS UN EDIFACT system, that is expected to be complete in April 2003.

Will the Service Impose Any Fines on the Carriers for Not Submitting the New Data Elements on January 1, 2003?

No. The Service will not impose any fines until the regulation is published as a final rule. The Service may impose fines under section 231 of the Act in cases where the carrier fails to transmit an electronic record after the final rule becomes effective. However, before issuing any fines during the conversion period (from the effective date of the final rule through December 31, 2003), the Service will evaluate a carrier's performance to determine whether it has made a good faith effort to comply with the electronic transmission requirement. The Service will consider the following factors: (1) Whether the carrier notified the Service of any problems it was experiencing in submitting the information; (2) whether the carrier has a backorder for the purchase of additional equipment, such as document readers; (3) the completion of the APIS UN EDIFACT format by the Service and the USCS; and (4) the totality of circumstances of each carrier's attempt to comply with this regulation. The Service has the authority to mitigate or remit fines under 8 CFR 280.5.

The Service will continue to accept the current APIS arrival and departure data elements in the US EDIFACT format until carriers can convert to the UN EDIFACT format, through at least the end of 2003. The Service will require that the carriers notify the Service of when they will be able to comply with the UN EDIFACT format.

Does the Service Propose To Require Any Other Additional Electronic Information?

Yes. The Attorney General, in consultation with the Secretaries of State and the Treasury, may also require additional manifest information if the information is deemed necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security. Pursuant to that authority, the proposed rule prescribes adding a Passenger Name Record (PNR) locator or a unique identifier or reservation number. The PNR locator is a unique passenger identifier that is specific to the airline industry in their reservation systems. This does not require carriers to create new identifying systems. In any database system a unique identifier is not difficult to create. This identifier is very important to the Service because this will assist the Service in matching an arrival record with a departure record. The Service is particularly interested in comments by the carrier industry to the proposal that carriers submit the PNR locator number or unique identifier electronically as part of the manifest requirement.

The Service has consulted with the USCS, the U.S. Coast Guard (USCG), and the U.S. Department of State on this proposed additional data element.

When Are Carriers Required To Submit the Electronic Arrival and Departure Manifests?

This rule proposes to require commercial carriers transporting any person by air to any port within the United States from any place outside the United States to submit electronic arrival passenger manifests to the Service no later than 15 minutes after the flight departs from the last foreign port or place. This will allow the Service to check the manifest information against appropriate security databases prior to arrival. This rule further proposes that air carriers be required to submit the arrival crew manifest electronically to the Service in advance of departure from the last foreign port or place. This is the current transmission requirement for air carriers submitting electronic arrival information under the APIS program, and this requirement will also conform to the USCS' rule published at 66 FR 67482 (December 31, 2001).

In consultation with the USCG and the cargo and cruise line industry, the Service proposes to require that a vessel on a voyage of: (1) 96 hours or more must submit the information required in the crewmember and passenger manifests at least 96 hours before entering the port or place of destination; (2) less than 96 hours but not less than 24 hours must submit the crewmember and passenger manifests not less than 24 hours before entering the port or place of destination; or (3) less than 24 hours must submit the crewmember and passenger manifests prior to departing the port or place of departure. These requirements will conform to 33 CFR

160.207(a) in the USCG's Notice of Proposed Rule Making (NPRM) published at 67 FR 41659 (June 19, 2002). These timeframes will provide the Service and USCG with adequate time to review the electronic arrival manifests for arriving vessels. In addition, these requirements are more in accord with commercial maritime operations, which differ greatly from those of the airline industry. This alignment of submission time requirements will facilitate the Government's ongoing efforts to develop a system that eliminates multiple transmissions of manifest information to both the Service and the USCG.

The proposed rule requires that carriers transporting persons to points outside of the United States submit electronic departure passenger and crewmember data lists or manifests to the Service no later than 15 minutes before the flight or vessel has departed from the United States. This will allow the Service to check the manifest information against the appropriate security databases prior to departure. If additional passengers or crewmembers board after the original manifest has been submitted, or if passengers or crewmembers exit after boarding but prior to departure, carriers will also be required to submit amended or updated passenger and crewmember manifest information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States. This will allow the Service to continue to check any new information against the appropriate security databases. Although the number of last minute passengers will vary, the Service believes that carriers will be able to provide electronic departure passenger and crewmember data lists or manifests on approximately 80 to 95 percent of their total number of passengers when submitting the required information 15 minutes prior to departure. Failure to submit an amended manifest 15 minutes after departure, if necessary, may result in a fine.

For purposes of determining the time of departure for purposes of submitting electronic manifest information under this rule, the Service will use the same definitions already used by other agencies. For air carriers, the time of departure is the point at which the wheels are up on the aircraft and the aircraft is directly en route to or from the United States. For vessels, the time of departure is that time when the vessel gets under way on its outward voyage and proceeds on the voyage without, thereafter, coming to rest in the harbor from which it is going. *See* 19 CFR chapter I, part 4 (August 30, 2002).

Will Transmission of Data in Accordance With the Proposed Rule Satisfy the Electronic Transmission Requirements Prescribed Under Section 217(h)(2)(B) of the Act?

Yes. Section 217 of the Act, relating to the Visa Waiver Program, contains similar requirements for the electronic submission of arrival and departure information pertaining to visa waiver program passengers. This rule proposes to amend 8 CFR part 217 to provide that an alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port-of-entry, will not be admitted under the Visa Waiver Program unless the carrier transporting such an alien electronically transmits passenger arrival and departure data in accordance with 8 CFR 231.1, for each Visa Waiver Program passenger being transported.

What Manifest Information Will Carriers Be Responsible for Submitting Between January 1, 2003, and the Publication of a Final Rule?

In accordance with section 402 of Public Law 107–173, not later than January 1, 2003, the master or commanding officer, or authorized agent, owner, or consignee of a commercial aircraft or vessel to transmit electronically arrival and departure manifests to the Service for each passenger not currently exempt from the manifest requirements pursuant to 8 CFR 231.1, or 231.2. These manifests must contain the data elements specified in section 231(c) of the Act as amended, for each passenger listed on the manifest. In accordance with section 231(a) of the Act, arrival manifests must be electronically submitted to the Service prior to the arrival of the commercial aircraft or vessel. In addition, carriers may electronically submit departure data up to 48 hours after departure, exclusive of Saturdays, Sundays and legal holidays in accordance with 8 CFR 231.2

Until a final regulation is published, however, the Service will not require the electronic transmission of arrival or departure manifests for crewmembers because the submission of manifests containing crewmember information was not contemplated by the current regulations promulgated under section 231 of the Act.

Will Manifests in Paper Form Still Be Required on January 1, 2003?

As of January 1, 2003, carriers will no longer be required to submit Forms I–94 to the Service for the passengers they transport to or from the United States if they are electronically submitting arrival and departure manifests that include all of the data elements mandated by Section 231(c)-of the Act. The carriers in full compliance with their obligations to transmit the prescribed manifest information electronically should still distribute Forms I–94 to their passengers who will be responsible for completing and submitting the Form I–94 to the Service to facilitate the inspections process. The Service will then compare and analyze the accuracy and efficiency of matching the electronic arrival and departure information with the paper arrival and departure information. In addition, not all travelers enter and exit the United States at the same location. A traveler may enter the United States at an air port-of-entry and leave at a land border port-of-entry. In this scenario, the Service will not be able to match the record of arrival with the record of departure electronically. A traveler who enters the United States via the air or sea port-of-entry may exit at a land border port-of-entry; therefore, this traveler will need a copy of the Form I–94. The traveler is required to return the departure Form
I–94 at the land border port-of-entry; otherwise the Service would not know that they had exited the United States.

Until those provisions of the Service's regulations in 8 CFR part 251 requiring the submission of crew manifests in paper format are rescinded, commercial air and sea carriers transporting passengers to or from the United States shall continue to submit the Form I–418. Carriers also should continue to submit USCS Form 7507 and/or the International Civil Aviation Organization's (ICOA) General Declaration, as appropriate. Any determinations to eliminate these forms will be made by the proper agency.

The Service is requiring both an electronic and paper format to compare and analyze the accuracy and completeness of the electronic passenger manifest with the current paper process. The Service will randomly select data from the paper I–94 input manually into the Non-Immigrant Information System (NIIS) and compare that data to the same record that was input electronically and received from the airlines. The Service will compare the accuracy, time of availability of the data, and completeness of the data. If the data received through the electronic manifest is superior to that of the manually input data, then a policy decision will be made as to whether or not to continue the use of the paper Form I–94 as a manifest.

In addition, the paper Form I–418 is currently used when vessels arrive in the United States and continue coastwise to other ports within the United States (for example, from Baltimore, Maryland to Newark, New Jersey to Boston, Massachusetts). The paper Form I–418 is still required because the Service and USCS have not developed an APIS-like system for carriers that continue coastwise to other ports within the United States. Therefore, an electronic manifest is required when a commercial carrier arrives in and departs from the United States, but an electronic manifest is not required when vessels are traveling between the ports-of-entry in the United States. The Service currently is assessing the continued value of the paper Form I–418. Carriers, however, will have to continue to submit this form, when required under 8 CFR 251.1(a), until such time that the technical infrastructure is in place between ports-of-entry.

Are There Any Penalties for Submitting an Incomplete or Inaccurate Electronic Arrival or Departure Manifest?

Yes. Section 231(g) of the Act, as amended, provides that if any public or private carrier, or the agent of any transportation line, has refused or failed to provide manifest information as required, or the manifest information provided is not accurate and full, such carrier, or agent shall pay the Commissioner the sum of $1,000 for each person with respect to whom accurate and full manifest information is not provided, or with respect to whom the manifest information is not prepared as prescribed. Fines for violations of section 231 and 251 of the Act may be imposed and collected in accordance with 8 CFR part 280. However, the Service, as a matter of discretion, does not intend to impose fines against carriers for violations of section 231 of the Act until a final regulation is published.

Are Ferries Required To Submit Electronic Arrival and Departure Manifests?

No. This proposed rule adds a definition of the term "ferry" based on the existing USCG maritime safety regulations at 46 CFR 70.10–15. The determination of whether a particular service is "ferry" service is a case-by-case determination in which, should the question arise, the Service will refer to the USCG classification of the vessel or vessels providing the service.

The Service will also refer to other relevant definitions from the USCG regulations that are applicable to the definition of "ferry." In particular, the USCG regulations define "coastwise" service as navigation in the ocean or Gulf of Mexico 20 nautical miles or less offshore (46 CFR 70.10–13), and "ocean" service as navigation in the ocean or the Gulf of Mexico more than 20 nautical miles offshore (46 CFR 70.10–31). Vessels in ocean or coastwise service are not ferries and, therefore, the Service proposes that sea carriers must submit electronic arrival and departure manifests for those vessels. This includes all vessels that travel between the United States and foreign adjacent islands.

However, otherwise qualifying services in "lakes, bays, and sounds" such as Puget Sound or the Great Lakes will be considered ferries (see 46 CFR 70.10–23) and therefore are not required to submit electronic arrival and departure manifests.

In order to qualify as a ferry, a vessel's service must be over the most direct water route and only make provisions for deck passengers and vehicles. The Service is aware that some vessels may offer extended dining services, even overnight accommodations or gambling, that are commonly associated with the operation of a cruise ship rather than a ferry. The Service will not extend this exemption to such vessels.

Regulatory Flexibility Act

The Service drafted this rule in consideration of the need to minimize its impact on small businesses. Based upon preliminary information available, the Service is unable to state with certainty that this rule, if promulgated, will not have the effect on small businesses of the type described at 5 U.S.C. 605. Accordingly, the Service has prepared the following Regulatory Flexibility Act (RFA) analysis in accordance with 5 U.S.C. 603.

A. Need for and Objectives of This Proposed Rule

This proposed rule will implement section 231 of the Act as amended by section 402 of Public Law 107–73. Section 231 of the Act provides, among other things, that commercial vessels or aircraft transporting passengers to and from the United States must electronically transmit to the appropriate immigration officer not later than January 1, 2003, arrival and departure manifests containing such information and delivered in such a manner and timeframe as may be prescribed in accordance with section 231.

The enactment of section 402 of Public Law 107–173 reflects Congress' desire to ensure that commercial air and sea carriers submit to immigration officials passenger and crewmember information within a timeframe and in a particular format in order to maximize the Government's efforts to (1) identify persons being transported to and from the United States, (2) enforce the immigration laws, and (3) protect public safety and national security.

B. Description and Estimates of the Number of Small Entities Affected By This Proposed Rule

A "small business" is defined by the RFA to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. 632. Under the SBA, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. It will be the duty of the appropriate officer of any commercial aircraft or vessel regardless of ownership, size or dominance in the field to provide the information prescribed in the proposed rule in the timeframe and format proposed therein.

Based upon the information available to the Service, there appear to be two distinct groups of businesses that will be affected by this proposed rule: (1) Larger commercial air and sea carriers, and (2) smaller commercial air and sea carriers (*e.g.*, air carriers that employ not more than 1,500 employees and sea carriers that employ not more than 500 employees) as defined by the United States Small Business Administration.

The Service estimates that there are approximately 108 large commercial carriers. Data provided by the United States Small Business Administration suggests that at least 446 small carriers will be affected by this rule. In addition, data provided by the USCG suggests that as many as 14,000 small commercial carriers potentially could be affected. Although the Service consulted with a number of the affected entities, including ATA, IATA, and the International Council of Cruise Lines (ICCL), the Service realizes that not all interested persons and entities may have been fully represented prior to the publication of this proposal. Therefore, the Service is requesting that comments be submitted to help ensure that the concerns of all interested parties are considered. Commenters may wish to identify the type of industry; including the number of companies/individuals involved and the annual income conducted; how the proposed regulatory requirements would impact that industry; and any suggestions on how the final regulations might be better tailored to the industry without

compromising the intent of the statute which is to enhance national security, public safety, and the enforcement of the immigration laws through timely identification of persons being transported to and from the United States.

Commenters should note that the submission of any comments or information on these or other matters addressed by this proposed rule is entirely voluntary and the Service is not prescribing the use of any form for this information.

Pursuant to the RFA and public policy concerns, the Service encourages all affected entities to provide specific estimates, wherever possible, of the economic costs that this rule will impose and the benefits that it will bring. The Service asks affected small businesses to estimate what these regulations will cost as a percentage of their total revenues, to enable the Service to ensure that small businesses are not unduly burdened.

1. Large Commercial Carriers

The Service has drafted this proposed rule to ensure the minimum possible impact on these businesses while complying with the statutory requirements. To ensure flexibility, the regulation does not mandate a specific electronic data interchange system that must be used. The regulation provides only that the transportation provider use a system that is approved by the Service.

The carriers must contact the USCS for additional technical information. The USCS and Service have APIS account managers to work with the carriers at the San Francisco, California, Houston, Texas, and Newark, New Jersey ports-of-entry. The APIS account managers have informed and notified the carriers of the new requirements, and will respond to any APIS issues, and act as a liaison between the carriers and the Service/USCS Headquarters. The USCS also provides APIS guidelines and documentation for the air carriers' technical staff. The USCS is currently updating a guideline for the sea carriers.

The Service and USCS have been working with the carrier industry for the past 10 years developing, implementing, and improving the arrival APIS information. The Service does not know how many systems are incompatible with APIS. However, EDIFACT is an international standard with which most carriers will be able to comply. For carriers that cannot comply with this requirement, alternatives are available. The Service believes that the EDIFACT system is flexible because it is an international standard with which all carriers and other governments can comply.

Because the information must be transmitted via the USCS Data Center, it is anticipated that carriers will transmit this data via the EDIFACT message format that was developed by the USCS in connection with the initial implementation of the APIS. The USCS has specified the data elements and codes to be used. The Service and USCS are currently working with the World Customs Organizations (WCO) to inform, update, and develop international electronic arrival and departure manifest standards for all carriers. The USCS is currently in the process of converting from the US EDIFACT message format to the UN EDIFACT format.

Moreover, commercial air carriers operating passenger flights have been required to electronically submit many of the data elements prescribed in the proposed rule to the USCS in advance of arrival since December 21, 2001. Other data elements in this proposed rule are statutorily mandated and, in accordance with statute, must be provided both upon arrival and departure. The Service and USCS have consulted with ATA, IATA, and ICCL on the current and additional data elements for the arrival and departure manifests. Where the proposed rule requires data elements that are not mandated by statute, the opinions of the industry representatives were taken into consideration so as to impose no greater burden than is necessary.

The requirement in this proposed rule that carriers submit specific manifest information electronically may require large commercial carriers to purchase equipment or develop integrated systems for that purpose. As discussed below in the section on Executive Order 12866, the Service estimates that larger commercial carriers may incur programming costs of $400,000 to implement these requirements, with an ongoing operational cost of $1 per passenger.

2. Small Commercial Carriers

In addition to large commercial carriers, the Service believes that there may be a large number of smaller commercial aircraft and vessel operators that will be affected by the proposed rule. The Service does not have specific information about how much of an economic impact this rule might have on smaller commercial carriers. According to the United States Small Business Administration, there are 383 scheduled air passenger transportation companies with less than 1,500 employees and 63 deep sea passenger transportation companies with less than 500 employees. The information provided by the United States Small Business Administration suggests that these 446 companies have average annual receipts of approximately $16 million. The Service believes that this rule will have a proportionally smaller economic impact upon smaller rather than larger carriers because of the volume of passengers they carry. In addition, smaller commercial carriers should not have to incur substantial initial programming costs. As discussed in the Executive Order 12866 section below, the Service estimates that the average reprogramming costs are approximately $400,000 per carrier for large carriers. A comparable conversion for a small carrier would be much less. Some vendors currently are providing equipment and software utilizing the US EDIFACT standard for small commercial carriers in the range of $6,800 to $7,200 per machine. One vendor has estimated that his conversion costs would be approximately $1,200 for his customers. This equipment automates much of the data submission process and performs functions comparable to equipment used by large commercial carriers, albeit on a much smaller scale. The Service estimates that new equipment and software that utilizes the UN EDIFACT standard should cost approximately as much as the current equipment and software.

The USCS also has an e-mail system that allows small entities to submit arrival and departure data electronically. In addition, the USCS is in the process of developing a Web-based APIS specifically for small entities, with an estimated completion date in April 2003. For either system, all that is required is a computer, e-mail, or access to the internet by the small entities to transmit the electronic arrival and departure manifests. This cost is minimal to the small entities. Indeed, the Service believes that most small carriers already will possess the necessary equipment and will not have to incur any additional costs. A carrier that decided to purchase a new personal computer should be able to do so for under $1,000. Access to the internet is estimated to cost approximately $20 per month.

While small entities will be required to submit new additional data (such as the United States address while in the United States, visa number, and place of issuance, where applicable, and country of residence), the collection of this information should not impose a significant burden on small entities. Therefore, the economic impact on

small entities by this rule will be minimal.

The ongoing costs to small carriers of submitting this information to the Service is difficult for the Service to quantify. The Service believes that the number of passengers that small commercial carriers transport in a given year may vary greatly. The IATA, however, estimates this rule will cost large commercial carriers approximately $1 per transaction per passenger for additional time costs. The Service believes that this estimate also may be applicable to small commercial carriers.

The Service is requesting comment on the impact that this proposed rule would have on small commercial carriers. The Service is particularly interested in comments concerning the number of these smaller entities transporting passengers, the number of passengers they transport each year, the ongoing costs this rule would impose (including any incremental cost per passenger), and their estimates on the economic impact of this rule.

C. Recordkeeping and Reporting Requirements

The purpose of this rule is to implement an ongoing reporting requirement for carriers. All small entities that transport passengers and crew to any seaport or airport of the United States from outside the United States will be required to comply with the arrival and departure manifest requirements. The submission of the required data elements will not require any unusual professional skills. The data that must be collected are basic and its submission should not be difficult. For purposes of complying with its Paperwork Reduction Act, the Service has estimated that 600 respondents will spend approximately 10 minutes a day in order to provide the required data. The Service based its estimate of 10 minutes on its experience in connection with the transmission of data elements under the Visa Waiver Program. See 67 FR 63246 (October 11, 2002).

D. Other Federal Regulations

This proposed rule does not duplicate, overlap, or conflict with other federal regulations. The rule was drafted after consultation with the USCS and the USCG and designed to work in coordination with their regulations. The Service, USCG, and USCS are currently coordinating their efforts to develop an electronic arrival and departure manifest system that meets the requirements of all three agencies. Submitting APIS meets the requirements of both the Service and USCS. The marine industry will have to continue to forward a separate Notice of Arrival (NOA) submission to the USCG, until such time that the technical infrastructure is in place to ensure that the USCG can obtain electronic data from APIS and import this data into a Coast Guard database.

As discussed above, the Service will require the continued submission of the paper Form I–94 in order to compare and analyze the accuracy and completeness of the electronic passenger manifest with the current paper process. The paper Form I–418 also is still required because the Service and USCS have not developed an APIS-like system for carriers that continue coastwise to other ports within the United States.

E. Issues Raised and Alternatives Suggested

The Service has little discretion regarding the scope of this rule and its impact on small entities because of explicit requirements in section 402 of Public Law 107–173. While consulting with ATA, IATA, and ICCL, a number of issues were raised concerning the impact on passenger check-in times resulting from the collection of the data required by this proposed rule. These requirements are, with only one exception (PNR locator or unique number), statutorily required. The Service considered the need for the inclusion of the PNR, and determined that it was necessary to simplify the data submission process. The use of an unique identifier is a standard data processing tool and is extremely useful both to the Service and to commercial carriers. Its elimination would only serve to make the submission and tracking of manifests more difficult.

The Service also considered different electronic data submission requirements. The Service could not continue with the US EDIFACT standard because it will not support the data elements called for by section 402 of Public Law 107–173. The UN EDIFACT standard was selected because it will be the dominant standard throughout the world and its use will simplify the data submission process for commercial carriers. The use of another standard would only serve to balkanize the data submission process.

The Service, however, has decided to allow commercial carriers to utilize alternative methods for the electronic submission of the manifests, as long as they are approved by the Service. For example, small carriers may use a USCS e-mail system. In addition, the USCS also is in the process of developing a Web-based APIS specifically for small entities which can be used for data submission when it is available. The purpose of these options is to reduce the possible economic impact the manifest reporting requirements will have on small commercial carriers. The use of these alternatives will benefit small commercial carriers who may not have access to the resources available to large carriers. The Web-based APIS and e-mail options eliminate the need for small commercial carriers to adopt data submission processes similar to those utilized by large commercial carriers.

Large commercial carriers also may utilize these options, but because of the volume of passengers whose arrival and departure data they may be submitting, the Service does not anticipate that these options will be used frequently by large carriers. The Service continues to entertain carrier proposals for pilot projects involving the collection of the required information electronically.

F. Conclusion

The Service believes that, given the statutory mandate in section 231 of the Act requiring that manifests containing certain prescribed data elements be electronically transmitted to the Service no later than January 1, 2003, this proposed rule meets the stated objectives while reducing as much as possible the burden imposed on affected transportation providers. The Service consulted with the air and sea carrier industries in developing this rule. The Service took into account their concerns in drafting the proposed rule. The Service intends to maintain an on-going dialogue with the affected industries.

The Service welcomes comments on its analysis under the RFA.

Unfunded Mandates Reform Act of 1995

This rule may result in approximately $124 million in operational costs and one-time programming costs of approximately $42 million on the private sector. Therefore, under the Unfunded Mandates Reform Act of 1995, this is a private sector mandate. Accordingly, the Service has conducted a cost/benefit assessment which is set forth in the Executive Order 12866 section below. This discussion assesses the costs and benefits resulting from the implementation of section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173). This rule, however, will not result in the expenditure by state, local and tribal governments, in the aggregate, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. The Service is requesting that comments be submitted

to help ensure that the concerns of all interested parties are considered.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

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

1. This Rule Does Not Require Carriers To Switch to the UN EDIFACT Standard

Carriers currently submit arrival and departure manifests electronically to APIS. In accordance with section 402 of Public Law 107–173, this proposed rule also requires carriers to transmit additional data elements (*e.g.*, U.S. address, visa information, PNR locator). These additional data elements are not currently included in the APIS data being transmitted and carriers would have to incur some costs adapting their systems to include these elements.

However, many of the carriers with which the Service consulted, informed the Service that they have decided not to add the additional data elements to their APIS submissions. Rather, carriers plan on converting their systems from the US EDIFACT format to the UN EDIFACT format.

Carriers are making this change in data format for their own business reasons because it is the format being adopted in several foreign countries, such as Canada, Mexico, Australia, New Zealand, and United Kingdom. The Service wants to emphasize that neither section 231 of the Act nor this proposed rule require carriers to convert to the UN format. This movement to the UN format was based upon international agreements between the Immigration and Customs Services of several countries and is an international standard adopted by the IATA and ATA.

2. Estimated Costs

A. One Time Programming Costs

The conversion in EDIFACT data formats which the carriers are undertaking on their own initiative makes it difficult for them to provide the Service with the actual costs to them resulting from the new additional data elements required by the statute and this proposed rule. The estimated cost range has been from thousands of dollars for the smaller carriers with a low volume of passengers to several million dollars for a larger carriers with a high volume number of passengers. The high-end estimates include the conversion of the US/UN EDIFACT reprogramming costs to the carrier's existing reservation systems and the hiring of additional personnel.

Carriers have informed the Service regarding the cost of new equipment they will be purchasing on their own initiative as part of their conversion to the UN EDIFACT format. Since the additional data elements this rule requires carriers to collect are not, at present, machine-readable, the Service has not included new equipment costs in its estimates below. The reprogramming costs below include both the cost of changing from the US to the UN EDIFACT format (which is not required by this rule) and the costs of processing the new data elements required by this rule, but the estimates below are the best that the carriers have been able to provide the Service regarding their non-equipment related costs of complying with this rule.

According to IATA, the average reprogramming costs are estimated at $400,000 per carrier. The total reprogramming costs are estimated at $36,800,000 (92 air carriers x $400,000).

The International Council of Cruiselines (ICCL) represents 16 passenger cruiselines. The estimated reprogramming costs reported by ICCL members is $2,000,000 (16 x $125,000).

92 IATA carriers	$36,800,000	
16 ICCL carriers	2,000,000	
IATA and ICCL carriers	38,800,000	
Other carriers	2,716,000	($38,800,000 x 20% of remaining carriers = 7,760,000 x 35% of IATA/ICCL carrier costs).
Total	41,516,000	Estimated total one-time programming costs.

The 108 carriers represented by IATA and ICCL account for the vast majority (75–80 percent) of passengers covered by this rule. Therefore, the Service has estimated that the remaining 20 percent of the passengers transported by other carriers at a cost of $7,760,000 ($38,800,000 × 20 percent). The Service then estimated that these other carrier (non-IATA and ICCL carriers) costs at approximately 35 percent of the IATA and ICCL carrier costs. Since, the USCS already provides an e-mail APIS account and will be developing a Web-Base APIS system for the small entities, the Service estimates that the reprogramming costs for the small and medium size entities will be much lower than the IATA and ICCL carrier costs. Therefore, the other carriers estimated reprogramming costs are calculated at $2,716,000 ($7,760,000 × 35 percent).

B. Operational Costs

The IATA estimates this rule will cost carriers approximately $1 per transaction per passenger for additional time costs. The IATA has estimated that this will amount to approximately $62 million for the inbound and the same for outbound with total estimated annual costs at $124 million.

However, the Service believes that some of these processing costs can be deferred or reduced by travelers providing these additional data elements to the travel agencies, Web-based/Internet or kiosk type reservations systems; thereby reducing the check-in time.

3. Much of the Information Required By This Rule is Already Being Submitted Electronically to the Service

USCS regulations already require all air carriers to submit arrival manifests electronically. In addition, Service regulations already require air and sea carriers to submit arrival and departure manifests electronically, for passengers traveling pursuant to the Visa Waiver Program. However, carriers have informed the Service that it is more

efficient for them to transmit electronic manifest information for all (not just Visa Waiver Program) passengers. Over 80 percent of these carriers currently submit arrival and departure manifests electronically for all passengers. This fact suggests that the costs of this rule will not be great since a substantial majority of the carriers already provide most of the information this rule would require.

4. Benefits This Rule Provides

Advanced electronic manifest provide the Service with the ability to conduct advance record checks of passengers entering and departing the United States. This allows the Service to check and pre-screen the names of known inadmissible aliens, terrorists, and other dangerous criminals prior to entering the United States. With the recent improvements and enhancements to the APIS and other enforcement database(s), which can identify high-risk passengers for more intensive questioning upon arrival, the Service has been able to prevent an increase in the number of aliens attempting to enter the United States illegally.

APIS also allows the Service to check for removable aliens, terrorists, and other dangerous criminals prior to exiting the United States. With advance prescreening of passengers, the Service will be able to process low-risk travelers with minimum delay and concentrate on high-risk travelers who may pose a threat to national security. APIS allows immigration intelligence officers to analyze the patterns and associations of alien smugglers on a real-time basis.

The Service and the USCS are in the process of including the USCG's vessel crewmember manifest requirements into the APIS. Currently, the cargo industry must submit separate paper manifests, one to the Service and one to the USCG. The carrier associations have indicated that they prefer to transmit one manifest electronically that meets all of the requirements for the Service, USCS, and USCG, thereby reducing the need to submit three separate paper manifests. APIS is a joint effort supported by the Service, USCS, USCG, foreign governments, World Customs Organization (WCO), ATA, IATA, ICCL, and other intereste stakeholders.

The UN EDIFACT format will improve the transmission of the electronic arrival and departure data. Currently, all of the carriers cannot submit 100 percent of the required APIS data in the US EDIFACT format. In addition, passenger data elements sometimes get lost in the APIS transmission. The US EDIFACT does not allow the carrier to receive a confirmation message that the APIS transmission was submitted and received by the system (for example, if an e-mail message is sent, a receipt is sent back to the original sender to confirm that the e-mail was received and opened by the intended user). The potential exists that any lost records of a passenger will not be searched in the appropriate database(s), and the absence of such checks on a particular alien in advance of arrival could pose a threat to national security. In addition, each loss of records in the transmission will cause a delay in the inspection processing of passengers because the immigration inspector will have to manually enter each passenger's name in the database(s), process the information, and ask any additional immigration related questions. This delay may have an impact on the wait time of the other passengers waiting to be inspected at primary inspection for admission to the United States. These delays may cause some of the passengers to miss their connecting flights, thereby causing an additional expense to the carriers. Therefore, conversion to the UN EDIFACT is expected to greatly enhance and improve the transmission of the electronic arrival and departure manifests.

The Service welcomes comments on its assessment under Executive Order 12866.

Executive Order 13132

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

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

This rule requires that carriers provide arrival and departure manifests electronically to the Service. This requirement is considered an information collection requirement under the Paperwork Reduction Act.

Accordingly, the Service has submitted an information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the Immigration and Naturalization Service, Regulations and Forms Services Division, 425 I Street NW., Suite 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, (202) 514–3291.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Any comments on the information collection must be submitted on or before March 4, 2003. 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 the 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:* New.

(2) *Title of Form/Collection:* Electronic arrival-departure manifests.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number (File number OMB–32), Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Business or Individuals. Section 402 of the Enhanced Border Security and Visa Entry Reform Act requires arrival and departure manifests to be delivered electronically no later than January 1, 2003. The information collection is necessary to comply with section 402 and to ensure that the Service receives accurate passenger and crewmember arrival and departure information in a timely manner.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600 respondents at 10 minutes multiplied by 365 days.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 36,500 burden hours.

If additional information is required contact Richard A. Sloan, Director, (202) 514–3291.

List of Subjects

8 CFR Part 217

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

8 CFR Part 231

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements

8 CFR Part 251

Vessels, Alien crewmembers, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, chapter I of the title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—VISA WAIVER PROGRAM

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

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

2. Section 217.7 is revised to read as follows:

§ 217.7 Electronic data transmission requirement.

(a) An alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port-of-entry will not be admitted under the Visa Waiver Program unless the carrier transporting such an alien electronically transmits passenger arrival and departure data in accordance with 8 CFR 231.1, for each Visa Waiver Program passenger being transported on the aircraft or vessel.

(b) For those carriers that fail to submit electronic arrival and departure manifests electronically, the Service will evaluate the carrier's compliance with immigration requirements as a whole. The Service will inform the carrier of any noncompliance and then may revoke any contract agreements between the Service and the carrier. The carrier may also be subject to fines for violations of manifest requirements or other statutory provisions. The Service will also review each Visa Waiver Program applicant who applies for admission and on a case-by-case basis, may authorize a waiver under current Service policy and guidelines or deny the applicant admission into the United States.

PART 231—ARRIVAL AND DEPARTURE MANIFESTS

3. The heading for part 231 is revised as set forth above.

4. The authority citation for part 231 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1221, 1228, 1229; 8 CFR part 2.

5. Section 231.1 is revised to read as follows:

§ 231.1 Electronic arrival and departure manifests for passengers and crew.

(a) *Definitions.* As used in this part, the terms:

Appropriate official means the master or commanding officer, or authorized agent, owner, or consignee of a commercial aircraft or vessel.

Commercial aircraft means commercial aircraft as defined in § 286.1(c) of this chapter.

Commercial vessel means commercial vessel as defined in § 286.1(d) of this chapter.

Crewmember has the same meaning as the term crewman defined in section 101(a)(10) of the Act.

Ferry means a commercial vessel that has provisions only for deck passengers and/or vehicles, operating on a short run on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel. Vessels in coastwise or ocean service, as defined in the regulations of the USCG, 46 CFR part 70, are not ferries and, accordingly, are required to transmit electronic arrival and departure manifests.

Passenger means any person being transported on a commercial aircraft or commercial vessel who is not a crewmember.

United States means United States as defined in section 101(a)(38) of the Act.

(b) *Electronic arrival manifest.* An appropriate official of every commercial vessel or aircraft arriving in the United States from any place outside of the United States shall transmit electronically to the Service a passenger arrival manifest and a crewmember arrival manifest. The electronic arrival manifest must contain the data elements set forth in paragraph (e) of this section for each passenger and crewmember.

(1) For aircraft, an appropriate official must transmit the passenger arrival manifest no later than 15 minutes after the flight has departed from the last foreign port or place. The crewmember arrival manifest must be transmitted electronically to the Service in advance of departure from the last foreign port or place.

(2) For vessels, an appropriate official must transmit the passenger and crewmember arrival manifests:

(i) at least 96 hours before entering the port or place of destination, for voyages of 96 hours or more;

(ii) at least 24 hours before entering the port or place of destination, for voyages of less than 96 hours but not less than 24 hours; or

(iii) prior to departing the port or place of departure, for voyages of less than 24 hours.

(c) *Electronic departure manifests.* An appropriate official of every commercial vessel or aircraft departing from the United States to any place outside of the United States shall transmit electronically to the Service a passenger departure manifest and a crewmember departure manifest. The electronic departure manifest must contain the data elements set forth in paragraph (e) of this section for each passenger and crewmember.

(1) An appropriate official of a commercial vessel or aircraft must transmit both the passenger departure manifest and the crewmember departure manifest to the Service no later than 15 minutes before the flight or vessel departs from the United States.

(2) If additional passengers or crewmembers board or disembark after the original manifest has been submitted, an appropriate official of the vessel or aircraft concerned will also be required to submit amended or updated passenger and crewmember information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States. An appropriate official of the aircraft or vessel concerned must also notify the Service electronically if a flight or voyage has been cancelled after a departure manifest has been submitted.

(d) *Electronic format.*

(1) The arrival and departure manifests for passengers and crewmember must be transmitted electronically to the Service via the USCS, by means of an electronic data interchange system that is approved by the Service.

(2) The passenger arrival and departure manifests must be transmitted separately from the crewmember arrival and departure manifests. To distinguish the two manifests transmitted for a given flight or vessel, the crewmember arrival and departure manifests must have the alpha character "C" included in the transmission to denote that the manifest information pertains to the crewmembers for the flight or vessel.

(e) *Contents of arrival and departure manifests.* Each electronic arrival or departure manifest must contain the following information for all passengers or crewmembers:

AIR carrier information	SEA carrier Information
Complete name (Last name, first name, and middle name or initial)	Complete name (Last name, first name, and middle name or initial).
Date of birth	Date of birth.
Citizenship (Country of document issuance)	Citizenship (Country of document issuance).
Gender (F=Female; M=Male)	Gender (F=Female; M=Male).
Passport number and country of issuance, if a passport is required	Passport number and country of issuance, if a passport is required.
Country of residence	Country of residence.
United States visa number, date, and place of issuance, where applicable (arrivals only).	United States visa number, date, and place of issuance, where applicable (arrivals only).
Alien registration number, where applicable	Alien registration number, where applicable.
United States address while in the United States (number and street, city, state, zip code).	United States address while in the United States (number and street, city, state, zip code).
International Air Transport Association (IATA) Arrival Port Code	Arrival Port Code.
IATA Departure Port Code	Departure Port Code.
Flight Number	Voyage number.
Date of Flight Arrival	Date of Vessel Arrival.
Date of Flight Departure	Date of Vessel Departure.
Airline Carrier Code	Country of Registry/Flag.
Document Type (*e.g.*, P=Passport; V=Visa; A=Alien Registration)	Document Type (*e.g.*, P=Passport; V=Visa; A=Alien Registration).
Date of Document Expiration	Date of Document Expiration.
A unique passenger identifier, or reservation number or Passenger Name Record (PNR) locator.	A unique passenger identifier, or reservation number or Passenger Name Record (PNR) locator.
	Vessel Name.
	International Maritime Organization (IMO) number or the official number of the vessel.

(f) *Ferries.* The provisions of this part relating to the transmission of electronic arrival and departure manifests shall not apply to a ferry (if the passengers are subject to a land-border inspection by the Service upon arrival in the United States).

(g) *Progressive clearance.* Inspection of arriving passengers may be deferred at the request of the carrier to an onward port of debarkation. Authorization for this progressive clearance may be granted by the Regional Commissioner when both the initial port-of-entry and the onward port are within the same regional jurisdiction, but when the initial port-of-entry and onward port are located within different regions, requests for progressive clearance must be authorized by the Assistant Commissioner for Inspections. When progressive clearance is requested, the carrier shall present Form I–92 in duplicate at the initial port-of-entry. The original Form I–92 will be processed at the initial port-of-entry, and the duplicate noted and returned to the carrier for presentation at the onward port of debarkation.

PART—251 ARRIVAL AND DEPARTURE MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

7. The heading for part 251 is revised as set forth above.

8. The authority citation for part 251 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282; 8 CFR part 2.

§ 251.5 [Redesignated as § 251.6]

9. Section 251.5 is redesignated as § 251.6.

10. Section 251.5 is added to read as follows:

§ 251.5 Electronic arrival and departure manifest for crew member.

In addition to submitting arrival and departure manifests in a paper format in accordance with §§ 251.1, 251.3, and 251.4, the master or commanding officer, or authorized agent, owner, or consignee of any aircraft or vessel transporting passengers to any airport or seaport of the United States from any place outside of the United States or from any airport or seaport of the United States to any place outside of the United States must submit electronic arrival and departure manifests for all crewmembers on board in accordance with 8 CFR 231.1.

11. Newly redesignated § 251.6 is revised to read as follows:

§ 251.6 Exemptions for private vessels and aircraft.

The provisions of this part relating to the presentation of arrival and departure manifests shall not apply to a private vessel or private aircraft not engaged directly or indirectly in the carrying of persons or cargo for hire.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–33145 Filed 12–30–02; 4:31 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that would have required modification of the down drive brackets of the left- and right-hand sides of the inboard flap track 1 assembly and installation of bigger bolts and washers. This new action revises the proposed AD by expanding the applicability and, for certain airplanes, adding improved

torque requirements specifying the correct torque value of the nuts. The actions specified by this new proposed AD are intended to prevent failure of the bolts due to flexural loads caused by transmission jam loading, which could lead to a "flap-locked" condition, causing reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–142–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–142–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 4, 2001 (66 FR 50580). That NPRM would have required modification of the down drive brackets of the left- and right-hand sides of the inboard flap track 1 assembly and installation of bigger bolts and washers. That NPRM was prompted by a report that, for certain airplanes on which Airbus Modification 45326 has been accomplished, the strength of the connection bolts at the down drive bracket of the track 1 assembly on the inboard flap is not sufficient. Failure of the bolts due to flexural loads caused by transmission jam loading, if not corrected, could lead to a "flap-locked" condition, causing reduced controllability of the airplane.

Comments

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

Request to Reference A Revised Service Bulletin

One commenter requests that the original NPRM be revised to reference Airbus Service Bulletin A330–57–3067, Revision 02, dated February 2, 2002 (for Model A330 series airplanes), which increases hole tolerances, and corrects improper nut torque conversions. The commenter states that the existing tolerances in Revision 01 of the service bulletin are not obtainable when reaming the existing production fastener holes on an affected airplane.

The FAA partially agrees. Since issuance of the original NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directives 2002–368(B) (for Model A330 series airplanes), and 2002–369(B) (for Model A340 series airplanes); both dated August 7, 2002. These French airworthiness directives replace French airworthiness directives 2001–125(B) (for Model A330 series airplanes), and 2001–123(B) (for Model A340 series airplanes); both dated April 4, 2001; respectively (which were referenced in the original NPRM).

French airworthiness directive 2002–368(B) states that a conversion error with regard to applied torque values (metric units to U.S. Customary Units) specified in Airbus Service Bulletin A330–57–3067, dated October 12, 2000; and Revision 01, dated April 10, 2001; has been identified. This error might lead the operators using U.S. Customary Units to apply a torque value being less than those required, which could lead to a loose nut. Revision 02 of the service bulletin, dated February 2, 2002, takes into account the right torque values, but does not mention additional work that is necessary. The applicability of this French airworthiness directive has also been revised to include additional airplanes on which these improper procedures may have been done.

French airworthiness directive 2002–369(B) states that an identical conversion error with regard to applied torque values has also been identified in Airbus Service Bulletin A340–57–4075, dated October 12, 2000; and Revision 01, dated April 10, 2001. The applicability of that French airworthiness directive has also been revised to include additional airplanes on which these improper procedures may have been done.

Airbus has issued Service Bulletin A330–57–3067, Revision 03, dated

August 7, 2002 (for Model A330 series airplanes); and Service Bulletin A340–57–4075, Revision 02, dated August 7, 2002 (for Model A340 series airplanes). These service bulletins describe procedures for, among other things, modifying the down drive brackets of the left- and right-hand inboard flap track 1 assembly; re-identifying the tracks; installing bigger bolts and washers to improve the strength of the connection at the down drive brackets; and testing the torque value of the nuts.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in France.

Therefore, we have revised this supplemental NPRM to reference these service bulletins as the appropriate sources of service information for accomplishing the proposed actions. We have also revised the applicability of the supplemental NPRM to include the additional airplanes listed in the French airworthiness directives.

Conclusion

Since these changes expands the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed modifications and installations, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,020, or $780 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2001–NM–142–AD.

Applicability: The airplanes specified in Table 1 of this AD, certificated in any category. Table 1 is as follows:

TABLE 1.—APPLICABILITY

Model	Which have received—	Excluding airplanes—
A330 series airplanes	Airbus Modification 45326 in production	Modified in production per Airbus Modification 47619, or modified in service per Airbus Service Bulletin A330–57–3067, Revision 03, dated August 7, 2002.
A340 series airplanes	Airbus Modification 45326 in production	Modified in production per Airbus Modification 47619, or modified in service per Airbus Service Bulletin A340–57–4075, Revision 02, dated August 7, 2002.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bolts due to flexural loads caused by transmission jam loading, which could lead to a "flap-locked" condition, causing reduced controllability of the airplane, accomplish the following:

Modification and Testing

(a) At the times specified in Table 2 of this AD, modify the down drive brackets of the left- and right-hand inboard flap track 1 assembly and test the torque value of the nuts by accomplishing all actions specified in the Accomplishment Instructions of Airbus Service Bulletin A330–57–3067, Revision 03, dated August 7, 2002 (for Model A330 series airplanes); or Airbus Service Bulletin A340–57–4075, Revision 02, dated August 7, 2002 (for Model A340 series airplanes); as applicable. Table 2 is as follows:

TABLE 2.—COMPLIANCE TIME

Compliance time	Action	For model	On which—
(1) Within 36 months since date of manufacture of the airplane, or within 6 months from the effective date of this AD, whichever occurs Later.	(i) Modify	A330 series airplanes.	Airbus Service Bulletin A330–57–3067, dated October 12, 2000; Revision 01, dated April 10, 2001; or Revision 02, dated February 2, 2002; has not been done.
	(ii) Modify	A340 series airplanes.	Airbus Service Bulletin A340–57–4075, dated October 12, 2000; or Revision 01, dated April 10, 2001; has not been done.
(2) Within 700 flight hours from the effective date of this AD.	(i) Modify	A330 series airplanes.	Airbus Service Bulletin A330–57–3067, dated October 12, 2000; Revision 01, dated April 10, 2001; has been done using U.S. Customary Units.
	(ii) Test	4A330 series airplanes.	Airbus Service Bulletin A340–57–4075, dated October 12, 2000; or Revision 01, dated April 10, 2001; has been done using U.S. Customary Unit.

Parts Installation

(b) As of the effective date of this AD, no person shall install, on any airplane inboard flap track I assembly unless it has been modified and its associated nuts have been torqued in accordance with this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directives 2002–368(B) (for Model A330 series airplanes), and 2002–369(B) (for Model A340 series airplanes); both dated August 7, 2002.

Issued in Renton, Washington, on December 24, 2002.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–99–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10 and DC–10–10F Airplanes; Model DC–10–15 Airplanes; Model DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) Airplanes; Model DC–10–40 and DC–10–40F Airplanes; and Model MD–10–10F and –30F Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models, that would have required an inspection of the throttle control module on the center pedestal in the flight deck compartment to determine its part number and configuration, and modification of the throttle control module. This new action revises the proposed rule by adding additional repetitive inspections for chafing of the throttle control module wiring and adding additional airplanes to the applicability of this AD. The actions specified by this new proposed AD are intended to prevent chafing of wiring inside the throttle control module, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit.

DATES: Comments must be received by January 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate. ANM–114, Attention: Rules Docket No. 2001–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425)–227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–99–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the

Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–99–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–30F airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 24, 2001 (66 FR 44562). That NPRM would have required an inspection of the throttle control module (TCM) on the center pedestal in the flight deck compartment to determine its part number and configuration, and modification of the TCM. Those actions are necessary to prevent chafing of wiring inside the TCM, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit.

Since the Issuance of the NPRM

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Alert Service Bulletin (ASB) DC10–76A049, including Appendix and Evaluation Form, all dated January 29, 2002. That ASB describes procedures for repetitive visual inspections for chafing or potential chafing of wiring of the TCM module located on the center pedestal in the flight compartment. That ASB also describes procedures for repairing or repositioning electrical wiring, as applicable, if necessary.

In addition, the FAA has reviewed and approved Boeing ASB DC10–76A048, Revision 01, dated January 29, 2002, including Evaluation Form. (Boeing ASB DC10–76A048, dated August 6, 2001, was specified as the appropriate source of service information in the NPRM.) Boeing ASB DC10–76A048, Revision 01, dated January 29, 2002, adds two airplanes to the effectivity and describes procedures that are generally the same as the original service bulletin. The procedures described in Revision 01 of the ASB are for an inspection of the TCM on the center pedestal in the flight deck compartment to determine its part number and configuration, and modification of the TCM. The modification includes removing material from the throttle lever and cover plates (as applicable) for engines 1, 2, and 3; replacing the existing guide assembly with an improved guide assembly inside the TCM; replacing the existing protective sleeving on the wire bundles; removing previously installed spiral wrap tubing on the auto throttle/takeoff/go around (TOGA) wiring; and reidentifying the coverplates and TCM; as applicable.

Accomplishment of the actions specified in those service bulletins is intended to adequately address the identified unsafe condition.

Comments

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

Requests To Extend Compliance Time

Three commenters request that the compliance time for the modification that would be required by paragraph (a) of the proposal be extended from 18 months to 5 years. Two commenters state that there may be a problem with parts availability, and that they would be unable to meet an 18-month compliance time. Additionally, the commenters note that a 5-year compliance time would also align with the modification of the thrust reverser activation system (TRAS) that is required by AD 2001–17–19, amendment 39–12410 (65 FR 44950, August 27, 2001). That AD requires the TCM to be removed in order to access the TRAS. One commenter requests that, for certain airplanes, the compliance time be extended to 36 months. That commenter did not provide any justification for the extension. One commenter, the manufacturer, states that it has released a new service bulletin (Boeing ASB DC10–76A049, including Appendix and Evaluation Form, all dated January 29, 2002, as described earlier in this Supplemental Notice of Proposed Rulemaking (SNPRM)) that specifies repetitive visual inspections for chafing or potential chafing of the TCM wiring located on the center pedestal in the flight compartment. The manufacturer states that, if the repetitive inspections described in the new service bulletins are accomplished every 18 months, a 5-year compliance time for the modification should be adequate to ensure operational safety of the affected airplanes.

The FAA agrees with certain commenters that the compliance time may be extended for the reasons they specified. We have revised the original NPRM to extend the compliance time for the modification until 5 years after the effective date of the AD. Additionally, we have added a new paragraph (a) to this SNPRM that specifies repetitive visual inspections for chafing or potential chafing of the wiring every 18 months, until the modification is accomplished.

Requests to Withdraw the NPRM

Two commenters disagree with a need for the rule as proposed. The commenters state that they are unaware of any report of smoke or fire in the cockpit of the Model DC–10 fleet that resulted from wire chafing in the TCM. The commenters conclude that supporting documentation of such incidents of smoke or fire is absent. The FAA infers that the commenters are requesting that the original NPRM be withdrawn.

The FAA does not agree. We acknowledge that we are unaware of any specific reports of smoke or fire due to wire arcing or chafing associated with the TCM on the airplanes specified in this SNPRM. However, we find that there have been numerous incident reports describing wire chafing that emanated from other systems, which has been identified as the ignition source for some in-flight smoke and/or fires. Therefore, we consider that an unsafe condition has been identified that is likely to exist or develop on other products of these type designs, and that issuance of this SNPRM is warranted.

Requests to Revise the Cost Impact Section

The commenters request that the Cost Impact section be revised to reflect a more realistic work hour estimate of 24 hours for the accomplishment of the modification. (The original NPRM estimates between 4 and 7 hours.)

The FAA agrees that the cost information should be revised. However, we have revised the estimated cost for accomplishing the modification based on the current work hours estimated in Boeing ASB DC10–76A048, Revision 01, dated January 29, 2002. The estimated work hours to accomplish the modification specified in that service bulletin (excluding work hours to remove, install, and test) are approximately 15 work hours. We estimate that the average labor rate is $60 per work hour, and that required parts would cost approximately $1,712 per airplane. Based on those figures, we estimate that the modification cost impact of the proposed AD would be $2,612 per airplane.

Additionally, we have added an estimated cost of the inspection specified in Boeing ASB DC10–76A049, dated January 29, 2002. We estimate that each inspection would take 2 work hours to perform, at an estimated average labor rate of $60 per work hour, per inspection. Based on those figures, we estimate that each inspection would cost approximately $120 per airplane, per inspection cycle.

Explanation of New Requirements of Proposal

Since an unsafe condition has been identified that is likely to exist or develop on other products of these type designs, this SNPRM would continue to require an inspection of the TCM on the center pedestal in the flight deck compartment to determine its part number and configuration, and modification of the TCM. This SNPRM also would add repetitive inspections for chafing or potential chafing of the TCM wiring, and corrective actions if necessary. This SNPRM also would require adding airplanes to the applicability of this AD. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Conclusion

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

Explanation of Change to Applicability

The FAA has revised the applicability of the original NPRM to identify model designations as published in the most recent type certificate date sheet for the affected models.

Cost Impact

There are approximately 401 McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and "MD–10–30F airplanes; of the affected design in the worldwide fleet. The FAA estimates that 321 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,712 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $838,452 or $2,612 per airplane.

We estimate that it would take approximately 2 work hours per airplane to perform the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $38,520, or $120 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–99–AD.

Applicability: Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30, DC–10–30F, and DC–10–30F (KC10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; Model MD–10–10F and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin DC10–76A048, Revision 01, dated January 29, 2002; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wiring inside the throttle control module, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit; accomplish the following:

Repetitive Inspections for Chafing

(a) Within 18 months after the effective date of this AD, perform a general visual inspection for chafing or potential chafing of the wiring of the throttle control module located on the center pedestal in the flight compartment, per Boeing Alert Service Bulletin (ASB) DC10–76A049, excluding the Appendix and Evaluation Form, all dated January 29, 2002. Thereafter, repeat the inspection at intervals not to exceed 18 months, until the actions specified in paragraph (c) of this AD are accomplished.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(h) If any evidence of chafing or potential chafing is found during any inspection required by paragraph (a) of this AD, before further flight, repair the chafed wires or reposition wires, as applicable, per Boeing ASB DC10–76A049, excluding the Appendix and Evaluation Form, all dated January 29, 2002.

Inspection and Modification

(c) Within 5 years after the effective date of this AD, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD, per Boeing ASB DC10–76A048, excluding the Evaluation Form, both dated August 6, 2001; or Revision 01, excluding the Evaluation Form, both dated January 29, 2002.

(1) Do an inspection of the throttle control module on the center pedestal in the flight deck compartment to determine its part number and configuration, which will identify the group applicability information.

(2) Modify the throttle control module on the center pedestal in the flight deck compartment per the applicable figure in the service bulletin. Accomplishment of the modification constitutes terminating action for the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permit

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

Issued in Renton, Washington, on December 24, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–54–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Modified by Supplemental Type Certificate ST01783AT–D

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate ST01783AT–D. This proposal would require modifying the in-flight entertainment (IFE) system and revising the airplane flight manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–54–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from TIMCO Engineered Systems, Inc., 623 Radar Road, Greensboro, North Carolina 27410. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Robert Chupka, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Federal Aviation Administration (FAA) recently completed a review of in-flight entertainment (IFE) systems certified by supplemental type certificate (STC) and installed on transport category airplanes. The review focused on the interface between the IFE system and airplane electrical system, with the objective of determining if any unsafe conditions exist with regard to the interface. STCs issued between 1992 and 2000 were considered for the review.

The type of IFE systems considered for review were those that contain video monitors (cathode ray tubes or liquid crystal displays; either hanging above the aisle or mounted on individual seat backs or seat trays), or complex circuitry (*i.e.*, power supplies, electronic distribution boxes, extensive wire routing, relatively high power consumption, multiple layers of circuit protection, etc.). In addition, in-seat power supply systems that provide power to more than 20 percent of the total passenger seats were also considered for the review. The types of IFE systems not considered for review include systems that provide only audio signals to each passenger seat, ordinary in-flight telephone systems (*e.g.*, one telephone handset per group of seats or bulkhead-mounted telephones), systems that only have a video monitor on the forward bulkhead(s) (or a projection system) to provide passengers with basic airplane and flight information, and in-seat power supply systems that provide power to less than 20 percent of the total passenger seats.

Items considered during the review include the following:

- Can the electrical bus(es) supplying power to the IFE system be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing?
- Can IFE system power be removed when required without pulling IFE system circuit breakers (*i.e.*, is there a switch (dedicated to the IFE system or a combination of loads) located in the flight deck or cabin that can be used to remove IFE power?)?
- If the IFE system requires changes to flight crew procedures, has the airplane flight manual (AFM) been properly amended?
- If the IFE system requires changes to cabin crew procedures, have they been properly amended?
- Does the IFE system require periodic or special maintenance?

In all, approximately 180 IFE systems approved by STC were reviewed by the FAA. The review results indicate that potential unsafe conditions exist on some IFE systems installed on various transport category airplanes. These conditions can be summarized as:

- Electrical bus(es) supplying power to the IFE system cannot be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing.
- Power cannot be removed from the IFE system when required without pulling IFE system circuit breakers (*i.e.*, there is no switch dedicated to the IFE system or combination of systems for the purpose of removing power).
- Installation of the IFE system has affected crew (flight crew and/or cabin crew) procedures, but the procedures have not been properly revised.

FAA's Determination

As part of its review of IFE systems, the FAA has determined that an unsafe condition exists on all Boeing Model 767–300 series airplanes modified by STC ST01783AT–D. The IFE system on these airplanes is connected to an electrical bus that cannot be deactivated without also removing power from airplane systems necessary for safe flight and landing. There is no other means to remove power from the IFE system. Additionally, the airplane manufacturer's published flight crew and cabin crew emergency procedures do not advise the flight crew and cabin crew that power cannot be removed from the IFE system. This condition, if not corrected, could result in inability to remove power from the IFE system during a non-normal or emergency situation, and consequent inability to control smoke or fumes in the airplane flight deck or cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved TIMCO Service Bulletin TSB–767–23–009, Revision IR, dated August 22, 2001. That service bulletin describes procedures for modifying the IFE system by installing two new relays to control power inputs to the IFE system, and a new circuit breaker to protect the wiring of the IFE system. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The FAA also has reviewed and approved TIMCO AFM Supplement TIM–AFM–01035, dated March 13, 2002, which revises the procedures under the heading "Electrical Smoke or Fire" in the "Emergency Procedures" section of the AFM to provide instructions for the cabin crew to remove power from the various components of the IFE system in an emergency.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The proposed AD also would require revising procedures to be followed in the event of smoke or fire in the airplane by including the information in the AFM supplement

described previously. Accomplishment of these actions is intended to adequately address the identified unsafe condition.

In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the amount of time necessary to accomplish the proposed actions, and the practical aspect of accomplishing the proposed actions within an interval of time that parallels normal scheduled maintenance for the affected operators. In consideration of these factors, the FAA has determined that 18 months after the effective date of this AD represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained.

Clarification of Airplane Model Designation

While TIMCO Service Bulletin TSB–767–23–009, Revision IR, and TIMCO AFM Supplement TIM–AFM–01035 specify that they are effective for "Boeing Model 767–300ER" series airplanes, this proposed AD would apply to Boeing Model 767–300 series airplanes. The model designation in this proposed AD is consistent with the most recent type certificate data sheet for the affected model.

Other Relevant Rulemaking

The FAA has previously issued several ADs that address unsafe conditions and require corrective actions similar to those that would be required by the proposed AD. These other ADs, and the airplane models and STCs to which they apply, are as follows:

Model/Series—	STC Number—	AD Reference—
Airbus A340–211	ST0902AC–D	AD 2001–18–01, amendment 39–12427 (66 FR 46939, September 10, 2001).
Boeing 737–300	ST00171SE	AD 2001–14–10, amendment 39–12321 (66 FR 36455, July 12, 2001).
Boeing 737–700	ST09100AC–D ST09104AC–D ST09105AC–D ST09106AC–D	AD 2001–14–12, amendment 39–12323 (66 FR 36452, July 12, 2001).
Boeing 747–100 and –200	SA8622SW	AD 2001–14–11, amendment 39–12322 (66 FR 36453, July 12, 2001).
Boeing 747–100 and –200	ST00196SE	AD 2001–16–19, amendment 39–12388 and (66 FR 43068, August 17, 2001)
Boeing 747–400	SA8843SW	AD 2001–14–15, amendment 12326 (66 FR 36447, July 12, 2001).
Boeing 747SP	ST09097AC–D	AD 2001–14–14, amendment 39–12325 (66 FR 36449, July 12, 2001).
Boeing 757–200	SA1727GL	AD 2001–14–01. amendment 39–12311 (66 FR 36149, July 11, 2001).
Boeing 767–200	SA4998NM	AD 2001–16–21, amendment 39–12390 (66 FR 43072, August 17, 2001).
Boeing 767–200	SA5134NM	AD 2001–16–20, amendment 39–12389 (66 FR 43066, August 17, 2001).
Boeing 767–200	ST09022AC–D	AD 2001–14–13, amendment 39–12324 (66 FR 36450, July 12, 2001).
Boeing 767–300	SA5765NM SA5978NM	AD 2001–16–17, amendment 39–12386 (66 FR 42937, August 16, 2001).
Boeing 767–300	SA7019NM–D	AD 2001–18–08, amendment 39–12434 (66 FR 46517, September 6, 2001).
Boeing 767–300	ST00118SE	AD 2001–14–04, amendment 39–12314 (66 FR 36699, July 13, 2001).
Boeing 767–300	ST00157SE	AD 2001–16–18, amendment 39–12387 (66 FR 43070, August 17, 2001).
McDonnell Douglas DC–9–51 and DC–9–83.	SA8026NM	AD 2001–14–02, amendment 39–12312 (66 FR 36456, July 12, 2001).
McDonnell Douglas DC–10–30	SA8452SW	AD 2001–16–22, amendment 39–12391 (66 FR 43074, August 17, 2001).
McDonnell Douglas DC–10–30	ST00054SE	AD 2001–13–03, amendment 39–12313 (66 FR 36150, July 11, 2001).

Cost Impact

There are approximately 37 airplanes of the affected design in the worldwide fleet. The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 66 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $146,520, or $3,960 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AFM revision on U.S. operators is estimated to be $2,220, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–54–AD.

Applicability: Model 767–300 series airplanes modified by Supplemental Type Certificate (STC) ST01783AT–D, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the IFE system installed on the airplane by installing two new relays and a new circuit breaker, according to TIMCO Service Bulletin TSB–767–23–009, Revision IR, dated August 22, 2001.

(2) Revise the procedures under "Electrical Smoke or Fire" in the "Emergency Procedures" section of the airplane flight manual (AFM) to include TIMCO AFM Supplement TIM–AFM–01035, dated March 13, 2002. When the information in that AFM supplement has been incorporated into the FAA-approved general revisions of the AFM, the general revisions may be incorporated into the AFM, and the AFM supplement may be removed from the AFM.

Part Installation

(b) As of the effective date of this AD, no person may install an IFE system according to STC ST01783AT–D on any airplane, unless the IFE system is modified and the AFM is revised according to this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on December 26, 2002.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–19–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 737–100, 737–200, and 737–200C Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 727, 737–100, 737–200, and 737–200C series airplanes. That proposed AD would have required a one-time inspection to determine the part number of hydraulic accumulators installed in various areas of the airplane, and follow-on corrective actions if necessary. This new action revises the proposed rule by adding an inspection of an additional area of the airplane, and follow-on corrective actions if necessary. This new action also clarifies what actions are necessary for accumulators with certain part numbers. This action is necessary to prevent high-velocity separation of a barrel, piston, or end cap from a hydraulic accumulator. Such separation could result in injury to personnel in the accumulator area; loss of cabin pressurization; loss of affected hydraulic systems; or damage to plumbing, electrical installations, or structural members. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–19–AD" in the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 200–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 727, 737–100, 737–200, and 737–200C series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 20, 2002 (67 FR 35464). That NPRM would have required a one-time inspection to determine the part number of hydraulic accumulators installed in various areas of the airplane, and follow-on corrective actions if necessary. That NPRM was prompted by reports of several incidents on various Boeing Model 747 series airplanes, and one incident on a Boeing Model 737–200 series airplane, in which aluminum end caps on hydraulic accumulators have fractured. That condition, if not corrected, could result in high-velocity separation of a barrel, piston, or end cap from a hydraulic accumulator. Such separation could result in injury to personnel in the accumulator area; loss of cabin pressurization; loss of affected hydraulic systems; or damage to plumbing, electrical installations, or structural members.

Comments

Due consideration has been given to the comments received in response to the NPRM. Certain comments, as discussed below, have resulted in changes to the proposed AD.

Support for the Proposed AD

One commenter concurs with the proposed AD, and another commenter states that it has no technical objection to the proposed AD because it does not operate any affected airplanes.

Include Additional Requirements

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to include additional requirements. The commenter points out that Boeing Special Attention Service Bulletin 737–78–1068, Revision 1, dated March 1, 2001, addresses a hydraulic accumulator, Boeing part number (P/N) BACA11E2 (vendor P/N 2660472–2 or 2660472M2), installed in the thrust reverser actuation system on certain Boeing Model 737–100, –200, and "200C series airplanes. Boeing Special Attention Service Bulletin 737–32–1334, Revision 1, dated March 1, 2001, which is one of the service bulletins that would be required by the proposed AD, addresses the same hydraulic accumulator as installed in the landing gear brake system.

The FAA concurs with the commenter's request. We have reviewed and approved Boeing Special Attention Service Bulletin 737–78–1068, Revision 1. That service bulletin describes procedures for a one-time inspection to determine the part number of the hydraulic accumulator in the thrust reverser actuation system, and follow-on corrective actions. Corrective actions include replacing the existing hydraulic accumulator with an improved or modified accumulator having stainless steel end caps. The service bulletin refers to Parker Service Bulletin 2660472–29–63, dated December 12, 2000, as the appropriate source of service information for modification of the hydraulic accumulator.

We have added a new paragraph, paragraph (e), to this supplemental NPRM to propose to require accomplishment of the actions in Boeing Special Attention Service Bulletin 737–78–1068, Revision 1. Also, we have added Note 6 to this supplemental NPRM to state that the service bulletin refers to Parker Service Bulletin 2660472–29–63 as the appropriate source of service information for modification of the hydraulic accumulator.

Remove Requirement to Replace Certain Accumulators

One commenter requests that we revise paragraphs (b)(2) and (c)(2) of the proposed AD to remove certain P/Ns. The commenter points out that the accumulators with those particular P/Ns have steel end caps. The only necessary action is installation of new accumulator clamps and mounting hardware. The commenter suggests that we move the specified P/Ns to a separate paragraph to clarify that replacement of these accumulators with new accumulators is not necessary.

We concur that moving the specified part numbers to separate paragraphs would more clearly state our intent. We acknowledge that the P/Ns identified by the commenter do not need to be replaced. Therefore, we have revised paragraphs (b)(2) and (c)(2) of this supplemental NPRM to remove the subject P/Ns, and have included those P/Ns in new paragraphs (b)(3) and (c)(3) of this supplemental NPRM. Those paragraphs would require replacing existing accumulator clamps and mounting hardware with stronger accumulator clamps and mounting hardware, per the referenced service bulletin.

Remove a Certain Accumulator

The same commenter requests that we remove a certain accumulator, P/N BACA11E4S, from paragraphs (b)(2) and (c)(2) of the proposed AD. The commenter states that, while that accumulator has aluminum end caps, the end caps are thicker and the design of the accumulator is different from that of the accumulators that have failed in service. The commenter notes that there have been no reported failures of that accumulator. The commenter asserts that no action is necessary if this accumulator is installed.

We partially concur. We do not agree that no action is necessary if an accumulator with the subject P/N is installed. However, if an accumulator with the subject P/N is installed, it is necessary only to replace existing accumulator clamps and mounting hardware with new, stronger clamps and hardware. Therefore, we have removed the subject P/N from paragraphs (b)(2) and (c)(2) of the proposed AD and instead have included it in new paragraphs (b)(3) and (c)(3) of this supplemental NPRM, which were described previously.

Explanation of Additional Changes

Because the language in Notes 2 and 6 of the proposed AD is regulatory in nature, those notes have been

redesignated as paragraphs (f) and (g) of this supplemental NPRM. Remaining notes have been renumbered accordingly.

Also, paragraphs (a), (b), (c), (d), and (e), have been revised in this supplemental NPRM to clarify that we do not intend to require completing the Evaluation Form attached to the service bulletin.

Conclusion

Since certain changes described previously expand the scope of the originally proposed AD, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 1,832 Model 727 series airplanes and 1,033 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,294 Model 727 series airplanes and 376 Model 737 series airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 1 work hour per airplane to accomplish the proposed one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed one-time inspection on U.S. operators is estimated to be $100,200, or $60 per airplane.

Cost Impact: On-Condition Actions

For an airplane subject to the replacement per Boeing Service Bulletin 727–29–0064, we estimate that it would take approximately 5 work hours per accumulator (two hydraulic system accumulators per airplane), at an average labor rate of $60 per work hour. Required parts would cost between $1,400 (new part) and $2,810 (vendor-modified part) per accumulator. Based on these figures, the cost impact of this replacement, if necessary, would be between $1,700 and $3,110 per accumulator.

For an airplane subject to the replacement of both the mounting clamps and hardware and the hydraulic accumulator per Boeing Service Bulletin 727–32–0410, we estimate that it would take approximately 6 work hours per airplane to accomplish (one landing gear brake accumulator per airplane), at an average labor rate of $60 per work hour. Required parts would cost between $2,500 (new part) and $3,975 (vendor-modified part) per airplane. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,860 and $4,335 per airplane.

For an airplane subject to the replacement of both the mounting clamps and hardware and the hydraulic accumulator per Boeing Service Bulletin 727–52–0148, we estimate that it would take approximately 6 work hours per airplane (one aft airstairs hydraulic accumulator per airplane) to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $2,500 (new part) and $3,975 (vendor-modified part) per airplane. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,860 and $4,335 per airplane.

For an airplane subject to the replacement per Boeing Service Bulletin 737–32–1334, we estimate that it would take approximately 5 work hours per accumulator (two landing gear hydraulic brake accumulators per airplane) to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $2,175 (operator-modified part) and $2,410 (vendor-modified part) per accumulator. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,475 and $2,710 per accumulator.

For an airplane subject to the replacement per Boeing Special Attention Service Bulletin 737–78–1068, we estimate that it would take approximately 5 work hours per accumulator to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $2,175 (operator-modified part) and $2,410 (vendor-modified part) per accumulator. Based on these figures, the cost impact of this replacement, if necessary, would be between $2,475 and $2,710 per accumulator.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–19–AD.

Applicability: Model 727 series airplanes, line numbers (L/N) 1 through 1832 inclusive; and Model 737–100, –200, and –200C series airplanes, L/N 1 through 1033 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high-velocity separation of a barrel, piston, or end cap from a hydraulic accumulator, which could result in injury to personnel in the accumulator area; loss of cabin pressurization; loss of affected hydraulic systems; or damage to plumbing, electrical installations, or structural members; accomplish the following:

Inspection/Corrective Action: Service Bulletin 727–29–0064

(a) For airplanes listed in Boeing Special Attention Service Bulletin 727–29–0064, Revision 1, dated May 3, 2001: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the part numbers (P/Ns) of hydraulic accumulators in hydraulic systems "A" and "B," per the Accomplishment Instructions of the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with Parker P/N 1356–603303 is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with Parker P/N 1356–603303 is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

Note 2: Boeing Special Attention Service Bulletin 727–29–0064, Revision 1, refers to Parker Service Bulletin 1356–603303–29–60, dated January 9, 2001, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 727–29–0064, Revision 1.

Inspection/Corrective Action: Service Bulletin 727–32–0410

(b) For airplanes listed in Boeing Special Attention Service Bulletin 727–32–0410, Revision 2, dated January 24, 2002: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/N of the hydraulic accumulator in the landing gear brake system, per the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with P/N 1356–603399, 3780078–104, BACA11E4S, BACA11E4SA, 60857–4–1, or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N 1356–603399 or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware, and replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

(3) If any hydraulic accumulator with P/N 3780078–104, BACA11E4S, BACA11E4SA, or 60857–4–1 is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware, per the service bulletin, excluding the Evaluation Form.

Note 3: Boeing Special Attention Service Bulletin 727–32–0410, Revision 2, refers to Parker Service Bulletins 1356–603399–29–61 and 2660472–29–63, both dated December 12, 2000, as the appropriate sources of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 727–32–0410, Revision 2.

Inspection/Corrective Action: Service Bulletin 727–52–0148

(c) For airplanes listed in Boeing Special Attention Service Bulletin 727–52–0148, Revision 2, dated January 24, 2002: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/N of the hydraulic accumulator in the aft airstairs, per the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with P/N 1356–603399, 3780078–104, BACA11E4S, BACA11E4SA, 60857–4–1, or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N 1356–603399 or BACA11E4 (vendor P/N 2660472–4 or 2660472M4) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware, and replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

(3) If any hydraulic accumulator with P/N 3780078–104, BACA11E4S, BACA11E4SA, or 60857–4–1 is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace existing accumulator clamps and mounting hardware with new, stronger accumulator clamps and mounting hardware, per the service bulletin, excluding the Evaluation Form.

Note 4: Boeing Special Attention Service Bulletin 727–52–0148, Revision 2, refers to Parker Service Bulletins 1356–603399–29–61 and 2660472–29–63, both dated December 12, 2000, as the appropriate sources of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 727–52–0148, Revision 2.

Inspection/Corrective Action: Service Bulletin 737–32–1334

(d) For airplanes listed in Boeing Special Attention Service Bulletin 737–32–1334, Revision 1, dated March 1, 2001: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/Ns of the hydraulic accumulators in the landing gear brake system, per the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

Note 5: Boeing Special Attention Service Bulletin 737–32–1334, Revision 1, refers to Parker Service Bulletin 2660472–29–63, dated December 12, 2000, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 737–32–1334, Revision 1.

Inspection/Corrective Action: Service Bulletin 737–78–1068

(e) For airplanes listed in Boeing Special Attention Service Bulletin 737–78–1068, Revision 1, dated March 1, 2001: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, do a one-time inspection to determine the P/Ns of the hydraulic accumulators in the thrust reverser actuation system, per the service bulletin, excluding the Evaluation Form.

(1) If no hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: No further action is required by this paragraph.

(2) If any hydraulic accumulator with P/N BACA11E2 (vendor P/N 2660472–2 or 2660472M2) is installed: Within 18 months or 6,000 flight hours after the effective date of this AD, whichever is first, replace the subject hydraulic accumulator with a new or modified accumulator, per the service bulletin, excluding the Evaluation Form.

Note 6: Boeing Special Attention Service Bulletin 737–78–1068, Revision 1, refers to Parker Service Bulletin 2660472–29–63, both dated December 12, 2000, as the appropriate source of service information for modification of the hydraulic accumulators that are subject to replacement per Service Bulletin 737–78–1068, Revision 1.

Inspections Accomplished Per Previous Issues of Service Bulletins

(f) Inspections and replacements accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 727–29–0064, dated June 8, 2000, are considered acceptable for compliance with the corresponding action required by paragraph (a) of this AD.

(g) Inspections and replacements accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 737–32–1334, dated May 11, 2000, are considered acceptable for compliance with the corresponding actions required by paragraph (d) of this AD.

(h) Inspections and replacements accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 737–78–1068, dated June 8, 2000, are considered acceptable for compliance

with the corresponding action required by paragraph (e) of this AD.

Part Installation

(i) As of the effective date of this AD, no one may install a hydraulic accumulator with a P/N listed in paragraph (a)(2), (b)(2), (c)(2), (d)(2), or (e)(2) of this AD on any airplane.

Alternative Methods of Compliance

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

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on December 24, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300 B4, A300 B4–600, A300 B4–600R, A300 F4–600R, A310, A330, and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus airplanes, that would have required repetitive inspections for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slides; a one-time inspection for correct adjustment of the slide release mechanism and the girt bar attachment fittings, which would terminate the repetitive inspections; a one-time test for correct extension of the girt bar through the sliders; and corrective action, if necessary. This new action adds airplanes to the proposed applicability. The actions specified by this new proposed AD are intended to prevent failure of an emergency escape slide, which could result in a delayed evacuation in an emergency and consequent injury to passengers or crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–154–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–154–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 12, 2001 (66 FR 52066). That NPRM would have required repetitive inspections for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slides; a one-time inspection for correct adjustment of the slide release mechanism and the girt bar attachment fittings, which would terminate the repetitive inspections; a one-time test for correct extension of the girt bar through the sliders; and corrective action, if necessary. The original NPRM was prompted by a report indicating that, during escape slide deployment tests on a Model A330 series airplane, the girt bar of the emergency escape slide became detached from the airplane when the

escape slide was deployed. That condition, if not corrected, could result in failure of an emergency escape slide, which could result in a delayed evacuation in an emergency and consequent injury to passengers or crew.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, operators have reported difficulty with certain inspection procedures described in the service bulletins. Problems encountered in measuring the gap between the sliders and the girt bar in some cases resulted in asymmetrical adjustment of the girt bar assembly. The manufacturer has since revised the service bulletins to improve the rigging procedures.

In addition, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised that the identified unsafe condition may apply to additional airplanes. Airbus Model A300, A300–600, and A310 series airplanes are equipped with the same escape slide installation as that on Model A330 and A340 series airplanes.

Explanation of Relevant Service Information

The original NPRM cited Airbus Service Bulletins A330–52–3064 and A340–52–4076, both dated April 4, 2001, as the appropriate sources of service information for the proposed actions. Since the original NPRM was issued, Airbus issued Revision 01 of each service bulletin on June 12, 2002, to revise certain inspection procedures and add airplanes to the effectivity. The remaining procedures are essentially unchanged.

Airbus has also issued Service Bulletins A300–52–0174, A310–52–2066, and A300–52–6062, all Revision 01, all dated August 23, 2002, which describe essentially the same procedures as those described in revised Service Bulletins A330–52–3064 and A340–52–4076.

Accomplishment of the actions specified in the revised service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory. To ensure the continued airworthiness of these airplanes in France, the DGAC issued French airworthiness directives 2002–296(B) and 2002–297(B), both dated June 12, 2002; and 2002–525(B), dated October 16, 2002.

Changes to Original NPRM

Based on the DGAC's findings, the FAA has determined that it is necessary to revise the applicability of the original NPRM to add certain Model A300, A300–600, and A310 series airplanes.

For clarification, the FAA has also revised the definition of a "general visual inspection" (Note 2) in this supplemental NPRM.

Conclusion

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

Cost Impact

The FAA estimates that 103 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to inspect for foreign objects between the slider and the girt bar attachment fittings, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $12,360, or $120 per airplane, per inspection cycle.

It would take approximately 4 work hours per airplane to determine whether the slide mechanism and girt bar attachment fittings are adjusted correctly, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $24,720, or $240 per airplane.

It would take approximately 4 work hours per airplane to determine whether the girt bar extends through the sliders correctly, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $24,720, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2001–NM–154–AD.

Applicability: The following airplanes, certificated in any category:

TABLE 1.—APPLICABILITY

Model	Listed in Airbus Service Bulletin
A300 B2 and A300 B4 series airplanes	A300–52–0174, Revision 01, dated August 23, 2002.

TABLE 1.—APPLICABILITY—Continued

Model	Listed in Airbus Service Bulletin
A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes	A300–52–6062, Revision 01, dated August 23, 2002.
A310 series airplanes	A310–52–2066, Revision 01, dated August 23, 2002.
A330 series airplanes	A330–52–3064, Revision 01, dated June 12, 2002.
A340 series airplanes	A340–52–4076, Revision 01, dated June 12, 2002.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the emergency escape slide, which could delay evacuation in an emergency and result in injury to passengers or crew, accomplish the following:

Repetitive Inspections for Foreign Objects

(a) At the applicable time specified in paragraph (a)(1) or (a)(2) of this AD: Perform a general visual inspection for foreign objects between the slider and the girt bar attachment fittings of the emergency escape slides according to the applicable service bulletin listed in Table 2 of this AD. Repeat the inspection at least every 7 days until the actions required by paragraph (b) of this AD are done. If any foreign object is found during any inspection required by paragraph (a) of this AD: Before further flight, remove the object and ensure that the girt bar attachment fittings are clean, according to the applicable service bulletin. Table 2 follows:

TABLE 2.—SERVICE BULLETIN REFERENCES FOR REQUIRED ACTIONS

For model	Do the actions in accordance with Airbus Service Bulletin
A300 B2 and A300 B4 series airplanes	A300–52–0174, Revision 01, dated August 23, 2002.
A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes	A300–52–6062, Revision 01, dated August 23, 2002.
A310 series airplanes	A310–52–2066, Revision 01, dated August 23, 2002.
A330 series airplanes	A330–52–3064, Revision 01, dated June 12, 2002.
A340 series airplanes	A340–52–4076, Revision 01, dated June 12, 2002.

(1) For Model A330 and A340 series airplanes: Inspect within 7 days after the effective date of this AD.

(2) For Model A300, A300–600, and A310 series airplanes: Inspect within 550 flight hours after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removing or opening access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

One-Time Inspection of Slide Release Mechanism and Girt Bar Attachment Fittings

(b) Within 18 months after the effective date of this AD, perform a one-time general visual inspection for correct adjustment of the emergency escape slide release mechanism and the girt bar attachment fittings according to the service bulletin listed in Table 2 of this AD, as applicable. If the slide mechanism or girt bar attachment fittings are not adjusted correctly: Before further flight, adjust them according to the applicable service bulletin. Accomplishment of this inspection and any required corrective actions terminates the repetitive inspections required by paragraph (a) of this AD.

One-Time Inspection of Girt Bar Attachment Fittings

(c) Within 18 months after the effective date of this AD, perform a one-time general visual inspection for correct extension of the emergency escape slide girt bar through the sliders, according to the service bulletin listed in Table 2 of this AD, as applicable. If the girt bar does not extend correctly: Before further flight, rework the girt bar or replace the girt bar assembly with a new assembly, according to the applicable service bulletin.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directives 2002–296(B) and 2002–297(B), both dated June 12, 2002; and 2002–525(B), dated October 16, 2002.

Issued in Renton, Washington, on December 24, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–301–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to certain Airbus Model A319 and A320 series airplanes. This proposal would require an inspection of the clearance space between the fuel quantity indication (FQI) probes located in the center fuel tank and the adjacent structure; an inspection of the position of the support bracket for each probe; an inspection of the part number for each support bracket; and corrective action if necessary. This action is necessary to prevent the loss of FQI of the center fuel tank, and electrical arcing between the FQI probes and the adjacent structure in the event the airplane is struck by lightning. Such arcing could create a potential ignition source within the center fuel tank and an increased risk of a fuel tank explosion and fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–301–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–301–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319 and A320 series airplanes. The DGAC advises that it has received reports from operators of loss of fuel quantity indications (FQI) of the center fuel tank. Investigation of the inside of the center fuel tank revealed that the source of the fault was an FQI probe touching the adjacent structure. Further investigation revealed that, during production of these airplanes, the support bracket for FQI probe 38QT had been installed in the position for FQI probe 39QT, and the support bracket for FQI probe 39QT had been installed in the position for FQI probe 38QT, which resulted in inadequate clearance. These conditions, if not corrected, could result in loss of FQI of the center fuel tank, and electrical arcing between the FQI probes and the adjacent structure in the event the airplane is struck by lightning. Such arcing could create a potential ignition source within the center fuel tank and an increased risk of a fuel tank explosion and fire.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–28A1096 including Appendix 01 and Reporting Sheet, all Revision 01, all dated July 4, 2001. The service bulletin describes procedures for an inspection for proper clearance space between the FQI probes located in the center fuel tank and the adjacent structure; an inspection of the position of the support bracket for each probe; an inspection of the part number for each support bracket; and corrective action if necessary. The corrective action includes removal and re-installation of the probe and its support bracket. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–271(B), dated June 27, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept 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 this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified

in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for the completion and submission of an inspection report (Appendix 01 and Reporting Sheet), this proposed AD would not require such reporting.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,440, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2001–NM–301–AD.

Applicability: Model A319 and A320 series airplanes, as listed in Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001, certificated in any category; except for those airplanes on which the actions specified in Airbus Service Bulletin A320–28A1096, dated March 23, 2001, or Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001, have been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of fuel quantity indication (FQI) of the center fuel tank, and to reduce the potential for an ignition source and possible explosion within the center fuel tank due to electrical arcing between the FQI probes and the adjacent structure, in the event the airplane is struck by lightning, accomplish the following:

Inspection

(a) Within 4,000 flight hours after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD per Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001; excluding Appendix 01 and Reporting Sheet, both Revision 01, both dated July 4, 2001.

(1) Perform a one-time detailed inspection for proper clearance space between each FQI probe located in the center fuel tank and the adjacent structure; and a one-time detailed inspection of the position of the support bracket for each probe.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Inspect the support bracket for each probe to determine the part number.

Corrective Action

(b) During the inspections required by paragraph (a) of this AD, if the clearance between any FQI probe and the adjacent structure is determined to be less than 6.00 millimeters (0.236 inch), or if the position or part number of any probe support bracket is not correct, before further flight, remove and re-install the probe and its support bracket, per Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001; excluding Appendix 01 and Reporting Sheet, both Revision 01, both dated July 4, 2001.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–271(B), dated June 27, 2001.

Issued in Renton, Washington, on December 24, 2002.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–10–30 Airplane

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to a single McDonnell Douglas Model DC–10–30 airplane. This proposal would require repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary. This action is necessary to prevent arcing of connectors in the fuel boost/transfer pump circuit, which could result in a fire or explosion of the fuel tank. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–134–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–134–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has previously received reports of five instances of failed connectors in the fuel boost/transfer pump circuit on certain McDonnell Douglas Model DC–10 and MD–11 series airplanes. The connectors returned for evaluation exhibited arcing of the contacts to the shell in the back side of the connector and between the glass insert and potting material. Arcing also caused the potting material to be displaced from the glass seal in the connector backshell, which separated the contacts and wiring. Typically, the circuit breaker was not actuated, as the arcing event was faster than the time required for the circuit breaker to detect the event. The only indication has been that failed connectors cause loss of the fuel boost/transfer pump circuit. The cause of the connector failures is under investigation. Arcing of connectors of the fuel boost/transfer pump, if not corrected, could result in a fire or explosion of the fuel tank.

Other Relevant Rulemaking

We previously issued AD 2002–13–10, amendment 39–12798 (67 FR 45053, July 8, 2002), to require repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary. That AD applies to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; Model MD–10–10F and –30F airplanes; and Model MD–11 and –11F airplanes.

In the final rule for AD 2002–13–10, we note that, subsequent to the issuance of the notice of proposed rulemaking (NPRM) for that AD, the manufacturer issued Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. Revision 02 of the service bulletin contains no new procedures beyond those in previous revisions of the service bulletin, but adds a single airplane, fuselage number 0106, to the effectivity listing. That airplane had been inadvertently omitted from the previous issue of the service bulletin.

We state in AD 2002–13–10 that we may consider additional rulemaking to require accomplishment of the actions in that AD on the airplane added to Revision 02 of the referenced service bulletin. We have determined that such rulemaking is indeed necessary, and this proposed AD follows from that determination. We have included Note 1 in this proposed AD to clarify that this

proposed AD is related to AD 2002–13–10.

Explanation of Relevant Service Information

As specified previously in AD 2002–13–10, we previously reviewed and approved Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, which describe procedures for repetitive tests (using a digital multimeter and Quadtech 1864 megohm meter) for electrical continuity and resistance and repetitive general visual inspections to detect discrepancies (*e.g.*, damage, arcing, loose parts, wear) of the fuel boost/transfer pump connectors (alternating current pumping unit); and corrective actions, if necessary. The corrective actions include replacement of the connector/wire assembly with a serviceable connector/wire assembly, and replacement of the pump with a serviceable fuel boost/transfer pump, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Service Information

Although the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, refer to a reporting requirement using the form in the Appendix of the service bulletin, this proposed AD would not require such reporting. We do not need the information described in the Appendix to the service bulletin.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Cost Impact

This proposed AD applies to one airplane and that airplane is of U.S. registry. It would take approximately 65 work hours to accomplish the proposed tests and inspections on that airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on the single U.S. operator is estimated to be $3,900, per test or inspection cycle.

The cost impact figure discussed above is based on assumptions that the operator has not yet accomplished any of the proposed requirements of this AD action, and that the operator would not accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2002–NM–134–AD.

Applicability: Model DC–10–30 airplane, fuselage number 0106, certificated in any category.

Note 1: The requirements of this AD are identical to those in AD 2002–13–10, amendment 39–12798, which applies to Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes, and Model MD–10–10F and –30F airplanes; as listed in Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 01, dated July 16, 2001; and Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000.

Note 2: Airplane fuel tanks on which the fuel/boost pump and wiring connector have been physically removed and the fuel tank made inoperable are not subject to the requirements of this AD.

Note 3: This AD applies to the airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. If the airplane has been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of connectors of the fuel boost/transfer pump, which could result in a fire or explosion of the fuel tank, accomplish the following:

Repetitive Tests and Inspections

(a) Within 6 months after the effective date of this AD, do tests (using a digital multimeter and Quadtech 1864 megohm meter or an equivalent megohm meter that meets current and voltage requirements, as specified in the service bulletin) for electrical continuity and resistance and a general visual inspection to detect discrepancies (*e.g.*, damage, arcing, loose parts, wear) of the fuel boost/transfer pump (alternating current pumping unit) by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. Repeat the tests and inspection thereafter every 18 months. Although the service bulletin refers to a reporting requirement using the Appendix of the service bulletin, such reporting is not required.

Note 4: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions, If Necessary

(b) If the result of any test required by paragraph (a) of this AD is outside the limits specified in the service bulletin identified in that paragraph, or if any discrepancy is detected during any inspection required by paragraph (a) of this AD, before further flight, accomplish corrective actions (*e.g.*, replacement of connector/wire assembly with serviceable connector/wire assembly, and replacement of the pump with a serviceable fuel boost/transfer pump), as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. Although the service bulletin refers to a reporting requirement using the Appendix of the service bulletin, such reporting is not required.

Alternative Methods of Compliance

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on December 27, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–47 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–268–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe.125 Series 800A, 800A (C–29A), 800A (U–125), and 800B Airplanes; Model BH.125 Series 400A Airplanes; Model DH.125 Series Airplanes; Model Hawker 800, 800 (U–125A), and 800XP Airplanes; and Model HS.125 Series F3B, F3B/RA, F400B, F403B, 1B, 1B–522, 1B/R–522, 1B/S–522, 3B, 3B/R, 3B/RA, 3B/RB, 3B/RC, 400B, 400B/1, 401B, 403A(C), and 403B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon airplanes. This proposal would require inspection of the main landing gear (MLG) wheels to determine the part numbers of the tie-bolt nuts, and replacement of nuts that have the incorrect part number with nuts that have the correct part number. This action is necessary to prevent separation of an MLG wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 7227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–268–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this proposed rule may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–268–AD."

The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that two tie-bolt nuts were missing from a main landing gear (MLG) wheel, and that the remaining nuts were loose on a Raytheon Model Hawker 800XP airplane. Investigation revealed that the airplane manufacturer supplied to operators tie-bolt nuts with an incorrect part number, which were then installed on the MLG wheel tie-bolts. Tie-bolt nuts that have the incorrect part number have a lesser locking capability than the correct tie-bolt nuts. Installing incorrect tie-bolt nuts could lead to the nuts loosening due to the nuts not locking properly, which could result in the failure of the tie-bolts on the MLG wheel. This condition, if not corrected, could result in separation of an MLG wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground.

The tie-bolt nuts installed on the MLG wheels of the Raytheon Model BAe.125 series 800A, 800A (C–29A), 800A (U–125), and 800B airplanes; Model BH.125 series 400A airplanes; Model DH.125 series airplanes; Model Hawker 800, 800 (U–125A), and 800XP airplanes; Model HS.125 series F3B, F3B/RA, F400B, F403B, 1B, 1B–522, 1B/R–522, 1B/S–522, 3B, 3B/R, 3B/RA, 3B/RB, 3B/RC, 400B, 400B/1, 401B, 403A(C), and 403B airplanes may be identical to those installed on the affected Raytheon Model Hawker 800XP airplanes. Therefore, all of these airplane models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB 32–3522, dated September 2002, including Service Bulletin/Kit Drawing Report Fax, which describes procedures for inspecting the MLG wheels to determine the part numbers of the tie-bolt nuts, and replacing the tie-bolt nuts with new nuts if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for the completion and submission of a Service Bulletin/Kit Drawing Report Fax for reporting the relevant airplane and modification details, this proposed AD does not include such a reporting requirement.

Cost Impact

There are approximately 166 airplanes of the affected design in the worldwide fleet. The FAA estimates that 84 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,040, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket 2002–NM–268–AD.

Applicability: The following airplanes, certificated in any category:

TABLE.—AIRPLANE MODELS, SERIAL NUMBERS, AND EQUIPMENT

Model	Serial numbers	Equipped with—
BAe.125 series 800A	All	[Reserved].
BAe.125 series 800A (C–29A)	All	[Reserved].

TABLE.—AIRPLANE MODELS, SERIAL NUMBERS, AND EQUIPMENT—Continued

Model	Serial numbers	Equipped with—
BAe.125 series 800A (U–125)	All	[Reserved].
BAe.125 series 800B	All	[Reserved].
BH.125 series 400A	All	[Reserved].
DH.125 series airplanes	All	[Reserved].
Hawker 800	All	[Reserved].
Hawker 800 (U–125A)	Up to and including serial numbers 258493.	[Reserved].
Hawker 800XP	Up to and including serial numbers 258581.	Dunlop wheels part numbers AH51909, AH52075, AH52286, AH52206, AHA1287, AHA1606, or AHA1814.
HS.125 series F3B	All	[Reserved].
HS.125 series F3B/RA	All	[Reserved].
HS.125 series F400B	All	[Reserved].
HS.125 series F403B	All	[Reserved].
HS.125 series 1B	All	[Reserved].
HS.125 series 1B–522	All	[Reserved].
HS.125 series 1B/R–522	All	[Reserved].
HS.125 series 1B/S–522	All	[Reserved].
HS.125 series 3B	All	[Reserved].
HS.125 series 3B/R	All	[Reserved].
HS.125 series 3B/RA	All	[Reserved].
HS.125 series 3B/RB	All	[Reserved].
HS.125 series 3B/RC	All	[Reserved].
HS.125 series 400B	All	[Reserved].
HS.125 series 400B/1	All	[Reserved].
HS.125 series 401B	All	[Reserved].
HS.125 series 403A(C)	All	[Reserved].
HS.125 series 403B	All	[Reserved].

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

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of a main landing gear (MLG) wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground, accomplish the following:

Inspection

(a) Within 10 landings or 12 days after the effective date of this AD, whichever comes first, inspect the MLG wheels to determine the part numbers (P/Ns) of the tie-bolt nuts; per Raytheon Service Bulletin SB 32–3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax.

Replacement

(b) If any tie-bolt nut having P/N NAS1804 is found installed during the inspection required by paragraph (a) of this AD, before further flight, replace the tie-bolt nut with a new nut having P/N FN22A524, (or with a new tie-bolt nut having a Dunlop P/N H5227C–5CW, SN407C–054, or LH13318–5, which are P/Ns authorized by Raytheon); per Raytheon Service Bulletin SB 32–3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax.

Parts Installation

(c) As of the effective date of this AD, no person shall install any MLG wheel having a tie-bolt nut with P/N NAS1804, on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on December 27, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–49 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–395–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires repetitive detailed inspections to detect cracked, corroded, or stained collar fittings on both inboard trailing edge flaps; and follow-on corrective actions, if necessary. This action would expand the applicability in the existing AD, and would add

repetitive inspections for discrepancies of the collar fittings, torque tube, and splined bushings on both inboard trailing edge flaps; and follow-on and corrective actions, if necessary. The actions specified by the proposed AD are intended to prevent failure of the collar fittings, which could result in separation of the inboard trailing edge flap and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–395–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–395–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–395–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–395–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 21, 1998, the FAA issued AD 98–22–12, amendment 39–10859 (63 FR 57577, October 28, 1998), applicable to certain Boeing Model 767 series airplanes, to require repetitive detailed inspections to detect cracked, corroded, or stained collar fittings on both inboard trailing edge flaps; and follow-on corrective actions, if necessary. That action was prompted by a report indicating that a collar fitting suffered a complete fracture as a result of stress corrosion cracking. The requirements of that AD are intended to prevent separation of the inboard trailing edge flap from the airplane due to fractured collar fittings.

In the preamble to AD 98–22–12, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. We now have determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–22–12, the airplane manufacturer has received reports indicating corrosion of the splined components of the inboard support of the trailing edge flap. The root cause of the corrosion was determined to be a breakdown of the MIL–G–23827 grease in the joint, which subsequently allowed moisture to enter the joint. Eventually, the splined components corroded and, in two instances, stress corrosion cracking of one component occurred. We now have determined that it is necessary to require additional inspections on airplanes affected by the existing AD and to expand the applicability of the existing AD to include airplanes that were assembled with the corrosion inhibiting compound (CIC) BMS 3–27 and delivered before the Maintenance Planning Document (MPD) was revised by the manufacturer in April 1999. The MPD was revised to include the 12-year/24,000-flight-cycle teardown inspection as part of normal airplane maintenance for airplanes assembled with BMS 3–27.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001, and Evaluation Form. (The existing AD shows Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998, as the appropriate source of service information for accomplishment of the actions required by that AD.) Revision 3 of the service bulletin adds Part 5—Titanine Inspection and Rework, which describes procedures for doing Part 1-Inspection, Part 3-Spline Inspection, and Part 4-Spline Rework; then repeating the spline inspection at the intervals specified if it is determined that the CIC Titanine JC5A was used per Revision 2 of the service bulletin, dated February 18, 1999, or if the maintenance records are inconclusive on the type of CIC used. Subsequent to issuance of Revision 2 of the service bulletin, it was determined that Titanine JC5A does not provide adequate corrosion protection for the joints specified in the service bulletin. Revision 3 of the service bulletin also describes procedures for light wear rework of the splines if no corrosion or corrosion pits are found, in lieu of a complete spline evaluation and overhaul. Appendix A, titled "Guide for Determining the Level of Rework Required," was added to assist operators

in determining if the light wear rework procedure can be used. Part 3—Spline Inspection describes procedures for repetitive spline inspections in lieu of terminating action as routine scheduled maintenance, and defines procedural clarifications and changes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–22–12 to continue to require repetitive detailed inspections to detect cracked, corroded, or stained collar fittings on both inboard trailing edge flaps; and follow-on corrective actions, if necessary. This new action would expand the applicability in the existing AD, and would add repetitive inspections for discrepancies of the collar fittings, torque tube, and splined bushings on both inboard trailing edge flaps; and follow-on and corrective actions, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Service Information and This Proposed AD

Operators should note that the number of airplanes to which this proposed AD is applicable is larger than that published in the service bulletin. Additional line numbers of airplanes have been included (line numbers 1 through 749 inclusive), as advised in Boeing Letter B–H210–01–0432, dated December 14, 2001.

Explanation of Changes Made to Existing Requirements

We have changed all references to a "detailed visual inspection" in the existing AD to a "detailed inspection" in this AD. We also have added Part 4-Spline Rework, specified in Revision 3 of the service bulletin, to paragraphs (a)(3) and (a)(4)(ii) of the existing AD for the repair of corrosion, as an alternative to repairing per the Manager, Seattle Aircraft Certification Office.

Cost Impact

There are approximately 738 airplanes of the affected design in the worldwide fleet. The FAA estimates that 306 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 98–22–12 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $120 per airplane, per inspection cycle.

The new inspections and refinishing that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $36,720, or $120 per airplane, per cycle.

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

Should an operator be required to do the replacement proposed in this AD action, it would take approximately 63 work hours per wing, at an average labor rate of $60 per work hour. Parts costs are not available at this time. Based on these figures, the cost impact of the replacement is estimated to be $3,780 per wing, per airplane.

Should an operator be required to do the rework proposed in this AD action, it would take approximately 63 work hours per wing, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the rework is estimated to be $3,780 per wing, per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10859 (63 FR 57577, October 28, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–395–AD. Supersedes AD 98–22–12. Amendment 39–10859.

Applicability: Model 767 series airplanes, line numbers 1 through 749 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the collar fittings on the inboard trailing edge flaps, which could result in separation of the flap and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 98–22–12

Detailed Inspections/Corrective Actions

(a) For airplanes having line numbers 1 through 721 inclusive, except as provided by

paragraphs (c) and (e) of this AD: Within 8 years since the date of manufacture of the airplane, or within 90 days after November 12, 1998 (the effective date of AD 98–22–12, amendment 39–10859), whichever occurs later; perform a detailed inspection of the collar fittings of both inboard trailing edge flaps to detect cracks, corrosion, or staining, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998; or Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form. As of the effective date of this AD, only Revision 3 shall be used.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracked, corroded, or stained collar fitting is found, repeat the detailed inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 120 days.

(2) If any cracked collar fitting is found, prior to further flight, install a new collar fitting in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

(3) If any corroded collar fitting is found, prior to further flight, repair the corrosion in accordance with Part 4 of the Accomplishment Instructions of Revision 3 of the service bulletin; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(4) If any stained collar fitting is found, accomplish the requirements of paragraphs (a)(4)(i) and (a)(4)(ii) of this AD at the compliance times specified.

(i) Repeat the detailed inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 45 days; and

(ii) Within 18 months after finding the stained collar fitting, accomplish Part 2 of the Accomplishment Instructions of the alert service bulletin. If any corroded collar fitting is found, before further flight, repair the corrosion in accordance with Part 4 of the Accomplishment Instructions of Revision 3 of the service bulletin; or in accordance with a method approved by the Manager, Seattle ACO.

New Requirements of This AD

Detailed Inspection

(b) For airplane line number 723: Within 8 years since the date of manufacture of the airplane, or within 90 days after the effective date of this AD, whichever is later; do a detailed inspection of the collar fittings of both inboard trailing edge flaps to detect cracks, corrosion, or staining, as specified in paragraph (a) of this AD, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form. Then do the applicable actions specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

Repetitive Inspections/Follow-On and Corrective Actions

(c) For airplanes having line numbers 1 through 703 inclusive, 705 through 715 inclusive, 717, 718, 721, and 723; and for the right-hand side of the airplane on line number 716: Within 10 years since the date of manufacture of the airplane, or within 4 years after the effective date of this AD, whichever is later; do a detailed (spline) inspection of the collar fittings, torque tube, and splined bushings for discrepancies (including cracks, fractures, corrosion, corrosion pits, and light wear), in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form. Accomplishment of the inspections required by this paragraph, before the initial inspection required by paragraph (a) of this AD, meets the inspection requirements in paragraph (a) of this AD.

(d) If no discrepancy is found during any inspection required by paragraph (c) or (g) of this AD, before further flight, refinish the parts in accordance with Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form; and repeat the inspection every 24,000 flight cycles or 12 years, whichever is first. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (a) of this AD.

(e) If any discrepancy is found during any inspection required by paragraph (c) or (g) of this AD, before further flight, do the actions specified in either paragraph (e)(1) or (e)(2) of this AD in accordance with Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (a) of this AD.

(1) Replace the affected part with a new part, and reassemble the joint with liberal coatings of corrosion inhibiting compound (CIC) BMS 3–27 or BMS 3–38, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the applicable inspection every 24,000 flight cycles or 12 years, whichever is first.

(2) Rework the affected part, and reassemble the joint with liberal coatings of CIC BMS 3–27 or BMS 3–38, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the applicable inspection as specified in paragraph (e)(2)(i), (e)(2)(ii), or (e)(2)(iii) of this AD, as applicable.

(i) If five or fewer spline lengths are reworked per Figure 8 of the service bulletin, repeat the inspection every 24,000 flight cycles or 12 years, whichever is first.

(ii) If more than five spline lengths, but fewer than or equal to the maximum number of spline lengths allowed per Figure 8 of the service bulletin are reworked, repeat the inspection every 12,000 flight cycles or 6 years, whichever is first.

(iii) If more than the maximum number of spline lengths allowed per Figure 8 of the service bulletin are reworked, before further flight, replace the splined component and repeat the inspection every 24,000 flight cycles or 12 years, whichever is first.

Additional Inspections for Airplanes Inspected per Revision 2 of the Service Bulletin

(f) For any airplane on which the inspection required by paragraph (a) of this AD was done in accordance with Boeing Alert Service Bulletin 767–57A0066, Revision 2, dated February 18, 1999; and on which the CIC Titanine JC5A was used, or the maintenance records are inconclusive of the type of CIC used: Do the initial inspection and follow-on actions specified in paragraph (c) of this AD within 3 years after the most recent inspection done in accordance with Revision 2 of the service bulletin, or within 90 days after the effective date of this AD, whichever is later.

Airplanes Assembled With BMS 3–27

(g) For airplanes having line numbers 704, 719, and 720, 722, and 724 through 749 inclusive; and for the left-hand side of the airplane on line number 716: Within 12 years since the date of manufacture of the airplane, or within 24,000 flight cycles after the effective date of this AD, whichever is first; do a detailed (spline) inspection of the collar fittings, torque tube, and splined bushings for discrepancies (including cracks, fractures, corrosion, corrosion pits, and light wear). Do the inspection in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, dated December 19, 2001; including Appendices A and B, and excluding Evaluation Form, then, before further flight, do the applicable actions specified in either paragraph (d) or (e) of this AD.

(h) If the initial inspection required by paragraph (a) of this AD has not been done as of the effective date of this AD, operators may do the inspection required by paragraph (g) of this AD in lieu of the inspection required by paragraph (a) of this AD, at the time specified.

Use of Titanine JC5A Prohibited

(i) As of the effective date of this AD, no person shall use the CIC Titanine JC5A on the collar fittings, torque tube, and splined bushings on any airplane.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–22–12, Amendment 39–10859, are not

considered to be approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on December 27, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–48 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13936; Airspace Docket No. 02–AEA–22]

Establishment of Class E Airspace; Ridgely, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Ridgely Airpark (RJD), Ridgely, MD. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) to serve flights operating into Ridgely Airpark under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before February 3, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13936/ Airspace Docket No. 02–AEA–22 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Frances T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4089, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-regulated aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–13936/Airspace Docket No. 02–AEA–22". The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Documents web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Ridgely, MD. The development of SIAPs to serve flights operating IFR into Ridgely Airpark makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AEA MD E5 Ridgely, MD [NEW]

Ridgely Airpark

(Lat. 35°58′12″ N., long. 75°51′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Ridgely Airpark, excluding that portion that coincides with the Centerville, MD Class E airspace area.

* * * * *

Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–68 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL 7429.2]

RIN 2060–AG99, 2060–AG52, 2060–AG69, 2060–AG67, 2060–AG96, 2060–AH03

National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of proposed rules and changes to public comment periods.

SUMMARY: This document is to inform the public that the proposed national emission standards for hazardous air pollutants (NESHAP) for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining have been signed by the Administrator and are scheduled to be published as proposed rules in the **Federal Register** within a few weeks. Copies are available on EPA's Web site. We typically allow a 60-day public comment period after publication of proposed NESHAP in the **Federal Register**; however, we are providing advance notice that when these proposed rules are published in the **Federal Register**, the comment period will be 30 days after publication.

FOR FURTHER INFORMATION CONTACT: Mr. Keith W. Barnett, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541–5600, telephone number (919) 541–5605, electronic mail *barnett.keith@epa.gov.*

SUPPLEMENTARY INFORMATION: An electronic copy of today's notice is available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* In addition, electronic versions of all these proposed NESHAP that are affected by this notice are also currently available on the TTN at *http://www.epa.gov/ttn/oarpg/new.html.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

In accordance with section 112(e)(1) of the Clean Air Act (CAA), EPA issued a schedule for promulgation of NESHAP that specified that the NESHAP for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining were to be promulgated as final rules by November 15, 2000. We are now considerably past that date. In addition, the requirements of section 112(j) of the CAA specify that all sources in these source categories must submit permit applications for case-by-case determinations of the maximum achievable emissions reductions of hazardous air pollutants in the absence of a final rule. It is imperative that these proposed rules be finalized as soon as possible to avoid the unnecessary expenditure of resources by affected sources and permitting authorities.

The proposed NESHAP were signed by the Administrator on November 26, 2002, and were available on the TTN on the same day. Therefore, the proposed NESHAP have been widely available to the public since that time. We do not anticipate that any of the proposed NESHAP will be published in the **Federal Register** prior to December 26, 2002. If we allow a comment period of 30 days from actual publication in the **Federal Register**, the proposed NESHAP will still have been widely available to the public for 60 days or more.

Dated: December 20, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–32718 Filed 12–31–02; 10:34 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–7434–2]

Pennsylvania Approval of Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of tentative determination on Pennsylvania's application for approval of its Underground Storage Tank Program, public hearing and public comment period.

SUMMARY: The Commonwealth of Pennsylvania (Commonwealth or State) has applied for approval of its underground storage tank (UST) program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State's application and has made the tentative determination that the State's UST program satisfies all of the requirements necessary to qualify for approval. The State's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application unless insufficient public interest is expressed.

DATES: Unless insufficient public interest is expressed in holding a hearing, a public hearing will be held on February 19, 2003. However, EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing by February 13, 2003. EPA will determine by February 14, 2003, whether there is sufficient interest to warrant a public hearing. The State will participate in any public hearing held by EPA on this subject. All written comments on the State's application for program approval must be received by February 13, 2003.

ADDRESSES: Copies of the State's application for program approval are available between 8:30 a.m. to 4 p.m. at the following locations for inspection and copying:

Location: Pennsylvania Department of Environmental Protection, Division of

Storage Tanks, Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania.

Contact: James C. Adair, Telephone: (717) 772–5551.

Location: Pennsylvania Department of Environmental Protection, Southwest Regional Office, Central Services, 400 Waterfront Drive, Pittsburgh, Pennsylvania.

Contact: Edward Duval, Telephone: (412) 442–4000.

Location: United State Environmental Protection Agency, Region III, Library, 1650 Arch Street, Philadelphia, Pennsylvania. Telephone: (215) 814–5254.

Written comments should be sent to Carletta Parlin, Program Manager, RCRA State Programs Branch, Waste & Chemicals Management Division (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone: (215) 814–3380. Comments may also be submitted electronically through the Internet to: *parlin.carletta@epamail.epa.gov* or by facsimile at (215) 814–3163.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State's application for program approval on February 19, 2003, at 7 p.m. at the United States Environmental Protection Agency, 1650 Arch Street, 2nd Floor, Joan Goodis Room, Philadelphia, Pennsylvania.

It is EPA's policy to make reasonable accommodation to persons with disabilities wishing to participate in the Agency's programs and activities, pursuant to the Rehabilitation Act of 1973, 29 U.S.C. 791, *et seq.* Any request for accommodation should be made to Carletta Parlin, preferably a minimum of two weeks in advance of the public hearing date, so that EPA will have sufficient time to process the request.

Anyone who wishes to learn whether or not the public hearing on the Commonwealth's application has been cancelled should telephone the EPA Program Manager, Carletta Parlin, at (215) 814–3380 on February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Carletta Parlin, RCRA State Programs Branch (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone: (215) 814–3380. Also, a copy of a fact sheet on today's action is available on the EPA Web Site at *www.epa.gov/reg3wcmd/public_notices.htm.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c, authorizes EPA to approve state underground storage tank programs to operate in lieu of the Federal UST program. EPA may approve a State program if the Agency finds pursuant to RCRA section 9004(b), 42 U.S.C. 6991c(b), that the state's program is "no less stringent" than the Federal program in all seven elements set forth at RCRA section 9004(a) (1) through (7), 42 U.S.C. 6991c(a) (1) through (7), meets the notification requirements of RCRA section 9004(a)(8), 42 U.S.C. 6991c(a)(8), and also provides for adequate enforcement of compliance with UST standards in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a).

B. Pennsylvania

The Pennsylvania Department of Environmental Protection (PADEP) is the implementing agency for UST activities in the State. PADEP's Underground Storage Tank Program is dedicating a substantial effort to prevent, control and remediate UST-related contamination. PADEP's Underground Storage Tank Program maintains a strong field presence and works closely with the regulated community to ensure compliance with regulatory requirements.

C. Where Are the State Rules Different From the Federal Rules?

The Commonwealth's regulations contain several requirements that are broader in scope than the Federal program which are not part of the program being authorized by today's action. EPA cannot enforce these broader in scope requirements. Although compliance with these provisions is required under Commonwealth law, they are not RCRA requirements. Such provisions include, but are not limited to, the following:

(1) Unlike the Federal program, Pennsylvania's program includes a definition of, and imposes obligations on, a "responsible party." To the extent that Pennsylvania's definition of a "responsible party" includes entities that go beyond the owner and operator of an UST, it is in this respect, broader in scope than the Federal program.

(2) Unlike the Federal program, the Commonwealth's statute establishes a certification program for installers of underground storage tanks. In this respect, the Commonwealth's program is broader in scope than the Federal program.

(3) Pennsylvania's regulations require a person to obtain a "Site Specific Installation Permit" from PADEP prior to installing a field-constructed UST. Additionally, these systems need a "General Operating Permit." Because the Federal program does not require any type of permit for tank installations or operations, the Commonwealth's program, in this respect, is broader in scope.

(4) Under Pennsylvania's regulations, underground storage tank owners or operators must have their underground storage tank facilities inspected by a state-certified inspector at the frequency established by Pennsylvania's regulations. The Federal regulations do not require third-party inspections, nor do they provide for a certified inspector program; therefore, in this regard, the Commonwealth's program is broader in scope than the Federal program.

(5) Unlike the Federal program, section 1311 ("Presumption") of Pennsylvania's Storage Tank and Spill Prevention Act establishes a rebuttable presumption that a person who owns or operates a storage tank shall be liable, without proof of fault, for all damages, contamination or pollution within 2,500 feet of the perimeter of the site of an UST that contained a regulated substance of the type which caused the damage, contamination or pollution. This provision of Pennsylvania's program is broader in scope than the Federal program.

The Pennsylvania Department of Environmental Protection submitted to EPA a final application for approval on November 25, 2002. Prior to its submission, the State provided an opportunity for public notice and comment in the development of its underground storage tank program, as required by 40 CFR 281.50(b). EPA has reviewed the State's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final approval. However, EPA intends to review all timely public comments prior to making a final decision on whether to grant approval to the State to operate its program in lieu of the Federal program.

In accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR 281.50(e), the Agency will hold a public hearing on its tentative determination on February 19, 2003, at 7 p.m. at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until February 13, 2003. Copies of the State's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

EPA will consider all public comments on its tentative determination received at the public hearing, if a

hearing is held, and during the public comment period. Issues raised by those comments may be the basis for a decision to deny approval to the State. EPA will give notice of its final decision in the **Federal Register**; the notice will include a summary of the reasons for the final determination and a response to all significant comments.

Statutory and Executive Order Reviews

This proposed rule will only approve State underground storage tank requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (*see* **SUPPLEMENTARY INFORMATION,** section A. Background). Therefore, this proposed rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this proposed rule from its review under Executive Order 12866. *2. Paperwork Reduction Act*—This proposed rule will not impose an information collection burden under the Paperwork Reduction Act. *3. Regulatory Flexibility Act*—After considering the economic impacts of today's proposed rule on small entities under the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. *4. Unfunded Mandates Reform Act*—Because this proposed 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. *5. Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this proposed rule because it will not have federalism implications (*i.e.*, 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). *6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 does not apply to this proposed rule because it will not have tribal implications (*i.e.*, 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). *7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This proposed rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks. *8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This proposed rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866. *9. National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this proposed rule.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedures, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This document is issued under the authority of section 9004 of the Resource Conservation and Recovery Act as amended 42 U.S.C. 6991c.

Dated: December 20, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–34 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI51

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Flat-tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the Fish and Wildlife Service (Service), have determined that the action of listing the flat-tailed horned lizard (*Phrynosoma mcallii*) as threatened, pursuant to the Endangered Species Act (Act) of 1973, as amended, is not warranted, and we consequently withdraw our proposed rule. We have made this determination because threats to the species as identified in the proposed rule are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

ADDRESSES: Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, at the above address (telephone, 760–431–9440, or fax, 760–431–9618).

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small phrynosomatid lizard that reaches a maximum adult body length of 8.4 centimeters (cm) (3.3 inches [in]) (Muth and Fisher 1992). The flat-tailed horned lizard has a dorso-ventrally flattened body; long, broad flattened tail; and dagger-like head spines common to horned lizards. The species is cryptic in color, ranging from pale gray to light rust brown dorsally, and white or cream ventrally. It can be distinguished from the only other horned lizard known to occur within its range, the desert horned lizard (*Phrynosoma platyrhinos*), by its dark vertebral stripe, two rows of fringed scales on each side of the body, lack of external ear openings, and unmarked white ventral surface in most individuals (Foreman 1997). Apparent hybrids between the two species, exhibiting a mix of morphological characteristics, have been observed in the vicinity of Ocotillo, California (Stebbins 1985), and southeast of Yuma, Arizona (K. Young, Utah State University, pers. comm. 2002).

The flat-tailed horned lizard is endemic (restricted) to the Sonoran Desert in southern California, southwestern Arizona, and adjoining portions of Sonora and Baja California, Mexico (Turner and Medica 1982). Within California, the flat-tailed horned lizard ranges from the Coachella Valley, the northernmost extent of its range, south along both sides of the Salton Sea and Imperial Valley. On the west side of the Salton Sea and Imperial Valley, the species ranges into the Borrego Valley, Ocotillo Wells area, West Mesa, and the Yuha Desert (Yuha Basin). On the east side of Imperial Valley, the species occurs in the vicinity of the Dos Palmas Bureau of Land Management (BLM)

Area of Critical Environmental Concern (ACEC), but predominantly occurs in East Mesa and in areas adjoining the Algodones Dunes (*i.e.*, Imperial Sand Dunes, Glamis Sand Dunes). In Arizona, the flat-tailed horned lizard is found in the Yuma Desert south of the Gila River and west of the Gila and Butler Mountains (Rorabaugh *et al.* 1987). The flat-tailed horned lizard is patchily distributed throughout its range, and has been recorded at elevations as high as 520 meters (m) (1,706 feet [ft]) above sea level, but is more commonly found below 250 m (820 ft) in areas with flat-to-modest slopes (Turner *et al.* 1980).

The range of the flat-tailed horned lizard extends into Mexico from the international border in the Yuha Desert in California, south to Laguna Salada in Baja California, and from the international border in the Yuma Desert in Arizona, south and east through the Pinacate Region to the sandy plains around Puerto Penasco and Bahia de San Jorge, Sonora (Johnson and Spicer 1985, Gonzales-Romero and Alvarez-Cardenas 1989).

The distribution of the flat-tailed horned lizard is not contiguous across its range, because of fragmentation by large-scale agricultural and urban development, primarily in the Imperial Valley and the Coachella Valley. In addition, the Salton Sea, Colorado River, East Highline Canal, New Coachella Canal, and All American Canal are barriers to movement of flat-tailed horned lizards.

Due to this habitat fragmentation and existing geographic barriers, the distribution of flat-tailed horned lizards appears to be currently divided on a broad scale into at least four geographically discrete populations: three in California and one in Arizona. The three populations in California are located in the Coachella Valley, the west side of the Salton Sea/Imperial Valley, and the east side of the Imperial Valley.

The Coachella Valley population of flat-tailed horned lizards was likely much more extensive and connected to other populations in California in the past. Now it is isolated by extensive agricultural development in the southern half of the Coachella Valley and by the Salton Sea. The other two populations of flat-tailed horned lizards, on the west side of the Salton Sea/Imperial Valley and the east side of the Imperial Valley, are isolated from the Coachella Valley population and each other by agricultural and urban development of the Imperial Valley and by the Salton Sea. The Arizona population is isolated from populations in California by agricultural and urban development around Yuma, and ultimately by the Colorado River.

Hodges (1997) estimated that the flat-tailed horned lizard historically (prior to agricultural or urban development of either the Coachella or Imperial Valleys) occupied up to 979,037 hectares (ha) (2,419,200 acres [ac]) in Arizona and California. Approximately 51 percent (503,173 ha [1,243,340 ac]) of this historical habitat remains in the United States, with about 56,770 ha (140,300 ac) in Arizona and 446,390 ha (1,103,040 ac) in California (Hodges 1997). The Salton Sea area could arguably be considered ephemeral historical habitat, present at some points and absent at others, as the area changed through time. Hodges (1977) included the Salton Sea as historical habitat. If the area the Salton Sea currently occupies is not considered historical habitat, then approximately 57 percent (557,072 ha [1,376,525 ac]) of historical habitat remains in the United States.

Johnson and Spicer (1985) estimated that in 1981 approximately 59 percent of the species range occurred in Mexico, with the majority of the range in Mexico occurring in the state of Sonora. However, the distribution of the species in Mexico is poorly understood because few surveys have been conducted to determine where the species occurs in Mexico (CEDO 2001). In Sonora, about 14 percent of the habitat was estimated to be threatened by urban, agricultural or recreational use, and habitat degradation in 1981 (Johnson and Spicer 1985). In Baja California Norte, considerable habitat loss has occurred in the Mexicali Valley, where urban and agricultural development extends from Mexicali to the Colorado River (Johnson and Spicer 1985, Foreman 1997).

The majority (about 60 percent) of the species' range in Mexico lies within two federally protected areas: (1) The Upper Gulf of California and Colorado Delta Biosphere Reserve, and (2) the Pinacate and Gran Desierto de Altar Biosphere Reserve (CEDO 2001). The National Park of Pinacate is an area administered by the Mexican government with use restrictions similar to those in a national park in the United States. The Pinacate area is primarily a volcanic zone within which flat-tailed horned lizard habitat is probably limited to the sandy perimeters of Volcan Pinacate. The Upper Gulf of California Biosphere Reserve includes flat-tailed horned lizard habitat in the vicinity of the Colorado River Delta in Sonora, Mexico.

The flat-tailed horned lizard is most commonly found in sandy flats and valleys in a creosote (*Larrea tridentata*)—white bursage (*Ambrosia dumosa*) plant association (Turner *et al.* 1980; Muth and Fisher 1992; Foreman 1997). Turner *et al.* (1980) stated the best habitats are generally low-relief areas with surface soils of fine packed sand or pavement, overlain with loose, fine sand. Flat-tailed horned lizards are also known to occur at the edges of vegetated sand dunes, on barren clay soils, and sparse saltbush communities, but Turner *et al.* (1980) suspected that these recorded occurrences were actually individuals that had dispersed from more suitable habitats. Within a creosote plant community in West Mesa, California, Muth and Fisher (1992) found that flat-tailed horned lizards preferred sandy substrates with white bursage and Emory dalea (*Psorothamnus emoryi*), and avoided creosote and *Tequilia plicata*. In Arizona, Rorabaugh *et al.* (1987) found flat-tailed horned lizard abundance correlated with big galleta grass (*Hilaria rigida*) and sandy substrates, but suggested that the presence of sandy substrates were more important than that of big galleta grass.

Several researchers have investigated the relationship between density of perennial plants and flat-tailed horned lizard abundance. The relationships observed varied among studies (Altman *et al.* 1980, Turner and Medica 1982, Beauchamp *et al.* 1998). Altman *et al.* (1980) and Turner and Medica (1982) found the relative abundance of horned lizards was significantly and positively correlated with perennial plant density in creosote-white bursage plant communities. However, Beauchamp *et al.* (1998) found flat-tailed horned lizards to be present in higher relative densities in sparsely vegetated areas with large patches of concretions, gravel, and silt, than they were in sandy or densely vegetated areas. Altman *et al.* (1980) also reported finding flat-tailed horned lizards in desert pavement areas. Foley (2002) found little correlation in substrate texture and distribution of flat-tailed horned lizards when using three experimental treatments consisting of sandy, rocky and mixed substrates. However, Grant and Wright (2002) found flat-tailed horned lizard abundance was positively correlated with percentage of sand cover.

Information concerning population dynamics of flat-tailed horned lizard populations is limited and inconclusive. Since 1979, population trends were monitored using a combination of scat counts and lizards observed along transects (Wright 2002). Different methods of transect selection, numbers and experience of observers, numbers of repetitions, and lengths and shapes of transects have been used from year to year (Wright 2002).

The relationship between scat counts and lizard abundance is unclear, or weak at best (Wright 2002). Wright (2002) states that while differences in scat abundance could indicate differences in lizard abundance, the observed decline in the rate at which scat is found could also be a result of an increase in Off-Highway Vehicle (OHV) activity resulting in crushed or buried scat, lower deposition rates, greater wind eradication, different observers, or additional factors. Furthermore, the use of scat counts does not account for variations in lizard activity, misidentification of scat from other species, scat production due to fluctuating food resources, weather conditions that affect scat production or longevity in the field, observer differences, and small sample sizes (Muth and Fisher 1992, Rorabaugh 1994). Consequently, scat abundance may not be positively correlated with lizard abundance under varying conditions (Rorabaugh 1994, Beauchamp *et al.* 1998). In addition, the use of a relative index, such as scat counts, to indicate population trends is not reliable due to uncorrected bias that exists (discussed further below). Relative index techniques assume that any changes or differences in survey results are proportional to true changes or differences in the populations of interest (Thompson *et al.* 1998). Thus, due to the significant limitations of scat count data, we consider the use of scat count information useful primarily in determining the distribution and presence of flat-tailed horned lizards.

Two measures of abundance trends (*i.e.*, lizards detected per 10 hours, and lizards per transect) used between 1979 and 2001 for the East Mesa, West Mesa, and Yuha Basin, did not include scat data (Wright 2002). No statistically significant trends were found in the rate at which lizards were detected or the number of lizards per transect on any of the areas from 1979 to 2001 (Wright 2002). The measure of lizards per transect has inherent error due to differences in transect lengths surveyed among years. More importantly, the methodologies used between 1979 and 2001 have varied and the data have not incorporated detection probabilities (see Thompson *et al.* 1998). Because flat-tailed horned lizards are very difficult to find in the field due to their cryptic coloration and behavioral characteristics, incorporating the probability of detecting them into survey results is very important.

Detectability is a common source of bias that is ignored for relative index techniques, such as the techniques used to collect the data between 1979 and 2001. Numerous factors may affect the detectability of animals within selected sampling plots. These include physical structure and cover, weather, individual behavior, and survey methodology. However, it is possible that differences in relative abundance found using uncorrected data may result from only a difference in detectability of animals between areas or within the same area across time (Thompson *et al.* 1998). Uncorrected bias could seriously affect the validity and usefulness of data in indicating abundance trends (Thompson *et al.* 1998).

The BLM recently estimated the population size on the Yuha Basin Management Area (MA) (one of five management areas identified in a management strategy for the species) by using capture-mark-recapture (CMR) techniques incorporating detection probabilities (see Thompson *et al.* 1998, Williams *et al.* 2002). In the summer (June to August) of 2002, the population of flat-tailed horned lizards for the Yuha Basin MA (24,122 ha [59,605 ac]) was estimated at 18,494 adults (95 percent CI = 14,596 to 22,391) (Grant and Wright 2002) and 8,685 juveniles (95 percent CI = 6,860 to 10,510) (derived from Grant and Wright 2002). "Adults" included all lizards greater than 60 millimeters (mm) (Young and Young 2000), while "juveniles" included all lizards 60 mm or less in snout-to-vent length. Population estimates for the other four MAs using a CMR methodology will be conducted soon, for the first time (Gavin Wright, BLM biologist, pers. comm. 2002).

Greater than 95 percent of the diet of flat-tailed horned lizards consists of ants of the genera *Messor, Pogonomyrmex, Conomyrma*, and *Myrmecocystus* (Turner and Medica 1982, Pianka and Parker 1975). Flat-tailed horned lizards are oviparous (egg-laying), early maturing, and may produce multiple clutches within a breeding season (Howard 1974). Flat-tailed horned lizards produce relatively small egg clutches (N = 31; mean clutch size = 4.7; range = 3 to 7; Howard 1974), compared to most other horned lizards (Pianka and Parker 1975). The first cohort hatches in July to August (Muth and Fisher 1992; Young and Young 2000), and in some years a second cohort may be produced (Howard 1974, Young and Young 2000). Hatchlings from the first cohort may reach sexual maturity after their first winter season, whereas hatchlings born later may require an additional growing season to mature (Howard 1974, Young and Young 2000). Flat-tailed horned lizards can live up to at least 6 years in the wild (FTHL–ICC 2002), and up to 9 years in captivity (Baur 1986).

Flat-tailed horned lizards can have relatively large home ranges (Foreman 1997). Muth and Fisher (1992) found the mean home range for lizards (N = 22) was 2.7 ha (6.7 ac) from a minimum of 19 locations in West Mesa. In the Yuma Desert of Arizona, Young and Young (2000) found mean home ranges for males differed between drought and wet years, while those of females did not. The mean home range for males was 2.5 ha (6.2 ac) during a dry year versus 10.3 ha (25.5 ac) during a wet year. Female mean home ranges were smaller at 1.3 ha (3.2 ac) and 1.9 ha (4.7 ac) in dry and wet years, respectively (Young and Young 2000). Young and Young (2000) noted a wide variation in movement patterns, with a few home ranges estimated at greater than 34.4 ha (85 ac).

Flat-tailed horned lizards generally lie close to the ground and remain motionless when approached (Wone 1995); however, but on occasion they may bury themselves in loose sand if it is available (Norris 1949). More rarely they may flee. Their propensity to remain motionless and bury themselves in the sand, along with their cryptic coloration and flattened body, make them very difficult to find in the field (Foreman 1997). During the summer, a flat-tailed horned lizard may escape extreme surface temperatures either by burying the main part of its body below the surface layer (Norris 1949) or by retreating to a burrow (Rorabaugh 1994, Young and Young 2000).

Adult flat-tailed horned lizards are reported to be obligatory hibernators (Mayhew 1965), although individuals have been noted on the surface during January and February (Eric Hollenbeck, Ocotillo Wells SVRA biologist, pers. comm. 2002). Hibernation may begin as early as October and end as late as March (Muth and Fisher 1992). Hibernation burrows appear to be self-constructed (constructed by the lizards themselves versus using burrows constructed by other animals) and are within 10 cm (3.9 in) of the surface (Muth and Fisher 1992). Mayhew (1965) found that the majority of lizards hibernated within 5 cm (2.0 in) of the surface. The greatest depth recorded was 20 cm (7.9 in) below the surface. While most adults apparently hibernate during winter months, some juveniles may remain active (Muth and Fisher 1992).

In June of 1997, seven Federal and State agencies signed a Flat-Tailed Horned Lizard Conservation Agreement (CA) to implement a Flat-tailed Horned Lizard Rangewide Management Strategy (Management Strategy). The purpose of

the Management Strategy is to provide a framework for conserving sufficient habitat to maintain several viable populations of the flat-tailed horned lizard throughout the range of the species in the United States. The Management Strategy was developed by an interagency working group over a two-year period. As part of the CA, agencies delineated specific areas under their jurisdiction as Management Areas (MAs). Approximately 181,100 ha (447,600 ac) of the remaining flat-tailed horned lizard habitat managed by signatories of the CA exists within five MAs, which occur in the Borrego Badlands, West Mesa, Yuha Desert, East Mesa, and the Yuma Desert. These managed areas are believed to represent approximately 35 percent of flat-tailed horned lizard habitat remaining in the United States.

The five MAs were designed to identify large areas of public land where flat-tailed horned lizards have been found, as well as to include most flat-tailed horned lizard habitat identified as key areas in previous studies (Turner *et al.* 1980, Turner and Medica 1982, Rorabaugh *et al.* 1987, Foreman 1997). MAs were proposed based on accepted principles of good preserve design, utilizing the best information available at the time (FTHL–ICC 2002). Furthermore, the MAs were delineated to include areas as large as possible, while avoiding extensive, existing and predicted management conflicts (*e.g.*, OHV open areas). The MAs are meant to be the core areas for maintaining self-sustaining populations of flat-tailed horned lizards in the U.S. (FTHL–ICC 2002).

The flat-tailed horned lizard commonly occurs in additional areas outside of the MAs. These areas include the Ocotillo Wells State Vehicle Recreation Area (Ocotillo Wells SVRA), Coachella Valley, the areas adjoining the Algodones Dunes, and east of the Algodones Dunes between Ogilby and the Mexican border (Norris 1949, Turner *et al.* 1980, Turner and Medica 1982). The Ocotillo Wells SVRA is currently a Research Area under the Management Strategy, and studies on the flat-tailed horned lizard have been encouraged and funded by the California Department of Parks and Recreation (CDPR) Division of Off-Highway Motor Vehicle Recreation (Foreman 1997).

The majority of the potential flat-tailed horned lizard habitat is within and adjacent to the Algodones Dunes is within the Imperial Sand Dunes Recreation Area. Over 47,754 ha (118,000 ac) of the Imperial Sand Dunes Recreation Area is used as an OHV open area. The majority of the Algodones Dunes north of Highway 78 is a designated wilderness area.

The Coachella Valley has been developed to a much larger extent than any other geographic area within the flat-tailed horned lizard's current range, and does not have nearly as much Federal land as the other areas in which the MAs were established. There are only about 16,610 ha (41,040 ac) of flat-tailed horned lizard habitat remaining, representing 19 percent of the approximately 86,820 ha (214,540 ac) of historical habitat in the Coachella Valley (Katie Barrows, pers. comm. 2002), about 3 percent of the current habitat rangewide in the U.S., and roughly 1 percent of the species range overall, including Mexico (we derive these figures using Hodges' 1997 figure for current habitat within the U.S., and Johnson and Spicer's [1985] estimate of overall range). Of the remaining habitat in the Coachella Valley, only about 2,150 ha (5,314 ac) of suitable flat-tailed horned lizard habitat is estimated to be protected as part of the Coachella Valley Fringe-Toed Lizard Preserve System (Coachella Valley Mountains Conservancy 2001).

Approximately 75 percent of the flat-tailed horned lizard habitat in the Coachella Valley is either private or Tribal land and subject to development in the near future. An area with the largest amount of remaining habitat outside the fringe-toed lizard preserve system is the Big Dune area between Palm Springs and Indian Wells, south of I–10. However, this area is fragmented with major roads and new development (*e.g.*, residential housing, shopping centers, Agua Caliente Casino, and California State University of San Bernardino Extension) and is increasingly subject to new development because of its central location within the Coachella Valley.

Signatories of the CA, which include the Service, Bureau of Reclamation (BOR), BLM, U.S. Marine Corps, U.S. Navy, Arizona Game and Fish Department (AGFD), California Department of Fish and Game (CDFG), and CDPR, committed to implementation of conservation measures for the species over the life of the CA. These measures included: (1) Continued monitoring of lizard populations and new surface disturbance within MAs; (2) limitation of new surface-disturbing projects within MAs to 1 percent of the area of MAs between 1997–2002; (3) collection of compensation fees from project proponents who conduct activities within and outside of MAs; (4) reduction in off-highway vehicle (OHV = all vehicles used off-road, including automobiles, dune buggies, motorcycles, all-terrain-cycles, four-wheelers, etc.) routes within MAs; (5) prohibition of off-highway competitive events within MAs; (6) support of continued flat-tailed horned lizard monitoring and research; (7) mitigation for surface-disturbing activities in lizard habitat; and (8) attempting to acquire all private inholdings within MAs. An Interagency Coordination Committee (ICC) and a Management Oversight Group, composed of biologists and managers from CA signatory agencies, respectively, were established to formulate and oversee implementation of the Management Strategy. The signatories agreed to review the CA and its effectiveness annually to determine whether it should be revised. Within a year of completing the tasks identified in the implementation schedule, the involved parties shall review the CA and either modify, renew, or terminate it. The CA may at any time be amended, extended, modified, supplemented, or terminated by mutual concurrence. Participation in the CA/Management Strategy is voluntary, and agencies may withdraw from participation with 60 days' notice. The Management Strategy is currently being revised.

A flat-tailed horned lizard Population Viability Analysis (PVA) was conducted by a conservation team convened both to share research results involving this species and to evaluate the Management Strategy. The preliminary PVA provided no estimate of the minimum viable population size and did not determine whether populations contained within the MAs were viable, due to a lack of population demographic and stochastic (*i.e.*, random events relevant to a population) information. However, the analysis illustrated the sensitivity of flat-tailed horned lizard population viability to certain factors, particularly changes in mortality and fecundity. Recommendations in the PVA report included controlling activities that result in mortality of flat-tailed horned lizards and degradation of their habitat. Large management areas were found to be desirable as a conservative approach to ensuring the long-term population persistence.

Based on information obtained since the withdrawal of the proposed listing rule in 1997 and information documented in the proposed rule, we have identified potential threats to the flat-tailed horned lizard, including the following: urban development, agricultural development, OHV activity, energy developments, military activities, introduction of non-native plants, pesticide use, and habitat degradation due to Border Patrol and

illegal drive-through traffic along the United States-Mexico border. These threats and their effects on flat-tailed horned lizards and their habitat are discussed in further detail in the section "Summary of Factors Affecting the Species."

Previous Federal Action

In 1982, we first identified the flat-tailed horned lizard as a category 2 candidate species for listing under the Act (47 FR 58454). Service regulations defined category 2 candidate species as "taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support proposed rules." In 1989, we elevated the species to category 1 status (54 FR 554). Category 1 included species "for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule." Subsequently, on November 29, 1993, we published a proposed rule to list the flat-tailed horned lizard as a threatened species pursuant to the Act (58 FR 62624).

On May 16, 1997, in response to a lawsuit filed by the Defenders of Wildlife to compel us to make a final listing determination on the flat-tailed horned lizard, the District Court in Arizona ordered us to issue a final listing decision within 60 days. A month after the District Court's order, several State and Federal agencies signed a CA implementing a recently completed rangewide management strategy to protect the flat-tailed horned lizard. Pursuant to the CA, cooperating parties agreed to take voluntary steps aimed at "reducing threats to the species, stabilizing the species" populations, and maintaining its ecosystem."

On July 15, 1997, we issued a final decision to withdraw the proposed rule to list the flat-tailed horned lizard as a threatened species (62 FR 37852). We based the withdrawal on three factors: (1) Population trend data did not conclusively demonstrate significant population declines; (2) some of the threats to the flat-tailed horned lizard habitat had grown less serious since the proposed rule was issued; and (3) we believed that the recently approved "conservation agreement w[ould] ensure further reductions in threats."

Six months following our withdrawal of the proposed listing rule, the Defenders of Wildlife filed a lawsuit challenging our decision. On June 16, 1999, the District Court for the Southern District of California granted summary judgement in our favor upholding our decision not to list the flat-tailed horned lizard. However, on July 31, 2001, the Ninth Circuit Court of Appeals reversed the lower court's ruling and directed the District Court to remand the matter back to us for further consideration in accordance with the legal standards outlined in its opinion. The case was remanded back to us because (1) the withdrawal did not expressly consider whether the flat-tailed horned lizard is likely to become an endangered species within the foreseeable future in a significant portion of its range; and (2) the withdrawal did not "address the lizard's viability in a site-specific manner with regard to the putative benefits of the Conservation Agreement."

On October 24, 2001, the District Court ordered us to reinstate the previously effective proposed listing rule within 60 calendar days and, thereafter, commence a 12-month statutory time schedule for a final listing decision, and render our final listing determination in compliance with the mandate of the Ninth Circuit Court's order. Accordingly, we published a notice on December 26, 2001, announcing the reinstatement of the 1993 proposed listing of the flat-tailed horned lizard as threatened and the opening of a 120-day public comment period on the reinstated proposed rule (66 FR 66384).

In compliance with our requirements and for the purpose of adequately soliciting public comment, we published legal notices of the reinstatement of the 1993 proposed rule and the opening of the public comment period in the *San Diego Union Tribune* on January 7, 2002; *Imperial Valley Press* on January 7, 2002; *The Desert Sun* on January 8, 2002; and *The Yuma Daily Sun* on January 7, 2002; inviting the general public to comment. On May 30, 2002, we published a notice reopening the public comment period for an additional 60 days (67 FR 37752) and announced that we would be holding public hearings from 1 to 3 p.m. and from 6 to 8 p.m. on June 19, 2002, in El Centro, California. Additionally, on May 30, 2002, we published public notices in the *San Diego Union Tribune, Imperial Valley Press,* and *The Desert Sun,* announcing the June 19, 2002, public hearings in El Centro, California.

On September 24, 2002, we published an additional notice (67 FR 59809) announcing the reopening of the public comment period for 15 days to allow for peer review, additional public comment on the proposed rule, and submittal of information that has become available since our 1997 withdrawal. In this current final determination to withdraw our proposal to list the flat-tailed horned lizard as threatened, we address the Court's order that we determine: (1) Whether the flat-tailed horned lizard is likely to become an endangered species within the foreseeable future in a significant portion of its range; and (2) the lizard's viability in a site-specific manner with regard to the putative benefits of the CA.

Summary of Comments and Recommendations

In the 3 notices announcing the public comment periods, we requested all interested parties to submit the following types of information pertaining to the flat-tailed horned lizard: current status, ecology, distribution, threats, and management/conservation efforts in place. We requested this information in order to make a new final listing determination based on the best scientific and commercial data currently available. During the three public comment periods, we received written comments from a total of 58 entities, and 10 speakers gave verbal comments at the public hearings.

Substantive information provided in all public comments either has been incorporated directly into this withdrawal or is addressed below. Similar comments are grouped together.

Comment 1: One commenter supported the listing of several populations of flat-tailed horned lizards, including the population in the Coachella Valley and Arizona. The commenter further stated that independent of the proposal to list the flat-tailed horned lizard as a threatened species rangewide, the Coachella Valley population must be listed as an endangered species.

Our Response: In our 1993 proposed rule, we proposed to list the flat-tailed horned lizard as a threatened species throughout its range.

However, under the Act and our regulations, a species will still warrant listing if it is threatened or endangered in a significant portion of its range. As discussed in the "Finding" section of this withdrawal, we have determined that the flat-tailed horned lizard is not threatened throughout all or a significant portion of its range.

We considered whether the flat-tailed horned lizard population in the Coachella Valley would warrant listing pursuant to our joint Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). According to this policy,

to be listed as distinct vertebrate population segments populations have to qualify as both "discrete" and "significant."

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delineated by international government boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance will then be considered. Significance is determined by the importance or contribution, or both, of a discrete population to the species throughout its range. The policy (61 FR 4722) lists four examples of factors that may be used to determine significance: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only known surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the taxon in genetic characteristics. In carrying out this analysis, the Service will consider available scientific evidence of the discrete population segment's importance to the species as a whole.

If a population segment is found to be discrete and significant (*i.e.*, it is a DPS) its evaluation for endangered or threatened status will be based on the Act's definitions of those terms and on a review of the species' status relative to the factors described in section 4(a)(1) of the Act for listing a species as endangered or threatened.

As outlined in this withdrawal, we currently believe there are four disjunct geographic areas occupied by flat-tailed horned lizards. They are disjunct due to fragmentation of habitat by agricultural and urban development, the Salton Sea, and the Colorado River. We recognize that of the four geographically discrete populations, the Coachella Valley population is the smallest and most fragmented by development and roads, and faces existing and future threats to the remaining habitat. Current scientific evidence does not suggest that the Coachella Valley population is genetically, behaviorally, or ecologically unique; is a large population of flat-tailed horned lizards; or contributes individuals to other geographic areas through emigration. Therefore, we conclude that this population, even if discrete, is not significant within the meaning of the DPS policy. If additional information becomes available that indicates the Coachella Valley population is biologically or ecologically significant pursuant to the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722), we may reconsider the status of the Coachella Valley population for the purpose of listing under the Act. At this time, the threats to the remaining populations (as described below) do not suggest that they warrant consideration for listing as a separate DPS.

Comment 2: One commenter noted that the population of flat-tailed horned lizards in the Coachella Valley is isolated from all other populations and is at the northern limit of the species range, and that preliminary genetic work being conducted at Utah State University suggests that the Coachella Valley population has a unique genetic structure.

Our Response: We agree that the population of flat-tailed horned lizards in the Coachella Valley is isolated from all other populations, and is at the northern limit of the species range. We have contacted the Utah State University scientist who is conducting the genetic research on the species, and he indicated that the work is still ongoing and that no conclusions have been drawn yet on the genetic structure of flat-tailed horned lizard populations.

Comment 3: Several commenters have remarked on the apparent lack of implementation of the planning actions in the Management Strategy, and its overall ineffectiveness with regards to conservation of flat-tailed horned lizard populations.

Our Response: There are nine planning actions with associated subactions. The Management Strategy states that it is understood among the signatories that implementation of these actions is subject to availability of funds and compliance with all applicable regulations. The implementation of the planning actions from May 1997 through June 2002 was as follows.

Planning Action 1: Delineate and designate five flat-tailed horned lizard MAs and one flat-tailed horned lizard research area. Management Areas have not been fully designated, although participating agencies have continued to recognize the boundaries of MAs. Precise boundary descriptions have been completed. Naval Air Facility-El Centro has designated the portions of the MAs under Department of Defense jurisdiction through the Naval Air Facility-El Centro Integrated Natural Resources Management Plan. In order to implement the Management Strategy, the Yuma and El Centro BLM field offices have drafted a document entitled "The Proposed Amendment to the California Desert Conservation Area Plan and the Yuma District Resource Management Plan to Expand the East Mesa ACEC, West Mesa ACEC, and Gran Desierto Dunes ACEC Boundaries and To Implement the Flat-Tailed Horned Lizard Rangewide Management Strategy in Imperial County, California and Yuma County, Arizona." An Environmental Assessment (EA No. CA–067–EA–1998–023) was associated with the proposed amendment, and is still in the process of being finalized. Public scoping meetings concerning the proposed amendment were held. While the environmental assessment has not been completed, the Conservation Agreement has been signed and the Management Strategy has been implemented to the degree mentioned below.

Planning Action 2: Define and implement management actions necessary to minimize loss or degradation of habitat. Most subactions were implemented as follows. Appropriate mitigation measures were enforced for all authorized projects that impacted flat-tailed horned lizards or their habitat. Compensation funds were required for most projects that had residual impacts to flat-tailed horned lizard habitat. The limit of discretionary land use authorizations (not including impacts from OHV activity) to 1 percent cumulatively for each MA was not exceeded. No disposal of lands within MAs occurred. No new roads were authorized in MAs. Members of the ICC for the Management Strategy held several flat-tailed horned lizard orientation sessions with Border Patrol agents in the Yuma and El Centro sectors to reduce impacts to flat-tailed horned lizard habitat along the international border. The BLM El Centro office implemented an aggressive education strategy with Border Patrol to reduce impacts to flat-tailed horned lizard habitat. Competitive off-highway vehicle races have not been permitted in MAs. No new recreation facilities were allowed in MAs. A camping closure was implemented and enforced as mitigation in the East Mesa MA. However,

important subactions to designate routes "open," "closed," or "limited;" to reduce route density; and to limit camping to within 15 m (50 ft) from the centerline of a designated open route in MAs were not implemented; or were implemented to a limited degree. The effects of this inaction are discussed under Factor A of the section "Summary of Factors Affecting the Species."

Planning Action 3: Rehabilitate damaged and degraded habitat in MAs. BLM staff have been rehabilitating routes inside the Yuha Basin MA. They have focused on proliferation (unauthorized development of new routes by users) and parallel routes off of designated routes; and have rehabilitated approximately 32 to 40 km (20 to 25 mi) of non-designated routes.

Planning Action 4: Attempt to acquire through exchange, donation, or purchase from willing sellers all private lands within MAs. Lists prioritizing parcels for acquisition have been maintained by the California OHV Division office headquarters in Sacramento and by BLM's El Centro office. BLM's El Centro office has contacted all landowners within the East Mesa MA to advise them of BLM's desire to acquire their lands through purchase or exchange. Approximately 6,273 ha (15,500 ac) of Arizona State land within the Yuma Desert MA was acquired by the Department of Defense, a signatory to the Management Strategy. Consequently, all land within this MA is owned by signatory agencies. Anza Borrego Desert State Park acquired private lands totaling 299 ha (740 ac) within and adjacent to the Borrego Badlands MA. BLM-El Centro acquired 97 ha (240 ac) within the East Mesa MA and 32 ha (80 ac) within the West Mesa MA. California Department of Transportation has purchased one section (259 ha [640 ac]) in the northern portion of the West Mesa MA as compensation for a project outside the MAs. This section may be conveyed to BLM in the future.

Planning Action 5: Maintain or establish effective habitat corridors between naturally adjacent populations. No new corridors have been established, but no new projects were authorized that would block movement across existing corridors between MAs. Currently, MAs that may still be connected by corridors include the Borrego Badlands MA, West Mesa MA, and Yuha MA. An OHV open area and I–8 lie between West Mesa and the Yuha MAs, but two underpasses may facilitate some movement between these MAs. All corridors across the U.S.-Mexico border are currently intact, according to the ICC.

Planning Action 6: Coordinate activities and funding among the participating agencies and Mexican agencies. The signatory agencies formed the ICC, which has met quarterly to discuss implementation of planning actions under the Management Strategy. The signatory agencies also formed a Management Oversight Group to provide management-level leadership, coordination, and oversight in the implementation of the Management Strategy. A study to investigate the distribution of flat-tailed horned lizards in Sonora and Baja California, Mexico, was initiated with funding from BOR and BLM.

Planning Action 7: Promote the purposes of the strategy through law enforcement and public education. Annual reports (ICC 1999*a*, ICC 1999*b*, ICC 2002) stated that insufficient law enforcement personnel were available to prevent most of the illegal off-highway vehicle traffic and illegal dumping that occurs in the West Mesa, Yuha Basin, and East Mesa MAs. The annual reports state that given the funding situation of most of the agencies involved, sufficient law enforcement is unlikely to occur. Information pamphlets addressing the flat-tailed horned lizard were prepared by the CDPR staff at Ocotillo Wells SVRA and Naval Air Facility El Centro and distributed to relevant agencies and the public. Flat-tailed horned lizard signs were posted on most access points into the Yuma Desert and East Mesa MAs. BLM's El Centro office produced range-user brochures and wallet cards to educate all range users of the presence of flat-tailed horned lizards and procedures to avoid impacting lizards and to report any accidental impacts to lizards.

Planning Action 8: Encourage and support research that will promote the conservation of flat-tailed horned lizards or desert ecosystems and will effectively define and implement necessary management actions, both within and outside of MAs and the Research Area. Ocotillo Wells SVRA funded four studies (Young 1999, Setser and Young 2000, Setser 2001, and Gardner 2002) to collect information on flat-tailed horned lizard demographics, habitat use, and the effects of OHV activity. Various sampling methodologies to assess population trends were tested. ICC members consulted with Colorado State University regarding monitoring population trends. Flat-tailed horned lizard life history and demographic data were collected by several researchers from Utah State University. In 2001, BLM's El Centro office conducted a pilot CMR study that led to a population estimate study in 2002 for the Yuha Basin MA. Tissue samples were taken from the disjunct populations throughout the range of the flat-tailed horned lizard and are to be analyzed by Utah State University to determine any genetic differences between populations.

Planning Action 9: Continue Inventory and Monitoring. BLM's Palm Springs office conducted surveys in the Coachella Valley. Surveys were also conducted across Baja Norte and Sonora, Mexico, with the help of ICC personnel and funding from BOR and BLM. Additional surveys were conducted along the peripheral areas of the Borrego Badlands MA. Surveys of flat-tailed horned lizards and their scat continued on MAs each year between 1997 and 2001. ICC annual reports monitored the habitat loss authorized by Management Strategy/CA signatories. The Navy contracted Tierra Data Systems in 1997 to take aerial photographs and digitally map the five MAs and the Research Area to document habitat loss and disturbance. The El Centro BLM office quantified vehicular impacts at a finer resolution than Tierra Data Systems by using a step-point method on the West Mesa, Yuha Basin, and East Mesa MAs. A similar analysis was conducted in the Yuma MA by the Service and the Arizona Game and Fish Department.

In conclusion, while the Management Strategy has resulted in actions that provide protections for the flat-tailed horned lizard and has contributed to reductions in particular threats to the species (see Factor D below), the stated objectives of the Management Strategy have not yet been fully achieved. Specifically, the four of the Management Strategy's priority 1 planning subactions have not been fully implemented. These are the following: (1) Finalizing the designations of the MAs; (2) reducing route densities in MAs; (3) signing routes closed, limited, or open; and (4) providing adequate law enforcement.

Comment 4: One commenter stated that one of the management areas is within the boundaries of an ORV Open Area (Ocotillo Wells SVRA) and asked what has been done on the ground in the Ocotillo Wells SVRA to actually protect the lizard's habitat.

Our Response: None of the Management Areas contains OHV open areas. The Ocotillo Wells SVRA is designated as a Research Area and is not a designated Management Area under the Management Strategy. The Ocotillo Wells SVRA was not established to protect the flat-tailed horned lizard's habitat. It is one of six State Vehicular Recreation Areas within California that

serve as OHV parks for the public. While OHV freeplay, racing, and touring are permitted, the Ocotillo Wells SVRA prohibits most permanent surface disturbing activities. In order to encourage studies on the flat-tailed horned lizard, the Ocotillo Wells SVRA was proposed as a Research Area in the Management Strategy. Funding was to be provided by the California Department of Parks and Recreation Division of Off-Highway Motor Vehicle Recreation.

Comment 5: One commenter stated that large areas within the BLM-managed deserts of California and Arizona, as well as significant portions of Anza-Borrego Desert State Park and the Ocotillo Wells SVRA, have been closed to protect the flat-tailed horned lizard and its habitat from OHV intrusion.

Our Response: No areas have been closed to OHV use to protect the flat-tailed horned lizard or its habitat. Within the Anza-Borrego Desert State Park, OHV activity is limited to designated routes. Most of the BLM managed lands within the range of the flat-tailed horned lizard are currently open to OHV use in some capacity. The entire Ocotillo Wells SVRA is open to OHV use in some form, and the majority is completely open to freeplay (unlimited access and use). The Ocotillo Wells SVRA is in fact the largest of the State Vehicular Recreation Areas in California, comprising approximately 85 percent of land in the program. In addition, there are two BLM Open Areas that have unrestricted OHV use, the BLM's Plaster City (16,592 ha [41,000 ac]) and Superstition Hills (5,261 ha [13,000 ac]) Open Areas.

Comment 6: One commenter mentioned that the data show a weak, almost nonexistent correlation between OHV use and alleged declines in flat-tailed horned lizard populations, and that by contrast, other threats such as predation by ravens, shrikes, and round-tailed squirrels have been substantiated with hard evidence.

Our Response: Past indices of population abundance of the flat-tailed horned lizard have not used similar methodologies, nor have they incorporated detection probabilities. Population trends based on such data potentially include error related to numerous variables, including variation in detectability, scat counts, sampling methods, study areas sampled, number of transects surveyed, number of observers, temperature, year, etc. The BLM (Wright 2002) reported data that can be used as an indication of abundance from 1979 to 2001 and the correlation of OHV activity and population abundance, conditional on a number of assumptions.

Wright (2002) reported that flat-tailed horned lizards were encountered at the highest rates in the Navy and Limited use areas of West Mesa, at intermediate rates in the Yuha Desert and East Mesa, and at the lowest rates in the West Mesa ACEC, Plaster City, and Superstition Mountains Open Areas. If detection rates were assumed to be equal across all variables involved, then an inference could be made that the areas used most by OHVs, the open areas, have the lowest abundance of flat-tailed horned lizards. If we assume that the main difference between open and the other areas is a higher rate of use of open areas by OHVs, we could reasonably conclude that OHV impacts were responsible for this difference. However, the previously mentioned bias and error associated with the data collection make this inference weak and unreliable.

Further hypothesis testing of the relationship of OHV use and flat-tailed horned lizard abundance incorporating detection probabilities in a rigorous sampling design would be valuable. The BLM has recognized the importance of incorporating detection probability into their flat-tailed horned lizard sampling designs and has recently employed such a design to estimate population size in the Yuha Basin MA, referred to previously in the "Background" section of this notice.

OHV activity has also been documented as the direct cause of mortality of individual flat-tailed horned lizards (Luckenbach 1975; Luckenbach and Bury 1983; Muth and Fisher 1992). However, the number of documented flat-tailed horned lizard mortalities due to OHVs is limited.

The fact that ravens, shrikes, and round-tailed squirrels have been documented as predators of flat-tailed horned lizards does not make them threats to the survival of the species. We assume that flat-tailed horned lizards have coevolved in a predator-prey relationship with most of the predators they encounter in the Sonoran Desert. There are no data showing that round-tailed ground squirrels or other predators depend on flat-tailed horned lizards as a primary food source. To the contrary, round-tailed ground squirrels are omnivorous and rely on plant material for a major part of their diet (Ernest and Mares 1987).

Anthropogenic threats (*i.e.*, human caused habitat destruction and degradation; *e.g.*, OHV activity) and introduced predators or competitors are generally regarded as more severe threats to the survival of native species than are predators or interspecific competition with which the species has coevolved (Pimm *et al.* 1995). There is also the potential for natural predators to increase their predation rate on certain prey given human subsidies available. For example, increased predation rates on flat-tailed horned lizards by loggerhead shrikes and American kestrels have been reported in localized areas where human-provided perches (*e.g.*, power lines or planted palm trees) have been used by shrikes and kestrels as points from which to hunt (Young and Young 2000, Cameron Barrows pers. comm, 2002). However, areas in which these increased predation rates occur are small in size and occur within relatively short distances of the perches in the abovementioned examples.

Comment 7: One commenter stated that it is absolutely critical that we not issue a final decision until after we have conducted the studies necessary to address flat-tailed horned lizard abundance and viability on private lands. The commenter further recommended that all future studies do the following: (1) Abandon scat counts as a way of deriving species densities, (2) use different, more reliable methods for counting flat-tailed horned lizards, and (3) be repeatable over time, so that trend data on the lizard can be developed.

Our Response: The schedule for the final listing determination was mandated by the Southern District Court of California under the direction of the Ninth Circuit Court of Appeals, to be made within 12 months of reinstating the proposed listing. A notice announcing the reinstatement of the 1993 proposed rule was published in the **Federal Register** on December 26, 2001. Consequently, on the basis of the best scientific and commercial data currently available, we must make a final listing determination for the flat-tailed horned lizard by December 26, 2002.

While our listing determination undoubtedly would be aided by further studies on flat-tailed horned lizards, we can not delay the decision. Additionally, we do not currently have the funding to conduct additional research prior to making our decision. Despite this shortcoming, several of the commenter's recommendations have already been enacted. We have not used any scat count information to derive lizard density or abundance estimates, and the BLM has begun to use the previously mentioned CMR methodology to conduct population estimates on the MAs, which can then be replicated in the future to gain information on population trends.

Comment 8: One commenter remarked that a large flaw in the management strategy was that little or no baseline data were gathered on the abundance of the lizard or the condition of its habitat at the time the conservation agreement was put in place.

Our Response: While there were no data leading to population estimates, there were data gathered on flat-tailed horned lizard abundance using transects between 1979 and 1997, as discussed previously. In addition, the U.S. Navy (signatory agency) funded aerial photography of the MAs, and Tierra Data Systems subsequently analyzed the photographs to establish baseline levels of surface disturbance within MAs. We have since analyzed aerial photos taken in 2002 in an attempt to document disturbance on MAs using a methodology similar to that used by Tierra Data Systems in 1997. We then compared the 1997 disturbance information to that of 2002 to assess the change in amount of disturbance during that time period. The results of this comparative analysis can be found under our discussion of Factor A in the Summary of Factors Affecting the Species.

Comment 9: Several commenters have expressed concern that Border Patrol is not a signatory to the Conservation Agreement associated with the Management Strategy, and that its activities pose one of the main threats to the flat-tailed horned lizard.

Our Response: The Border Patrol declined the opportunity to sign the CA, but has encouraged education of new agents and continues to coordinate with signatory agencies to identify ways to reduce the impacts of Border Patrol activities. ICC members held several flat-tailed horned lizard orientation sessions with Border Patrol agents in the Yuma and El Centro sectors to reduce impacts to flat-tailed horned lizard habitat along the international border. These briefings were designed to familiarize Border Patrol agents with flat-tailed horned lizard natural history, habitat requirements, and the importance of minimizing vehicular traffic off of designated patrol routes/roads, and were well received by Border Patrol personnel. However, the Border Patrol's OHV activities and their impacts on flat-tailed horned lizard conservation have not been monitored and assessed.

Comment 10: One commenter remarked that while the MAs may be large enough to ensure viability of the species, because only approximately 35 percent of the current range of the flat-tailed horned lizard is included in the MAs, the species will at some point cease to be a part of the ecological community.

Our Response: Assessing a species' role in an ecosystem is often a complex task. We believe that the flat-tailed horned lizard will continue to be a self-sustaining, functioning component of their ecosystem into the foreseeable future. The roughly 65 percent of the current range of the flat-tailed horned lizard found outside of the MAs, if not developed, may continue to serve as habitat for flat-tailed horned lizard populations.

Much of the habitat outside the MAs is managed by Federal agencies such as the BLM, or the State. These agencies have the capacity to manage their lands to conserve flat-tailed horned lizard habitat into the future. The Management Strategy is applied to lands owned or managed by Federal signatories outside MAs as well, albeit to a lesser degree than is done for lands inside MAs. BLM lands outside of designated open areas are managed for limited use under the California Desert Conservation Area Plan. The flat-tailed horned lizard is also a sensitive species in the California Desert Conservation Area Plan, which states the goal for such designated species is to manage the species and their habitats so that the potential for Federal or State listing is minimized. In addition, the BLM must adhere to directives such as Executive Orders 11644 and 11989, which established policies and provided for procedures to control and direct, among other things, the use of OHVs on Federal lands in order to protect the resources of those lands.

Any habitat within the current range of the flat-tailed horned lizard that is in the Anza-Borrego Desert State Park is managed favorably for the conservation of the flat-tailed horned lizard, because of the emphasis placed on resource protection and regulations limiting OHV activity to designated trails. Some of the California state land outside the MAs is in the Ocotillo Wells SVRA. The mission of the Off-Highway Motor Vehicle Recreation Division (CSDPR 2002) includes insuring "that quality recreational opportunities remain available for future generations by providing for education, conservation, and enforcement efforts that balance OHV recreation impact with programs that conserve and protect cultural and natural resources." In addition, projects on State lands must adhere to the California Environmental Quality Act (CEQA). CEQA requires a full public disclosure of the potential environmental impact of proposed projects. Moreover, there is no evidence of private lands in flat-tailed horned lizard habitat being developed at a rate that would pose a significant threat to the species or its habitat, except in the Coachella Valley.

In the Coachella Valley, Regional Habitat Conservation Plans in preparation by the Coachella Valley Association of Governments and the Agua Caliente Band of Cahuilla Indians would conserve a yet-to-be-determined amount of flat-tailed horned lizard habitat, leaving the rest subject to development. However, these Habitat Conservation Plans are in progress and are subject to approval in the future; therefore, their completion and implementation cannot be relied upon for conservation purposes.

Comment 11: One commenter responded that BLM studies have shown that flat-tailed horned lizard populations have remained at levels found in the 1970s, regardless of the increased use of the desert by Border Patrol, OHVs, and other development.

Our Response: The BLM population trend data from the 1970s until 2001 used scat counts, which have been acknowledged to be unreliable indicators of lizard abundance (Muth and Fisher 1992, Rorabaugh 1994, Beauchamp *et al.* 1998) that should not be used to analyze population trends. Other problems associated with these studies have been stressed in our response to comment 6. In 2002, the BLM started to use the CMR methodology (described previously) incorporating detection probability to estimate population sizes on the MAs. This is a much more reliable and promising methodology that BLM will continue using in the future to monitor population trends. The increased use of the desert by Border Patrol, OHVs, and other development and the resulting effects on flat-tailed horned lizard populations has been difficult to monitor. Intuitively, we know these impacts cannot keep increasing without resulting in negative impacts to habitat. However, based on the best available information, we have determined that such possible negative impacts do not currently, or in the foreseeable future, pose a threat to the species. Land use thresholds resulting in population declines can only be derived through sound research and monitoring. See also discussion in Factor A below.

Comment 12: Several commenters stated that we should take economic impacts into consideration when we decide whether to list the flat-tailed horned lizard, because the areas surrounding the lizard's habitat are in danger of suffering economic harm

should the listing and any resulting land use restrictions occur.

Our Response: The Act requires us to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species (section 4(b) of the Act). Congress also made it clear in the Conference Report accompanying the 1982 amendments to the Act that "economic considerations have no relevance to determinations regarding the status of species." We do not consider economic impacts in the listing process, except when designating critical habitat; during this latter process, we conduct an economic analysis.

Comment 13: One commenter noted that reported habitat loss resulting from urbanization may not be accurate, because cities such as Imperial, El Centro, and Brawley have alkali, heavy clay, and silty clay soils, respectively; and these soil types are not preferred habitat for the flat-tailed horned lizard.

Our Response: These soils and habitats in Imperial Valley may not have been preferred or high quality habitat for the flat-tailed horned lizard, but they still more than likely provided habitat of some quality. Historically, the Imperial Valley may not have consisted of contiguous habitat quality but probably consisted of a patchy mosaic of different qualities of flat-tailed horned lizard habitat, as is seen today in the different geographic areas. Flat-tailed horned lizards do not require fine sandy habitats as was described in the past, but appear to be more flexible in their use of different soil types (Beauchamp *et al.* 1998). They have been found to occur on clay soils (Turner *et al.* 1980); concretions, gravel, and silt (Beauchamp *et al.* 1998); and desert pavement areas (Altman *et al.* 1980); in addition to the fine sandy habitats in which they are commonly found. They have even been found on the rocky lower slopes of Superstition Mountain coexisting with chuckwallas (Turner *et al.* 1980). Furthermore, the areas the commenter notes above may have been beneficial to populations for reasons other than providing quality habitat (*e.g.*, corridors or "stepping stones" providing gene flow among populations). Flat-tailed horned lizards have been documented in what are now the towns of Westmorland, Seeley, and Holtville (Klauber 1932).

Comment 14: A few commenters noted that although the Management Strategy and Conservation Agreement were produced in 1997, an environmental assessment to officially authorize the Management Areas has not been completed.

Our Response: While this is true, the Yuma and El Centro BLM field offices drafted a document to implement the Management Strategy. This document is "The Proposed Amendment to the California Desert Conservation Area Plan and the Yuma District Resource Management Plan to Expand the East Mesa ACEC, West Mesa ACEC, and Gran Desierto Dunes ACEC Boundaries and to Implement the Flat-tailed Horned Lizard Rangewide Management Strategy in Imperial County, California, and Yuma County, Arizona." An environmental assessment (EA No. CA–067–EA–1998–023) is attached to this proposed amendment. Public scoping meetings concerning this proposed amendment have been held, and work is in progress to finalize the environmental assessment. While the environmental assessment has not been completed, the Conservation Agreement has been signed, and the Management Strategy has been implemented to the degree mentioned previously.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited the expert opinions of six independent specialists. The Policy for Peer Review states that it is the policy of the Service to incorporate independent peer review in listing decisions during the public comment period in the following manner: (1) Solicit the expert opinions of a minimum of three appropriate and independent specialists regarding pertinent scientific and commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing; and (2) summarize in the final decision document the opinions of all independent peer reviewers received on the species under consideration. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We specifically asked the reviewers to review both our proposal to list the flat-tailed horned lizard as threatened (58 FR 62624) and our subsequent withdrawal of the proposed rule (62 FR 37852), and also to provide comments and information on the following issues: (1) Any additional data that may assist us in making our listing decision, (2) the status and threats to the species—in particular, the four geographic areas in which the species occurs in the United States, and (3) the effectiveness of the conservation strategy to provide adequate protection and management for the species. Four peer reviewers responded to our solicitation.

One reviewer noted that his comments are limited to the Coachella Valley population and stated that the Coachella Valley has experienced higher levels of urbanization and habitat fragmentation than any of the five MAs identified in the Management Strategy. The reviewer mentioned that the Coachella Valley historically had a substantial flat-tailed horned lizard population and that the largest remaining unfragmented habitat patch represents just 3 to 4 percent of its original extent. The reviewer stated that the Management Strategy has had no apparent benefit within the Coachella Valley, because there is no MA established within the Coachella Valley due to the lack of public land containing flat-tailed horned lizard habitat.

Two reviewers recommended the species be listed as threatened, as proposed in 1993, and the fourth reviewer recommended the species not be listed. The two reviewers who recommended listing the species stated that more research was necessary on the demographics of flat-tailed horned lizard populations.

One reviewer's opinion was that if immediate and strong action is not taken, the species is likely to disappear in most or all of its range in the immediate future. However, this reviewer noted that critical demographic data necessary to demonstrate population stability are still lacking. The reviewer remarked that the quality of data on flat-tailed horned lizards is so poor that all analyses are suspect. The following recommendations for continued research relevant to developing the necessary information to make a convincing argument for listing this species were offered: (1) Long-term capture-recapture data; (2) phylogeography studies to determine historic patterns of dispersal and present effects of fragmentation; (3) comparative ecological studies in areas impacted by chemicals that might affect ant populations versus areas where no detectable affects of insecticide exist; (4) physiological studies to determine whether dietary shifts (away from ants) might negatively effect growth rates and size at sexual maturity; and (5) close examination of the illegal OHV threat with the intent of developing a strategy of effective enforcement.

One reviewer, who has conducted research on flat-tailed horned lizards in

Arizona and California, expressed that the designated MAs and the current protective measures are adequate, and the species does not warrant Federal listing as threatened. This reviewer stated that the main reason that the species does not warrant Federal listing is that even without population estimates for the MAs, it is reasonable to believe there are large, viable, self-sustaining populations that are being protected in the MAs.

We respectfully disagree with the two reviewers who recommended listing the flat-tailed horned lizard rangewide, because we do not feel the available data indicate that the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. While one reviewer stated that critical demographic data necessary to demonstrate population stability are still lacking, reliable demographic data showing population declines are also lacking.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the flat-tailed horned lizard rangewide are discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

United States

There were some threats of habitat loss and modification identified in the 1993 proposed rule that have been reduced since 1993 or for which we have limited new information since 1993. The proposed rule stated that 95 percent of the remaining optimal habitat in California is threatened by one or more impacts, and that urban growth is an important component of these threats. At this time, habitat loss due to urbanization does not appear to be a significant threat in the foreseeable future, due to Federal and State land ownership of most of the remaining habitat, with the exception of that in the Coachella Valley and Borrego Valley. The Imperial Valley has been developed up against the borders of MAs, and additional BLM lands on both sides of the Imperial Valley largely prevent further urban and agricultural development. The proposed rule also mentioned gold mining as a potential threat. There are currently no gold mines in flat-tailed horned lizard habitat, and gold mines are not expected to become a threat in the foreseeable future.

The relative abundance index that was used in the 1993 proposed rule to document a decline in the Yuha Desert has since been found to be based on erroneous assumptions and inconclusive data. The information on population trends presented in the proposed rule was derived in part from scat count data collected between 1979 and 1991. The use of scat counts for this purpose has problems that were previously mentioned in the Background section of this rule, and therefore we do not consider scat counts scientifically reliable as indicators of population abundance. At this time, the available data do not indicate that populations of flat-tailed horned lizard are declining or threatened in any of the geographic areas, with the exception of the Coachella Valley, discussed later.

The distribution of the flat-tailed horned lizard was described by Turner and Medica (1982) as the desert areas of southeastern California and southwestern Arizona and adjoining portions of Sonora and Baja California Norte, Mexico. The historical distribution of the flat-tailed horned lizard in California was arguably connected to an unknown extent from the Imperial Valley north through the Coachella Valley. Locality records report flat-tailed horned lizards occurring within the Imperial Valley in the towns of Westmorland, Seeley, and Holtville (Klauber 1932). Bryant (1911) reported locality records from Mecca (southern end of Coachella Valley) and "Salton Lake." The development of the Imperial Valley and southern half of the Coachella Valley for agriculture and urbanization, and the filling up of the Salton Sea, have essentially fragmented the range of the flat-tailed horned lizard in California into the following disjunct areas: (1) Coachella Valley, (2) west side of Salton Sea and Imperial Valley, and (3) the east side of the Imperial Valley. Additionally, the Colorado River separates the Arizona population of flat-tailed horned lizards from populations in California. Consequently, we will further analyze Factor A using the four disjunct areas within the United States: (1) Coachella Valley, (2) west side of Salton Sea/Imperial Valley, (3) east side of Imperial Valley, and (4) Arizona.

Coachella Valley (California)

There has been substantial loss and fragmentation of flat-tailed horned lizard habitat within the Coachella Valley. We use the term fragmentation to refer to the breaking up of a habitat or ecosystem into smaller parcels (Foreman 1997). Fragmentation stems from Interstate 10 (I–10), which runs through the middle of the Coachella Valley; an associated network of roads south of I–10; and associated urban and agricultural development. An important effect of habitat fragmentation is the decreased movement of a species (*i.e.*, the flat-tailed horned lizard) across a landscape. Some highways, such as I–10, act as complete barriers to movement of flat-tailed horned lizards. Other roads may decrease the probability that flat-tailed horned lizards will cross the road, or may result in increased mortality rates for flat-tailed horned lizards within an unknown distance of roads. The decrease in movement of flat-tailed horned lizards due to roads can have negative impacts to local populations, including: (1) Decreased dispersal rates of juveniles, (2) decreased likelihood for rescue of small populations due to immigration, (3) decreased genetic flow between local populations, and (4) other unknown impacts to a population's spatial structure.

The amount of contiguous and total habitat remaining in the Coachella Valley is far less than that found in the other three geographic areas. There are about 16,610 ha (41,040 ac) remaining, which represent 19 percent of the approximately 86,820 ha (214,540 ac) of historical habitat in the Coachella Valley (Barrows, pers. comm. 2002), and about 3 percent of the current habitat rangewide in the U.S. (We derive these figures using Hodges 1997 figure for current habitat within the U.S.) Approximately 75 percent of the flat-tailed horned lizard habitat in the Coachella Valley is either private or Tribal land and subject to development in the near future. The remainder is either in Federal or State ownership. Between 1996 and 2002, an estimated 2,428 ha (6,000 ac) of flat-tailed horned lizard habitat was developed in the Coachella Valley (Kim Nicol, CDFG biologist, pers. comm. 2002).

The largest patch of habitat is on the Coachella Valley Preserve and consists of about 1,480 ha (3,660 ac). In total, there are about 2,150 hectares (5,314 acres) of suitable flat-tailed horned lizard habitat that are protected as part of the Coachella Valley Fringe-Toed Lizard Preserve System (Coachella Valley Mountains Conservancy 2001).

An area with the largest amount of remaining habitat outside the fringe-toed lizard Preserve System is the Big Dune area between Palm Springs and Indian Wells, south of I–10. However, this area is fragmented with major roads and new development (*e.g.*, residential housing, shopping centers, Agua Caliente Casino, and California State University of San Bernardino Extension) and is increasingly subject to new development because of its central location within the Coachella Valley.

Regional Habitat Conservation Plans in preparation by the Coachella Valley Association of Governments and the Agua Caliente Band of Cahuilla Indians would conserve a yet-to-be-determined amount of flat-tailed horned lizard habitat and the rest would be subject to development. However, these Habitat Conservation Plans are in progress and are subject to approval in the future; therefore their completion and implementation cannot be relied upon for conservation purposes.

West Side of Salton Sea/Imperial Valley (California)

This geographic area spans from Borrego Valley east to Salton Sea, and south to the border with Mexico, bounded on the west by the Peninsular Mountain ranges and to the east by the Salton Sea and agricultural development of the Imperial Valley. The majority of the private land that is potential flat-tailed horned lizard habitat is in the Borrego Valley and Ocotillo Wells area just south of State Route (SR) 78, west of the West Mesa MA. The geographic area contains three MAs (Borrego Badlands, West Mesa, and Yuha Basin) and the Ocotillo Wells SVRA research area.

This geographic area is fragmented from north to south by SR22, SR78, Interstate 8 (I–8), and SR98. Habitat loss has also resulted from the towns of Borrego Springs, Salton City, Ocotillo Wells, and Ocotillo. The largest of these towns is Borrego Springs, with a population of approximately 3,000 people. Due to the small size of these towns, it is unlikely that urban or agricultural development in or around these small towns is a significant threat to the flat-tailed horned lizard or its habitat in the foreseeable future.

Borrego Badlands MA

The Borrego Badlands MA is composed of about 17,159 ha (42,400 ac), of which 14,771 ha (36,500 ac) is habitat managed by signatories to the Management Strategy/CA, and 2,388 ha (5,900 ac) are private land. When we compared habitat disturbance and loss from aerial photographs taken in 2002 with the habitat loss and disturbance documented by Tierra Data Systems in 1997, we found that the length of dirt roads had slightly increased from 154 kilometers (km) (96 miles [mi]) to 192 km (120 mi), and the area disturbed had increased from 142 ha (351 ac) to 761 ha (1,881 ac). However, this increase in disturbed area may have been an artifact of what we designated disturbed versus what Tierra Data Systems called disturbed. The majority of the increase in disturbed habitat was attributed to an area that appeared to be an abandoned airfield.

West Mesa MA

The West Mesa MA consists of approximately 55,079 ha (136,100 ac), of which 46,257 ha (114,300 ac) is habitat managed by signatories to the Management Strategy/CA, and 8,822 ha (21,800 ac) are private land. No geothermal activity was found during BLM disturbance surveys, but about 2 percent of the surface has been affected by mining. In 2001, the BLM estimated that 11.4 percent of the West Mesa MA was covered with vehicle tracks (Wright 2002). Wright (2002) reported that the West Mesa and Yuha Basin MAs have relatively high levels of vehicular disturbance throughout and lack protected core habitats when compared with the East Mesa MA. The number of OHV routes in the West Mesa MA increased roughly fourfold from 1985 to 2001 (Wright 2002).

Yuha Basin MA

The Yuha Basin MA consists of about 24,363 ha (60,200 ac), of which 23,149 ha (57,200 ac) of habitat is managed by signatories to the Management Strategy/CA. This MA is bounded by I–8 to the north and fragmented by SR98 running east to west across the entire MA. In 2001, the BLM estimated that 10.5 percent of the eastern Yuha Basin MA was covered with vehicle tracks (Wright 2002). Wright (2002) estimated there was a 23 percent increase in routes and graded roads on this MA from 1994 to 2001, and commented that the vehicle track levels along SR98 in the eastern Yuha Basin MA are more consistent with an Open Area than they are with a limited area. Part of the high level of vehicle track disturbance in this area can be attributed to the increase in illegal drive-through traffic in the recent past from the border into the U.S. (BLM 2002). Drive-through traffic consists of vehicles that drive illegally across the International boundary, the majority off-road, without being inspected by Federal officers. The Border Patrol is planning to erect an "Anti-Vehicle Barrier System" along the international order that will decrease this specific OHV threat in the future. This system has been effective in reducing illegal drive-through traffic near the Algodones Dunes.

The primary reason for the proliferation of trails in limited use areas is most likely due to the lack of route signing and law enforcement available not only on the Yuha Basin MA, but across all MAs. "Federal Lands: Information on the Use and Impact of Off-highway Vehicles," a U.S. General Accounting Office (USGAO) report to Congress (USGAO 1995), reported that BLM has "not completed inventories of their OHV areas, roads, and trails, and they have not finished preparing maps and posting signs to indicate where OHVs may or may not be used. Without such inventories, maps, and signs, neither the public nor the staff can be certain whether specific areas, roads, or trails are available for OHV use." The report did not specifically look at the resource areas containing flat-tailed horned lizard habitat, but it does illustrate the difficulty BLM offices across the western United States have in complying with their agency's own regulations requiring the designation of lands for OHV use be communicated to the public. Without maps and signs to identify OHV routes, the USGAO (1995) concluded that restricted-use areas are, in effect, used and managed as open-use areas.

Our analysis showed that, between 1997 to 2002, the percentage of area disturbed increased from 6.6 to 9.7, the area of disturbance increased from 1,376 ha (3,400 ac) to 2,145 ha (5,300 ac), and the length of roads increased from 394 km (246 mi) to 655 km (409 mi). We consider the BLM figures for vehicle track coverage to be more accurate for strictly measuring vehicle tracks, because of the finer resolution in sampling. BLM measured track coverage on the ground, while our measurements were derived from aerial photographs with obviously much coarser resolution.

Outside MAs

The Ocotillo Wells SVRA manages about 31,040 ha (76,700 ac) between the Borrego Badlands MA and the West Mesa MA, west of SR86. The Ocotillo Wells SVRA allows unrestricted use by OHVs across approximately 20,640 ha (51,000 ac) of this area, while the remaining land is a restricted area zone limited to OHV use on designated trails only (Hollenbeck, pers. comm. 2002). In addition to the Ocotillo Wells SVRA, in this geographic area unrestricted OHV use is also allowed in the BLM's Plaster City (approximately 6,070 ha [15,000 ac]) and Superstition Hills

(approximately 14,164 ha [35,000 ac]) Open Areas.

The California State Department of Parks and Recreation (CSDPR 2002) has reported an increasing popularity of OHV activity in California, with a 30 percent increase in dirt bike registrations, a 96 percent increase in the number of All-Terrain Vehicle registrations, and a 96 percent increase in Dune Buggy and Sand Rail registrations from 1983 to 2000. The number of 4 wheel-drive vehicles registered in the state increased 74 percent from 1994 to 2001. The visitation rate to State Vehicular Recreation Areas in California increased 52 percent from 1985 to 2000. The Ocotillo Wells SVRA contains the majority of the greater than 36,423 ha (90,000 ac) in California's six SVRAs. These upward trends in OHV use in California can be expected to continue as the U.S. Census Bureau estimates California's population to increase by 39 percent, from 32 million to 45 million people by the year 2020.

OHV activity can result in direct mortality of flat-tailed horned lizards and other sand dwelling lizards (Luckenbach 1975; Luckenbach and Bury 1983; Muth and Fisher 1992). Road mortality has also been documented to occur (Turner and Medica 1982, Muth and Fisher 1992, ICC 1999*b*, Young and Young 2000). Flat-tailed horned lizards may be more prone to road and OHV caused mortality than other lizards due their tendency to remain motionless when approached. OHV activity can also crush burrows used by flat-tailed horned lizards and modify habitat because of impacts to vegetation (Luckenbach 1975, Vollmer *et al.* 1976, Bury *et al.* 1977, Luckenbach and Bury 1983, Wilshire 1983), soil disturbance (Luckenbach 1975, Bury *et al.* 1977, Webb 1983, Strittholt *et al.* 2000); and introduction of non-native plants.

Past studies of OHV impacts on lizards (Busack and Bury 1974, Bury *et al.* 1977, Luckenbach and Bury 1983, Klinger *et al.* 1990, Beauchamp *et al.* 1998, Setser and Young 2000, Setser 2001, Gardner 2002, Grant and Wright 2002, Knauf 2002) have been largely inconclusive or cannot be readily applied across the species' range (*i.e.*, have limited inference space; Ratti and Garton 1994). Luckenbach and Bury (1983) reported that a pronounced reduction in flat-tailed horned lizard abundance around the Algodones Dunes had been anecdotally noted by scientists. Marked declines in herbaceous and perennial plants, arthropods, lizards and mammals in OHV-used areas compared with nearby control areas were also reported by Luckenbach and Bury (1983). The declines, however, were for the Colorado Desert fringe-toed lizard (*Uma notata*) and beetles, and did not include flat-tailed horned lizards or ants. Similarly, the BLM (Knauf 2002) found that preliminary results from a comparative study on fringe-toed lizard abundance in OHV open and closed areas showed that abundance of fringe-toed lizards in the OHV-used areas of the Algodones Dunes was significantly lower than in areas closed to OHVs.

Research was conducted in creosote-dominated habitats in the Mojave Desert. Researchers compared reptile metrics (measures) between sites used differentially by OHVs and control sites (Bury *et al.* 1977). Bury *et al.* (1977) found a significant decrease in numbers of reptiles on ORV-used areas compared with numbers on control sites in the Mojave Desert. However, the highest number of desert horned lizards (*Phrynosoma platyrhinos*) on any one plot occurred on a moderately used OHV site. In research conducted by both Busack and Bury (1974) and Bury *et al.* (1977), there appeared to be an inverse relationship between increased use of OHVs and the abundance of lizards. Grant and Wright (2002) reported that OHV use was negatively correlated with flat-tailed horned lizard abundance on 12 plots on the Yuha Basin MA; however, the correlation was not statistically significant.

Research in the Ocotillo Wells SVRA found flat-tailed horned lizards at higher densities in non-sandy habitats than sandy habitats within the SVRA, which differed from most other research findings (Beauchamp *et al.* (1998). It was unclear, however, if flat-tailed horned lizards were found in these atypical habitat types because they are more plastic in habitat use than previously thought, these habitat types are more available in the Ocotillo Wells SVRA than other areas in which flat-tailed horned lizards have been studied, or as a response to OHV activity (Beauchamp *et al.* 1998). Beauchamp *et al.* (1998) stated that most of the sandy areas were heavily affected by OHV activity compared to the habitat types where flat-tailed horned lizards were more dense.

Setser and Young (2000) and Setser (2001) found flat-tailed horned lizards avoided OHV disturbed areas. However, there was no difference in flat-tailed horned lizard habitat use between areas within 10 m (33 ft) of OHV trails and sites further away from OHV trails (Setser and Young 2000, Setser 2001). Setser and Young (2000) and Setser (2001) concluded that (1) OHV use might render sites less suitable to flat-tailed horned lizard use, because of the impacts of OHV activity on vegetation and soil characteristics; or (2) OHV trails occur on sites not preferred by flat-tailed horned lizards (*e.g.*, barren ground with no plants or rocks). However, Gardner (2002) suggested that OHV activity did not have an effect on flat-tailed horned lizards at two different areas in the Ocotillo Wells SVRA, on the basis of observations. Similarly, Grant and Wright (2002) found that abundance of flat-tailed horned lizards was more correlated with percentage of sand cover than level of OHV disturbance.

In conclusion, while there has been some research on the adverse effects of OHV activity on vegetation, soils, and flat-tailed horned lizards, its applicability to flat-tailed horned lizard populations is limited and unreliable, because of the lack of scientific rigor associated with the research designs. Additionally, the effects of OHV activity on flat-tailed horned lizard populations were not the primary research questions. Nevertheless, these studies have utility in generating hypotheses concerning variation in degree of OHV use and flat-tailed horned lizard abundance. At this time, we feel that the available studies do not collectively show that OHV activity causes declines in flat-tailed horned lizard populations in the four different geographic areas in the United States, or that adverse OHV impacts pose a significant threat to these populations. Management activities, including efforts to reduce conflicts with actions that impact flat-tailed horned lizard habitats, would be enhanced by focused research. Impacts of OHV activity on flat-tailed horned lizard populations should be studied using rigorous research designs to yield conclusions with high degrees of certainty (Ratti and Garton 1994) regarding the effects of OHV activity on flat-tailed horned lizard populations across the geographic areas previously mentioned.

The Management Strategy includes specific planning actions to "Maintain information exchange and coordination of monitoring, management activities, and research" and "Encourage and support research that will promote the conservation of [flat-tailed horned lizards] or desert ecosystems." Research priorities include techniques for assessing abundance, life history, demographics, and effects of activities (including OHV use and associated activities). The research is conducted by the appropriate land management agency. We expect that future studies on these research priorities will provide the Service with the information necessary

to reevaluate the status of the flat-tailed horned lizard and threats at a population level.

East Side of Imperial Valley (California)

This geographic area is fragmented north to south by the New Coachella Canal, which separates the East Mesa populations from peripheral Algodones Dunes populations. Additional fragmentation is caused by SR78, I–8, and the All American Canal running mostly in an east to west direction. On the east side of the Algodones Dunes, Ogilby Road further fragments the area, although to a far lesser degree, running from I–8 to SR78.

East Mesa MA

The East Mesa MA is 46,661 ha (115,300 ac) in size, and consists of 43,869 ha (108,400 ac) managed by signatories to the Management Strategy/CA, and 2,792 ha (6,900 ac) of private land. In 2001, BLM estimated that about 4.8 percent of the surface area in the southern portion of the East Mesa MA was covered with OHV tracks (Wright 2002). Our disturbance analysis showed that, between 1997 and 2002, the percentage area disturbed increased from 7.3 to 7.8, acreage of disturbance increased from 3,278 ha (8,099 ac) to 3,311 ha (8,181 ac), and length of roads increased from 224 km (140 mi) to 944 km (590 mi).

In 2001, BLM disturbance surveys detected about 5 percent of the surface area in the southern East Mesa MA to be affected by agriculture, mining, and geothermal activity (Wright 2002). A live bombing area controlled by the U.S. Navy, El Centro Naval Air Facility is located in the northernmost portion of the MA. Based on our review of currently available information, we believe the limited nature of the activities discussed above, do not individually or collectively pose a significant threat to the species and/or its habitat such that the species warrants listing under the Act.

Outside MA

The Imperial Sand Dunes Recreation Area is over 60,704 ha (150,000 ac) of habitat directly to the east of the East Mesa MA. Unrestricted OHV activity is permitted on more than 47,754 ha (118,000 ac) of the area, while about 12,950 ha (32,000 ac) are designated as a wilderness area, with no vehicle use allowed. Habitat has been degraded in the open area of the Imperial Sand Dunes Recreation Area by OHV activity and associated camping. The main impacts to the population in this area are most likely along the western periphery of the Dunes, where people camp and ride OHVs to and from the Dunes and around camp, and to a lesser extent on the eastern periphery. The Dunes have heavy OHV use; however, surveys have shown that the Dunes have a low abundance of flat-tailed horned lizards (Turner *et al.* 1980, Luckenbach and Bury 1983, Wright 2002), even in the wilderness area of the Dunes (Luckenbach and Bury 1983, Wright, pers. comm. 2002).

There has been loss of flat-tailed horned lizard habitat on the west side of East Mesa due to geothermal development on both BLM and private land in an area termed the Known Geothermal Resource Area (KGRA). Historically, approximately 28,240 ha (69,760 ac) of potential flat-tailed horned lizard habitat were subject to geothermal development in the form of construction, maintenance and operation of geothermal powerplants within the KGRA. Ormesa LLC currently operates six geothermal power plants and 80 geothermal wells on nearly 5,463 ha (13,500 ac) of BLM land in the KGRA (D. Campbell, Ormesa LLC Plant Manager, *in litt.* 2002).

Based on our review of currently available information, we believe the limited nature of the geothermal activities discussed above and their location on the periphery of East Mesa, do not constitute a significant threat to the species and/or its habitat such that the species warrants listing under the Act.

Yuma Desert (Arizona)

The historic range of the species in Arizona was estimated at approximately 82,360 ha (203,520 ac) by Hodges (1997), and 89,455 ha (221,043 ac) by the AGFD (Duane Shroufe, AGFD Director, *in litt.* 2002). By 1997, Hodges (1997) estimated about 69 percent (56,780 ha [140,301 ac]) of the species' historic range remained. Habitat losses resulted from conversion to agriculture, urbanization, and military use. AGFD similarly estimates about 72 percent (64,283 ha [158,844 ac]) of the historic range currently remains in Arizona. AGFD reported that approximately 3.7 percent of historic habitat has been lost since 1996. Conversion of habitat to agriculture has been the primary land use responsible for the loss of habitat in Arizona, eliminating about 17.5 percent of historic habitat by 1997. Conversion of habitat for urban and military use accounted for the loss of approximately 11.1 percent and 2.5 percent of historic habitat, respectively (Hodges 1997). The 1993 proposed rule noted that urban and agricultural expansion into flat-tailed horned lizard habitat on the part of the communities of San Luis, Yuma, and the Foothills was a threat. While the expansion of these communities will convert some flat-tailed horned lizard habitat, 77 percent of the remaining habitat is within the MA and 87 percent is managed by signatories to the CA. The remaining private land subject to development is adjacent to existing urban and agricultural areas and is fragmented. In addition, the potential development of this land will not fragment or degrade the contiguous habitat remaining in the Yuma Desert MA, which comprises the majority of the flat-tailed horned lizard habitat in Arizona. For these reasons, the remaining private land does not constitute a significant portion of the range of the flat-tailed horned lizard in this geographic area.

Yuma Desert MA

Of the current habitat, 50,384 ha (124,500 ac) are within the MA. Recently, 6,273 ha (15,500 ac) of suitable habitat owned by the State of Arizona within the Yuma Desert MA was acquired by the Department of Defense, a signatory to the Conservation Agreement. Consequently, the Management Area is completely owned by signatories to the Management Strategy.

A proposal for an Area Service Highway on the west side of the MA would reduce the MA by about 405 ha (1,000 ac), because it would revise the MA boundary. The Area Service Highway would further fragment habitat on the west side of the MA by dividing it from the adjoining habitat outside the MA. Because the Area Service Highway will only contract the MA boundary on one side by less than 1 percent, leaving the habitat in the MA contiguous, this impact does not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act.

The Yuma Desert MA is relatively undisturbed compared to the Management Areas in California. Rorabaugh *et al.* (2002) randomly surveyed the Management Area to assess human disturbance and found the most common form was off-road-vehicle tracks, which covered 2.9 to 3.4 percent of the surface area. The Marine Corps Air Station-Yuma has a 66 ha (162 ac) target area called the "Moving Sands Target" within the MA. Based on our review of currently available information, we believe the limited nature of the activities discussed above, do not individually or collectively pose a significant threat to the species and/or its habitat such that the species warrants listing under the Act.

Outside MA

Currently, there is an estimated 14,876 ha (36,758 ac) of flat-tailed horned lizard habitat outside the MA. Of this habitat, 8,376 ha (20,697 ac) are owned by either the Arizona State Land Department, private interests, or the Cocopah Tribe. No immediate plans for development of this land are known; however, AGFD considers the land to be vulnerable to development. The other 44 percent is owned primarily by the BOR, which is a signatory agency of the Conservation Agreement, so the land is less likely to be developed (Shroufe in litt. 2002). However, approximately 6,475 ha (16,000 ac) of habitat managed by the BOR are within the "5-Mile Zone" of the international border with Mexico, which has been identified by the City of San Luis in their General Management Plan for potential development (Robert Kritzstein, BLM, *in litt.* 2002). These lands do not comprise a significant percentage of the flat-tailed horned lizard habitat in this geographic area, and the potential development of this land will not fragment or degrade the contiguous habitat remaining in the Yuma Desert MA. Therefore, these activities do not constitute a significant threat to the species or its habitat such that the species warrants listing under the Act.

Invasion of non-native plants into the desert systems has been noted as a threat (Hodges 1997, Shroufe in litt. 2002). Non-native species that have become prevalent in certain areas of the Sonoran Desert include *Schismus barbatus* (Mediterranean grass) and *Brassica* spp. (mustard). In Arizona, high densities of Mediterranean grass currently appear limited to disturbed areas in proximity to Yuma (Shroufe *in litt.* 2002). These species can become dense and effectively stabilize substrates that were once loose sand, likely reducing flat-tailed horned lizard habitat quality. Increased fuel load for fire is also a concern with these non-native plant species, and the effects of a new fire regime on the desert ecosystems and ultimately the flat-tailed horned lizard is unknown. Because of the limited extent to which non-native plants have established themselves in flat-tailed horned lizard habitat in this geographic area, this threat does not warrant listing the species under the Act.

Mexico

At this time, much less is known about the threats of habitat loss and modification in Mexico. Urban and agricultural farming are the most immediate threats to the species in Mexico (CEDO 2001). Considerable habitat loss has occurred in the Mexicali Valley in Baja California Norte where urban and agricultural development extends from Mexicali to the Colorado River (Johnson and Spicer 1985, Foreman 1997). This development from Mexicali to the Colorado River together with the All American Canal, has isolated flat-tailed horned lizard habitat on the Andrade Mesa in Mexico from East Mesa in the U.S. and also from the Yuha Desert in Mexico. Habitat fragmentation also has resulted from a variety of human activities, such as the creation of roads and highways. Other potential threats to the habitat of the flat-tailed horned lizard include invasion of non-native plants such as Russian thistle (*Salsola kali*), mustards (*Brassica* spp.), and salt cedar; cattle grazing in the Gran Desierto/Pinacate region; and the increasing use of OHVs in sandy plains, dunes, and back-roads (CEDO 2001). However, the effects of these threats have not been adequately documented (CEDO 2001).

In conclusion, after considering all the current available information, we have determined that the threats identified under Factor A are not significant enough to conclude that the flat-tailed horned lizard is likely to become endangered throughout all or a significant portion of its range in the foreseeable future. However, the Coachella Valley has experienced a significant amount of habitat curtailment and there is the potential for significant habitat destruction in the immediate future, because of the predominant private ownership of habitat and the rate of development in the Coachella Valley. The available data do not suggest that habitat modification by OHV use threatens the flat-tailed horned lizard on the west side of the Salton Sea/Imperial Valley and east side of the Imperial Valley. We conclude that the Arizona population is not likely to become endangered within the foreseeable future, because the low percentage of lands in private ownership makes for a low degree of threat from development. Further, OHV use has not been shown to be a threat to populations here and this geographic area experiences a relatively low level of OHV activity.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the past, scientists have reported on collection of flat-tailed horned lizards. The most noted example was the collection of 381 flat-tailed horned lizards along an 11.3 km (7 mi) stretch of SR78 between the Coachella and East Highline Canals between 1961 to 1964 (Bolster and Nicol 1989). Norris (1949) noted that near Palm Springs the capture of flat-tailed horned lizards was not a common occurrence, and that collecting was good if it yielded two flat-tailed horned lizards in one day. Collection of flat-tailed horned lizards has not been reported since 1964. Because of the difficulty in locating these lizards, due to their cryptic coloration and tendency to remain motionless when approached, no threat of overutilization of this species is known or expected in the future on either public or private lands. Collection for the pet trade has not been identified as a threat to the species.

C. Disease or Predation

While disease is not known to be a threat to flat-tailed horned lizard persistence, flat-tailed horned lizards are depredated by a variety of predators. Flat-tailed horned lizard predators include loggerhead shrikes, round-tailed ground squirrels, grasshopper mice, snakes, canids, American kestrels, common ravens, and burrowing owls (Muth and Fisher 1992, Duncan *et al.* 1994, Young and Young 2000). Round-tailed ground squirrels were documented as the main predator of flat-tailed horned lizards during research conducted in California (N = 19; Muth and Fisher 1992) and Arizona (N = 26; Young and Young 2000), with loggerhead shrikes being the second most common predator. The 1993 proposed rule noted that Bolster and Nicol (1989) suggested that predation of flat-tailed horned lizards near agricultural areas and urban areas may be elevated because of the presence of house cats in urban areas and the abundance of loggerhead shrikes and other predatory birds in croplands. We were unable to find any documentation suggesting that house cats increased mortality rates for flat-tailed horned lizards adjacent to urban areas. Increased predation rates on flat-tailed horned lizards by loggerhead shrikes and American kestrels have been reported in localized areas where human-provided perches (*e.g.*, power lines or palm trees) have been used by shrikes and kestrels as points from which to hunt (Young and Young 2000, Barrows pers. comm. 2002). Despite this, available evidence does not suggest that predation has caused a significant threat to the persistence of the species in any part of its range, public or private.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing mechanisms that could provide some protection for the flat-tailed horned lizard include the following: (1) State laws, including the California Endangered Species Act (CESA) and CEQA, and the Arizona State List of Wildlife of Special Concern and Arizona Game and Fish Commission Order 43; (2) Federal laws and regulations, including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, and the Fish and Wildlife Coordination Act; (3) local land use processes and ordinances; (4) the Flat-Tailed Horned Lizard Rangewide Management Strategy and associated Conservation Agreement; (5) regional planning efforts such as the Coachella Valley Multi-Species Habitat Conservation Plan; and (6) foreign laws and regulations in Mexico, including the Mexican Endangered Species List.

The State of California considers the flat-tailed horned lizard a species of special concern, but it is not listed as threatened or endangered under CESA. Consequently, the species receives no protection under CESA. In California, the management of Anza-Borrego Desert State Park is favorable for the conservation of the flat-tailed horned lizard because of the emphasis placed on resource protection and regulations limiting OHV activity to designated trails.

The States of California and Arizona prohibit the collection of flat-tailed horned lizards pursuant to California Code of Regulations, Title 14, Section 5.60, and Arizona Game and Fish Commission Order 43, except by permit. The AGFD has included the species on the draft List of Wildlife of Special Concern in Arizona, which Arizona uses to prioritize species for planning and funding purposes. No state regulations in Arizona protect the habitat of this species at this time.

CEQA requires review of any project that is undertaken, funded, or permitted by a State or local governmental agency. If a project with potential impacts on the flat-tailed horned lizard were reviewed, CDFG personnel could determine that, although not listed, the lizard is a *de facto* endangered, threatened, or rare species under section 15380 of CEQA. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or deciding that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species or their habitat. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

The flat-tailed horned lizard may receive some level of protection through the Act because of overlapping ranges or proximity to other federally listed species in California. These species include Coachella Valley fringe-toed lizard (*Uma inornata*), Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*), Pierson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*), bighorn sheep in the Peninsular Ranges (*Ovis canadensis*), and desert tortoise (*Gopherus agassizii*).

The federally threatened Coachella Valley fringe-toed lizard is restricted to the Coachella Valley, but its distribution overlaps with the northern portion of the flat-tailed horned lizard's range in the Coachella Valley. However, the flat-tailed horned lizard may use additional habitat within the Coachella Valley in which the fringe-toed lizard does not occur. In addition, the majority of suitable habitat in the Coachella Valley in which both the fringe-toed lizard and flat-tailed horned lizard occur is not protected. Only 2,150 ha (5,314 ac) of suitable flat-tailed horned lizard habitat is protected as part of the Coachella Valley Fringe-toed Lizard Preserve System (Coachella Valley Mountains Conservancy 2001). The federally endangered Coachella Valley milk-vetch also co-occurs with the flat-tailed horned lizard only within the Coachella Valley and offers no additional conservation beyond that provided by the fringe-toed lizard. However, projects in which there is a Federal action that may affect one or both these species are subject to Section 7 consultation with the Service under the Act. Section 7 consultations on the Coachella Valley fringe-toed lizard and/or Coachella Valley milk-vetch may indirectly provide ways to avoid or minimize adverse impacts to the flat-tailed horned lizard in addition to the targeted species.

The federally endangered bighorn sheep of the Peninsular Ranges and flat-tailed horned lizards may overlap in habitat use at the edge of both of their ranges, where there is suitable habitat for both species in close proximity to the toe of slope of the mountains. However, the benefit to the flat-tailed horned lizard provided by the protection of bighorn sheep in the Peninsular Ranges is inconsequential.

The federally endangered Pierson's milk-vetch is restricted to the Algodones Dunes, in which the flat-tailed horned lizard occurs in low numbers (Wright 2002), therefore offering little protection to the flat-tailed horned lizard. The range of the federally threatened desert tortoise may marginally overlap with the flat-tailed horned lizard in certain parts of the Coachella Valley, near the east side of the Salton Sea and the east side of the Algodones Dunes; however, no conservation value to the flat-tailed horned lizard should be expected.

Through NEPA and the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from Federal projects and water development projects authorized by the U.S. Army Corps of Engineers.

The Management Strategy/CA has been the main regulatory mechanism established for the conservation of the flat-tailed horned lizard throughout its range. The Management Strategy/CA was signed in 1997 and included an extensive list of planning actions developed as recommendations to management agencies to ensure population viability within each MA (Foreman 1997). A caveat of the Management Strategy, however, was that the implementation of these actions is subject to availability of funds and compliance with all applicable regulations. In addition, the CA is a voluntary agreement to implement the Management Strategy; a signatory agency may withdraw from the CA after giving the other signatories 60 days' notice.

Some of the planning actions have not yet been implemented. The planning action to "limit vehicle access and limit route proliferation within MAs," has not been achieved. No action has been taken regarding the planning subactions to designate all routes either open, closed, or limited; and to reduce open and limited route density in MAs (Shroufe in litt. 2002, Wright in litt. 2002), despite these subactions' being "priority 1" actions. Priority 1 actions are defined in the Management Strategy (Foreman 1997) as "action[s] that must be taken in the near term to conserve the species and prevent irreversible population declines." The lack of enforcement to ensure closed and limited use areas is the primary deficiency of Management Strategy implementation. Should future research demonstrate that OHV use poses a significant threat to the species, these deficiencies may need to be corrected to avoid the species being listed in the future.

While some important planning actions in the Management Strategy have not yet been implemented, the

actions that have been and are being implemented do provide protection for the flat-tailed horned lizard and its habitat and have contributed to reductions in specific threats to the species. Most planning actions listed in the Management Strategy were implemented between the period of May 1997 and June 2002 (see our response to comment 3). The Management Strategy actions that contributed the most to the conservation of flat-tailed horned lizards were the exclusion of pesticide spraying within MAs, exclusion of competitive recreational events within MAs, efforts to develop and implement a monitoring strategy, and compensation for project impacts to flat-tailed horned lizard habitat.

The actions that have been and are being implemented on the MAs do provide protection for the flat-tailed horned lizard and its habitat in each of the four geographic areas, except the Coachella Valley, in which the flat-tailed horned lizard occurs. Additionally, the Management Strategy has contributed to reductions in specific threats to the species, and to the viability of the flat-tailed horned lizard in each of the five MAs and ultimately the four geographic areas. Current available information does not indicate that the viability of the flat-tailed horned lizard in each of the geographic areas in which it occurs, with the exception of the Coachella Valley, is dependent on full implementation of the Management Strategy.

Regional Habitat Conservation Plans in preparation by the Coachella Valley Association of Governments and the Agua Caliente Band of Cahuilla Indians would conserve a yet-to-be-determined amount of flat-tailed horned lizard habitat, leaving the rest subject to development. These Habitat Conservation Plans are in progress and are subject to approval in the future; therefore, their completion and implementation cannot be relied upon for conservation purposes.

The species is listed in the official Mexican Endangered Species List as threatened (CEDO 2001). Consequently, the species is protected from collection, sale, and commerce, and its habitat is afforded special protection in Mexico. The majority (about 60 percent) of the species' range in Mexico lies within two Mexican Federal natural protected areas: The Upper Gulf of California and Colorado Delta Biosphere Reserve, and the Pinacate and Gran Desierto de Altar Biosphere Reserve (CEDO 2001). The National Park of Pinacate is an area administered by the Mexican government with use restrictions similar to those of a national park in the United States. However, the boundaries are not well established, and enforcement of regulations is minimal.

In conclusion, currently available information does not indicate that inadequate regulatory mechanisms necessitate listing the species under the Act. However, if flat-tailed horned lizard populations are found to be declining in the future, it would be prudent to revisit the adequacy of the regulatory mechanisms mentioned above, including the Management Strategy.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Pesticide spraying associated with the Curlytop Virus Control Program to control the beet leafhopper (*Circulifer tenellus*) (Curlytop Program) on the east and west sides of the Salton Sea and Imperial Valley, is a threat because of its effects on the ant prey base for flat-tailed horned lizards. In the 1993 proposed rule, this threat was identified as having an impact mainly the East Mesa and Yuha Desert. Since the proposed rule, the threat from pesticide spraying has been reduced by a BLM Record of Decision on the Curlytop Program in 1997 and 2002 to prohibit pesticide spraying within MAs. The Curlytop Program or a similar program has not been conducted in the Arizona geographic area of the species range (Minch, Arizona Department of Food and Agriculture, pers. comm. 2002). However, the Curlytop Program persists outside MAs and its direct, and indirect effects on flat-tailed horned lizard populations outside the MAs are not known in any detail. Foreman (1997) stated that the effects of applying broad-spectrum insecticide to desert scrub communities over many years are potentially many and complex. Pesticide/herbicide drift from croplands also has the potential to adversely affect plant communities adjacent to agricultural areas (Foreman 1997).

The California Department of Food and Agriculture's Joint Environmental Assessment proposed that the Curlytop Program is likely to have no direct adverse effect to flat-tailed horned lizard populations, because studies (Hall and Clark 1982, Peterle and Giles 1964, and Giles 1970; all cited in CDFA 2000) have shown various lizard species have a high tolerance of malathion. However, indirect effects of the Curlytop Program to ant populations were noted as being a concern in the associated Biological Opinion (11430–2002–7FCC–2365.1). The Curlytop Program included monitoring of ant colonies in 1991. Malathion was found to negatively affect ant colonies temporarily; however, ant colonies rapidly recovered (Peterson *in litt.* 1991). The Biological Opinion estimated the program could affect up to 141,643 ha (350,000 ac) of flat-tailed horned lizard habitat outside the MAs; however, most treatments are localized.

Historically, treatments in the Imperial Valley are necessary 1 out of every 3 years, and the area treated may vary from 50 to a few thousand hectares (100 to several thousand acres) (CDFA 2000). The most recent treatments in the Imperial Valley were in 1998 and 1991, when 2,388 ha (5,900 ac) and 2,891 ha (7,143 ac), respectively, of flat-tailed horned lizard habitat were sprayed (CDFA 2000).

Because of the limited extent of area sprayed, the prohibition of spraying on MAs, the long intervals between applications, and the apparently temporary nature of the adverse affects, we do not believe the Curlytop Program to be a threat to the species throughout all or a significant portion of its range to the extent that the flat-tailed horned lizard would be likely to become in danger of extinction in the foreseeable future. However, because the study conducted by CDFA (mentioned earlier) was cursory, we recommend further monitoring of ant colonies and flat-tailed horned lizard populations in treated and adjacent areas.

The potential adverse impacts associated with drought were mentioned in the 1993 proposed rule. The threat that localized areas may experience long-term drought resulting in decreased local flat-tailed horned lizard populations still exists.

In our 1993 proposal to list the flat-tailed horned lizard as threatened, we identified numerous potential threats to the species and its habitat as the rationale for believing that the listing of the flat-tailed horned lizard was warranted. In this withdrawal, we have spoken directly to many of the threats discussed in our 1993 proposal in addition to other information that has become available since the publication of that proposal. We did not, however, speak directly to all threats because we believe, based on our review of currently available and credible information, that the threats not directly discussed here no longer pose a significant threat to the species and/or its habitat individually or in combination such that the species warrants listing under the Act.

Finding

The species was proposed as threatened in 1993 because much of the habitat of this species was reported to have been lost, fragmented, or degraded

by human use; and relative densities were reported to have declined in at least one of five optimal habitat areas. Much of the species' habitat has been lost, fragmented, or degraded, but available data concerning population abundance, trends, and threats do not indicate that because of this habitat loss and degradation the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

The information on population trends presented in the 1993 proposed rule was derived in part from scat count data collected between 1979 and 1991. We no longer consider the use of these scat counts reliable for this purpose, as previously discussed in this rule. Therefore, we do not consider scat counts useful or reliable indicators of population abundance. Currently available data do not suggest that flat-tailed horned lizard populations are declining in any of the geographic areas.

On the basis of the analysis of the five factors for the four different geographic areas in which the flat-tailed horned lizard occurs in the U.S., we conclude that the species is in danger of extirpation within the Coachella Valley, because of the large amount of habitat loss, the drastic curtailment of its range, a high degree of fragmentation of remaining habitat, and the threat of habitat loss in the foreseeable future.

While we have determined that the population of flat-tailed horned lizards in the Coachella Valley is endangered with extinction within the foreseeable future, we have concluded that the current distribution of the flat-tailed horned lizard in the Coachella Valley does not constitute a significant portion of the species' range. We have made this determination based on the following: (1) Small extent of flat-tailed horned lizard habitat in the Coachella Valley relative to the overall range of the species (approximately 3 percent of the range in the U.S., and roughly 1 percent of the species range overall, including Mexico); and (2) high level of habitat fragmentation. In addition, current scientific evidence does not suggest that the Coachella Valley population is genetically, behaviorally, or ecologically unique; nor does it appear to be a large population of flat-tailed horned lizards or contribute individuals to other geographic areas through emigration.

Currently, the only geographic areas that have relatively large amounts of flat-tailed horned lizard habitat on private lands are the Coachella Valley and the west side of Salton Sea/Imperial Valley. The Coachella Valley is discussed above. Currently available information does not suggest that development of private lands on the west side of Salton Sea/Imperial Valley poses a threat in the foreseeable future. The only towns in this geographic area are Borrego Springs, Ocotillo, Ocotillo Wells, and Salton City. The largest of these towns is Borrego Springs with a population of approximately 3,000 people. It is likely the size of these towns will not change significantly in the foreseeable future. Therefore, we conclude that the threat of development of private lands in areas other than the Coachella Valley is not significant enough to endanger the species within the foreseeable future throughout a significant portion of its range.

In addition, currently available data do not suggest that the flat-tailed horned lizard is likely to become an endangered species within the foreseeable future on the west side of the Salton Sea/Imperial Valley and east side of Imperial Valley. The primary potential threat to the flat-tailed horned lizard identified for these areas is OHV use. As discussed under Factor A in the "Summary of Factors Affecting the Species" section, we believe the available studies do not collectively show that OHV activity causes declines in flat-tailed horned lizard populations, or that adverse OHV impacts pose a significant threat to these populations.

We conclude the Arizona population is not likely to become endangered within the foreseeable future, because of the relatively low level of OHV activity in this geographic area and the low degree of threats from development due to the low percentage of lands in private ownership.

Following our above analysis and discussion, we have determined that the action of listing the flat-tailed horned lizard as threatened throughout its range as proposed in 1993 is not warranted. We have made this determination because the threats to the species, as identified in the proposed rule, are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range. Consequently, we withdraw our 1993 proposal to list the flat-tailed horned lizard as threatened throughout its range.

References Cited

A complete list of all references cited is available at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** above).

Author

The primary author of this document is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** above).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 24, 2002.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–19 Filed 1–2–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 2
Friday, January 3, 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

Forest Service

McNally Fire/Sherman Pass Restoration Project

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of agriculture, forest Service is preparing an environmental impact statement (EIS) to address the impacts of the McNally Fire. In July and August of 2002, the Sequoia National Forest experienced the largest wildfire in its history. The Sequoia National Forest proposes to begin long-term ecological restoration on portions the fire damaged areas on the Cannell Meadow Ranger District that are outside of inventoried roadless areas. The McNally Fire/Sherman Pass Restoration Project would implement restoration measures on those watersheds containing conifer habitats that are outside the roadless areas and that burned with a moderate to high severity leading to heavy tree mortality. The fire produced adverse effects to forest resources such as soils, riparian areas, and wildlife habitat. The fire also killed thousands of trees that if left untreated will contribute to high loading over time and re-create high risks for another catastrophic fire. The goal of the project is to move the burned areas toward the desired conditions described in the Sequoia National Forest Land and Resource Management Plan (Forest Plan) as amended by the Sierra Nevada Forest Plan Amendment (SNFPA).

DATES: The public is asked to submit any issues (points of concern, debate, dispute, or disagreement) regarding potential effects of the proposed action by February 12, 2003. The draft EIS is expected to be available for public comment in August 2003 and the final EIS is expected to be published in November 2003.

ADDRESSES: Send written comments to: McNally Fire/Sherman Pass Restoration Project USDA Forest Service, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257.

FOR FURTHER INFORMATION CONTACT: Tom Simonson, Ecosystem Manager, Sequoia National Forest, at the Address listed above. The phone number is (559) 784–1500.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

In light of desired conditions specified in our Forest Plan and the existing conditions within the project area outlined above, there is an immediate need to:

1. Re-establish burned conifer stands to provide important habitat for such old forest species as the spotted owl, fisher, marten, and goshawk within 250 years.

2. Restore ground cover to soils left unprotected by the fire in order to minimize erosion in the short term, to protect from catastrophic fires and to replace organic material over the long term.

3. Reduce existing fuels to 10–15 tons per acre in order to reduce the risk of another stand-replacing fire which would damage recovering habitats and riparian condition, thereby setting back the clock on development of old forest habitat and riparian restoration.

Proposed Action

This project proposes to restore approximately 6,000 acres of conifer habitat and riparian areas with a combination of treatment methods. Within these 6,000 acres, approximately 1,600 acres are within Riparian Conservation Areas (RCA). All the areas proposed for treatment are to be managed as either RCAs or Old Forest Emphasis (OFE) areas following direction in the Forest Plan as amended.

Treatments that would be applied in a specific area depend upon the specific restoration need, the slope of the terrain, the degree of confer mortality, and the land management allocation. Where possible, dead trees that have commercial value and that are not needed to meet resource objectives would be removed from the site through a commercial timber sale, as fuelwood, or as other products. This commercial component is important both to ensure viability of the operation and to generate funds to finance related restoration activities within the project area.

Felling of dead trees across the contour of the slope is proposed to stabilize sediment. Reforestation with conifers is proposed to re-establish habitats occupied by late seral species prior to the fire and in order to link together suitable remnant habitats and restore large expanses of old forest habitat. Large-diameter snags and logs will be retained in sufficient quantity to maintain legacy structures for both the late-seral species and their prey. Vegetation control by hand removal is proposed during the first five years after planting to help ensure survival of planted trees.

Riparian Conservation Areas (RCA) would also be treated to restore riparian values by re-establishing vegetation, reducing excessive fuel loadings, stabilizing stream channels and sediment, and improving ground cover conditions. Contour felling of dead trees is proposed to stabilize sediment. Planting of native plants such as conifers, willows, and alders is proposed to re-establish the riparian corridor.

Responsible Official

The responsible official is Forest Supervisor Arthur L. Gaffrey, Sequoia National Forest, 900 West Grand Ave., Porterville, California 93257.

Comment Requested

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes that, at this early stage, it is very important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and

Wisconsin Heritages, Inc. v. *Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that persons interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Dated: December 23, 2002.

Arthur L. Gaffrey,

Forest Supervisor, Sequoia National Forest, USDA, Forest Service.

[FR Doc. 03–1 Filed 1–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayto, Oregon on Monday, January 13, 2003. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. Tentative agenda items include the following topics: Discuss project work plans and timelines, continue developing monitoring and transportation plans, and give update on management plan appeal status.

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time alloted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to January 13 meeting by sending them to Designated Federal Official Rodney Stewart at the address given below.

FOR FURTHER INFORMATION CONTACT: For more informqation regarding this meeting, contact Designated Federal Official Rodney Steward; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97630; (505) 853–3366.

Dated: December 24, 2002.

Y. Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 03–18 Filed 1–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln 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 (Public Law 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on January 13, February 3, March 3, and April 7, 2003 at 6:30 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

DATES: January 13, February 3, March 3, and April 7, 2003.

ADDRESSES: The meetings will be held at the Kootenai National Forest Supervisor's Office, located at 1101 U.S. Highway 2 West, Libby, MT.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include status of approved projects, accepting project proposals for consideration and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Intertake based in Kalispell, MT.

Dated: December 23, 2002.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 03–32 Filed 1–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of Meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings on: January 10, 2003, in Greenville, California; February 21, 2003, in Portola, California; and a third on March 7, 2003, at a location to be announced at a later date. The purpose of the January meeting will be to discuss the Cycle 3 funding process and to review the progress of Cycle 1 projects under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. The purpose of the February meeting will be to select Cycle 2 projects for recommendation to the Plumas National Forest Supervisor for funding consideration, while the meeting in March will be to review and discuss the Forest Service approved Cycle 2 projects.

DATES AND ADDRESSES: The January 10 meeting will take place from 9 a.m.–1:30 p.m., at the Catholic Church Social Hall, 209 Jesse Street, Greenville, California. The February 21 meeting will take place from 9 a.m.–4 p.m., at the Eastern Plumas Health Care Educational building, 500 First Avenue, Portola, California, The March 7 meeting will start at 9 a.m., at a location to be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by E-MAIL *eataylor@fs.fed.us.* Final agendas are posted one week prior to the meeting on the Internet at: *http://www.fs.r5.fs.fed.us/pay2states/plumas.* Prior meeting minutes and agendas are available on the same site.

SUPPLEMENTARY INFORMATION: Agenda items for the January 10 meeting include: (1) Forest Service update regarding RAC general administration, (2) Review Cycle 1 project accomplishments to date; (3) Consider

and make decision on Cycle 3 funding cycle; and, (4) Future meeting schedule/logistics/agenda.

The agenda for the February 21 meeting will focus on the review and selection of Cycle 2 projects for recommendation to the Plumas National Forest Supervisor for funding consideration. General RAC administration and future meeting logistics will also be included.

The agenda for the March meeting will include a review and discussion with the Forest Service regarding the approved Cycle 2 projects, along with other items to be determined at the February meeting. The meetings are open to the public and individuals may address the Committee after being recognized by the Chair.

Dated: December 26, 2002.

Robert G. Macwhorter,

Deputy Forest Supervisor.

[FR Doc. 03–44 Filed 1–2–03; 8:45 am]

BILLING CODE 0511–02–M

ARCTIC RESEARCH COMMISSION

Notice of Meeting

December 19, 2002.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 63rd Meeting in Arlington, VA on January 27 and 28, 2003. The Business Session open to the public will convene at 9 a.m. Monday, January 27, in the Agenda items include:

(1) Call to order and approval of the Agenda.

92) Approval of the Minutes of the 62nd Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Tuesday, January 28. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, (703) 525–0111 or TDD (703) 306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 03–73 Filed 1–2–03; 8:45 am]

BILLING CODE 7555–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

Agency: Commission on Civil Rights.

Date and Time: Friday, January 10, 2003, 8:30 a.m.

Place: Hyatt Regency Albuquerque, 330 Tijeras Avenue, NW., Albuquerque, NM 87102.

Status:

Agenda

I. Approval of Agenda.
II. Approval of Minutes of December 13, 2002 Meeting.
III. Announcements.
IV. Staff Director's Report.
V. State Advisory Committee Appointments for Connecticut.
VI. Program Planning.
VII. Presentations from State Advisory Committee Chairs from the Rocky Mountain Region.
VIII. Presentations from Individual and Organizational Representatives on Civil Rights Issues Facing New Mexico.
IX. Future Agenda Items.

Contact Person for Further Information: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–33151 Filed 12–31–02; 2:36 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On September 27, 2002, the Department published in the **Federal Register** the preliminary results of this new shipper review of certain forged stainless steel flanges from India (67 FR 61069). This review covers one manufacturer/exporter, Metal Forgings Pvt. Ltd. (Metal Forgings) and sales of the subject merchandise to the United States during the period January 1, 2001 through July 31, 2001. The final results do not differ from the preliminary results of review, in which we found that the respondent made no sales in the United States at prices below normal value.

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–5222 or (202) 482–0649, respectively

SUPPLEMENTARY INFORMATION:

Background

On September 27, 2002, the Department published in the **Federal Register** the preliminary results of this new shipper review of certain forged stainless steel flanges from India (67 FR 61069). We invited interested parties to comment on our preliminary results of review. We received no comments. The Department has now completed the new shipper review in accordance with section 751 of the Tariff Act.

Scope of Review

The products covered by this order are certain forged stainless steel flanges both finished and not-finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connections, threaded, used for threaded line connections, slip-on and lap joint, used with stub ends/butt-weld line connections, socket weld, used to fit pipe into a machined recession, and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheading 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The

written description of the scope of this order remains dispositive.

Final Results of the Review

No changes to our analysis in the preliminary results are warranted for purposes of these final results. Accordingly, the weighted-average dumping margin for Metal Forgings for the period January 1, 2001 through July 31, 2001, is as follows:

Manufacturer/exporter	Margin
Metal Forgings Pvt. Ltd	0.00%

Cash Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from Metal Forgings of certain forged stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise entered or withdrawn from warehouse for consumption on or after the publication date as provided for by section 751(a)(2)(C) of the Tariff Act:

- For subject merchandise manufactured and exported by Metal Forgings, no cash deposit is required. In accordance with the practice established in *Fresh Garlic From The People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and *Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 67 FR 52442 (August 12, 2002), the new shipper cash deposit rate will only apply to the merchandise subject to this new shipper review, *i.e.*, merchandise produced and exported by Metal Forgings.
- For subject merchandise exported by Metal Forgings but not manufactured by Metal Forgings, the cash-deposit rate will be the rate applicable to the manufacturer.
- If the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the most recent segment of these proceedings in which that manufacturer participated.
- Finally, if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 162.14 percent, the all others rate established in the less-than-fair-value investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only 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 notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act, and 19 CFR 351.214.

Dated: December 18, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–78 Filed 1–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–803]

Heavy Forged Hand Tools from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Thomas Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3936 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request administrative reviews of the antidumping duty orders on heavy forged hand tools from the People's Republic of China covering the period February 1, 2001 through January 31, 2002 (67 FR 4945). On February 28, 2002, Tianjin Machinery Import & Export Corporation (TMC), Shandong Machinery Import & Export Corporation (SMC), and Liaoning Machinery Import & Export Corporation (LMC) requested administrative reviews in the above-referenced proceedings. Specifically, TMC requested reviews of the hammers/sledges, bars/wedges, picks/mattocks and axes/adzes orders, SMC requested reviews of the hammers/sledges, bars/wedges, picks/mattocks orders, and LMC requested a review of the bars/wedges order. Based on these requests, the Department initiated the current administrative reviews of TMC, SMC and LMC under the requested orders on March 20, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002). The petitioner, Ames True Temper, did not submit any requests for reviews of these orders.

On May 3, 2002, LMC withdrew its request for review of the bars/wedges order. On May 10, 2002, TMC withdrew its requests for review of the hammers/sledges and picks/mattocks orders. On June 7, 2002, SMC withdrew its request for review under the picks/mattocks order. Additionally, on September 26, 2002, TMC withdrew its requests for review of the axes/adzes order and bars/wedges order, and SMC withdrew its requests for review of the bars/wedges and hammers/sledges orders.

On October 9, 2002, the petitioner filed comments in opposition to these withdrawal requests made on September 26, 2002.

Rescission of Review

According to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if the party that requested the review withdraws its requests within 90 days of the date of publication of the notice of initiation of such review, or at a later date if the Department determines that such an extended time is reasonable. TMC's withdrawal requests for the reviews of

the axes/adzes and bars/wedges orders, and SMC's withdrawal requests for reviews of the bars/wedges and hammers/sledges orders were submitted after the 90 day deadline provided by 19 CFR 351.213(d)(1). We note, however, section 351.213(d)(1) permits the Department to extend the deadline if "it is reasonable to do so." The Department has determined that a deadline extension is reasonable in the instant review. See Memorandum from Holly Kuga to Bernard T. Carreau, dated December 24, 2002, on file in the Central Records Unit (CRU) located in B-099 of the main Department of Commerce building. Therefore, the Department is rescinding the current administrative reviews of the orders on heavy forged hand tools with respect to TMC, SMC and LMC covering the period, February 1, 2001, through January 31, 2002 .

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 24, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–77 Filed 1–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results in the antidumping duty new shipper review of certain in-shell raw pistachios from Iran.

SUMMARY: On August 6, 2002, the Department of Commerce (Department) published the preliminary results of this new shipper review of the antidumping duty order on certain in-shell raw pistachios from Iran. *See Certain In-Shell Raw Pistachios from Iran: Preliminary Results of Antidumping Duty New Shipper Review*, 67 FR 50863 (August 6, 2002) (*Preliminary Results*). This review covers one exporter, Tehran Negah Nima Trading Company, Inc. (Nima). The period of review (POR) is July 1, 2000, through June 30, 2001. Comments were submitted by the parties and we have made changes to the margin calculation. The final weighted average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella at (202) 482–1398, or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the *Preliminary Results*, the following events have occurred. On October 17, 2002, the Department postponed the final results of the review until no later than 150 days from the date of issuance of the preliminary results. *See Administrative Review of Certain In-Shell Raw Pistachios From Iran: Extension of Time Limit for Final Results of New Shipper Review*, 67 FR 65337 (October 24, 2002). A request for a public hearing was received by the Department from petitioner (California Pistachio Commission) on August 13, 2002. On August 14, 2002, respondent submitted information in response to a supplemental cost of production questionnaire. On September 5, 2002, respondent filed its case brief. On September 6, 2002, petitioner and Western Pistachio Association (WPA), an interested party, filed case briefs. On September 12, 2002, the Department rejected both petitioner's and WPA's case briefs. On September 13, 2002, the Department received comments from petitioner regarding respondent's August 14, 2002 submission. On September 18, 2002, petitioner and WPA resubmitted their case briefs. On September 30, 2002, respondent submitted a supplemental case and rebuttal brief. On October 9, 2002, the Department rejected respondents' supplemental and rebuttal case brief. Respondent resubmitted a supplemental case brief and a rebuttal case brief on October 15, 2002. On October 17, 2002, the Department rejected respondents' October 15, 2002, supplemental case brief. On October 21, 2002, respondent submitted a revised supplemental case brief. On October 28, 2002, petitioner and Cal Pure Pistachios, Inc. (Cal Pure), an interested party, submitted rebuttal briefs. On October 31, 2002, the Department rejected petitioners' rebuttal brief. On November 1, 2002, petitioner submitted a revised rebuttal brief. On December 9, 2002, petitioner, Cal Pure and respondent submitted comments on the Department's December 4, 2002, verification reports in the new shipper reviews, C–507–501 and C–507–601, copies of which were placed on the record of this proceeding. The public hearing in this proceeding was held on December 12, 2002.

Scope of Review

Imports covered by this review are raw, in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meats, from Iran. The merchandise under review is currently classifiable under item 0802.50.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Facts Available

Section 776(a) of the Tariff Act of 1930 (the Act) provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified subject to sections 782(d), and (e) facts otherwise available in reaching the applicable determination. In this review, respondent failed to provide requested information (*i.e.*, cost information for all production facilities). In failing to disclose the existence of a production facility, respondent did not provide information that had been requested, leaving the Department unable to perform a proper analysis of the cost of producing the subject merchandise. Because the failure to provide the cost information was revealed five weeks prior to the final results, time constraints do not permit the Department to request the necessary information. Finally, as the absence from the record of complete cost information renders the reported per-unit costs unreliable, we conclude that, pursuant to section 776(a) of the Act, use of partial use of facts otherwise available is appropriate.

The statute also requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d)

of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. In this case, the Department requested that the producer provide the weighted-average cost of all facilities producing the product, and to report all affiliated producers. In responding to our requests for information, contrary to these instructions, respondent failed to disclose the additional production facility. Because disclosure of the existence of the additional production facility did not occur until verification in the concurrent CVD proceeding, approximately five weeks prior to the deadline for these final results and fourteen months after this review began, we had no opportunity to inform respondent of any deficiency in its responses or to request additional information. Prior to the disclosure at verification, the Department appropriately relied upon respondent's assertions that it had disclosed all relevant cost information.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so. In this proceeding, the proper, complete cost data was not provided, which renders the costs as reported so incomplete and unreliable as to be unusable.

Therefore, in these final results, the Department will resort to the partial use of facts available as the respondent's reported costs cannot be relied upon, in accordance with section 776(a)(2)(A) of the Act. In doing so, the Department must then determine whether the use of an adverse inference in applying facts available is warranted under section 776(b) of the Act. In the instant review, we find that an adverse inference is warranted given that the respondent withheld critical information with respect to the existence of the additional production facility. This omission renders the reported cost data so incomplete as to prevent the Department from determining the proper basis for constructed value (CV). Moreover, the significance of this omission is seriously compounded by the fact that normal value in this review is based entirely on CV. For further discussion of application of adverse facts available see comment 1 of the "Issues and Decision Memorandum" (Issues and Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Susan H. Kuhbach, Acting Assistant Secretary for Import Administration, dated December 26, 2002 and the Memorandum to Neal M. Halper from Gina K. Lee, RE: Constructed Value Adjustments for Final Results, dated December 26, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this new shipper review are addressed in the Issues and Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Susan H. Kuhbach, Acting Assistant Secretary for Import Administration, dated December 26, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Issues and Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/summary/list.htm. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes since the Preliminary Determination

To determine whether sales of certain in-shell raw pistachios from Iran to the United States were made at less than normal value, we compared export price to normal value. Based on our analysis of comments received, we have made certain changes in the margin calculation. See Analysis Memorandum dated December 26, 2002.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period July 1, 2000, through June 30, 2001:

Exporter/Manufacturer	Weighted-Average Margin
Tehran Negah Nima Trading Company, Inc. (Nima)	144.05 percent

Assessment

The Department shall determine, and U.S. Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b) (2002), we have calculated exporter/importer-specific assessment rates. We calculated importer-specific duty assessment rates on a unit value per kilogram basis and then divided this sum by the entered value for that sale. Based on our determination in this review, we will instruct Customs to assess antidumping duties on the merchandise subject to review. The Department is currently conducting a new shipper review of the countervailing duty order on raw in-shell pistachios from Iran involving Nima. The Department will adjust both the antidumping duty assessment rate and cash deposit rate for Nima/Maghsoudi Farms to offset any export subsidies found at the conclusion of the countervailing new shipper review.

Cash Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from Nima of certain in-shell raw pistachios from Iran entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. As Nima is the exporter but not the producer of subject merchandise, the Department's final results will apply to subject merchandise exported by Nima and produced by Maghsoudi Farms. *See* 19 CFR 351.107(b). Therefore, the following deposit requirements will be effective upon publication of this notice of final results of this new shipper review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(B) of the Act: (1) For the merchandise exported by Tehran Negah Nima Trading Company; Inc. (Nima) and produced by Maghsoudi Farms, the cash deposit rate will be 144.05 percent; (2) for subject merchandise exported by Nima but not produced by Maghsoudi Farms, moreover, the cash deposit rate will be the "all others" rate established in the original less than fair value (LTFV) investigation. *See* 51 FR 25922 (July 17, 1986); (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV

investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor manufacturer is a firm covered in this review or the original investigation, the cash deposit rate will continue to be the "all others" rate of 184.28 percent established in the LTFV investigation. This "all others" rate reflects the amount of export subsidies found in the final countervailing duty determination in the investigation subtracted from the dumping margin found in the less than fair value determination. *See* 51 FR 8344 (March 11, 1986). The Department will adjust the cash deposit rate for Nima/Maghsoudi Farms to offset any export subsidies found at the conclusion of the countervailing new shipper review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 26, 2002.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

1. Adverse Facts Available
2. Bona Fide Sale
3. Verification
4. Exchange Rate
5. Home Market Selling Expenses
6. Disclosure at CVD Verification of Additional Farm
7. Fallah Sales/Expense Data
8. Other Cost Issues
9. Preferential Treatment
10. Combination Rate

[FR Doc. 03–76 Filed 1–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020325069–2311–02]

Request for Proposals for FY 2003—NOAA Educational Partnership Program With Minority Serving Institutions: Environmental Entrepreneurship Program

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for preliminary proposals and subsequent full proposals.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR) of the National Oceanic and Atmospheric Administration (NOAA), United States Department of Commerce is soliciting preliminary proposals and subsequent full proposals for the NOAA Educational Partnership Program with Minority Serving Institutions (EPP/MSI): Environmental Entrepreneurship Program: For the purposes of this program, Environmental Entrepreneurship is defined as an education and training mechanism to engage students in applyng the necessary skills, tools, methods and technologies is sciences directly related to NOAA's mission. This includes fostering educational opportunities in coastal, oceanic, atmospheric, environmental, and remote sensing sciences coupled with training in economics, marketing, product development, and services to create jobs, businesses and economic development opportunities. The Environmental Entrpreneurship Program promotes partnerships with MSIs, NOAA and the public-private sector. The goal of the program is to strengthen the capacity of Minority Serving Institutions to foster student careers, entrepreneurship opportunities and advanced academic study in the sciences directly related to NOAA.

In Fiscal Year 2003, NOAA expects to make available a total of $3,300,000 (subject to congressional appropriations) to support the EPP/MSI Environmental Entrepreneurship Program. The program will provide funds, on a competitive basis, to support programs and projects at eligible Minority Serving Institutions, for a minimum of one year and a maximum of three years duration, in the following two categories:

(1) Program Development and Enhancement—approximately six grants or cooperative agreement awards, each up to a total of $250,000 for a period of one, two or three years to support the capacity of MSIs in the development and enhancement of entrepreneurship training and educational opportunities for students directly related to the NOAA sciences.

(2) Environmental Demonstration Projects—approximately six grants or cooperative agreement awards, each up to a total of $300,000 for a period of one, two or three years to support MSI students and faculty in hands-on demonstration projects focused on applying environmentally sound methods and technologies to address real world environmental issues in local communities directly related to the NOAA sciences.

DATES: Preliminary Proposals must be received by 5 p.m. (Eastern Standard Time) on February 17, 2003. After evaluation by the National Oceanic and Atmospheric Administration, acceptable proposals will be recommended to prepare full proposals, which must be received by 5 p.m. (Eastern Daylight Savings Time) on April 17, 2003. (See Section VI. Instructions for Application: Timetable). Facsimile transmissions and electronic mail submission of proposals will not be accepted.

ADDRESSES: Preliminary proposals and full proposals must be submitted to:

Jewel G. Linzey, Program Manager, Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Educational Partnership Program with Minority Serving Institutions, Room 10725, SSMC III, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jewel G. Linzey, NOAA. *EPP/MSI:* Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Room 10725, SSMC III, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–9437 x 118; e-mail: *jewel.griffin-linzey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Authority:

Authority: 15 U.S.C. 1540. Catalog of Federal Assistance Number: 11.481—Educational Partnership Program with Minority Serving Institutions:

II. Program Description

Background

NOAA provides science, technology and services to describe and predict changes in the Earth's environment, and conserve and manage wisely the Nation's coastal and marine resources to ensure sustainable economic

opportunities. The agency has made a commitment to expand and strengthen its partnerships with Minority Serving Institutions that will serve as a means to meet its principal goals of environmental stewardship, assessment, and prediction. In accordance with the policy of the U.S. Department of Commerce and NOAA to foster environment education and economic sustainability and the agency's mission, the purposes of the NOAA EPP/MSI Environmental Entrepreneurship Program are to support:

(1) *Educational and Training Opportunities.* To prepare students with the necessary compliment of educational opportunities, business acumen and technical skills that will enable them to pursue careers, entrepreneurship opportunities and advanced academic study in sciences directly related to NOAA's mission.

(2) *Capacity Building.* To develop or enhance the capacity of academic programs at MSIs, directly related to the NOAA sciences, to ensure they are effective pipelines through which students and faculty can gain the necessary experience as a baseline for both educational and training opportunities.

(3) *Partnerships.* To facilitate or strengthen MSI partnerships between NOAA programs, laboratories and facilities, community colleges and universities, industry, governments (state, local, commonwealth, territorial and tribal), and organizations (public, nonprofit, or private) that foster cooperative educational and training opportunities for students and facilities.

(4) *Community Economic Development.* To support MSIs and partners in preparing students with the necessary knowledge, skills, tools and technologies that may be applied outside the classroom to create minority business enterprise and foster environmentally sustainable and economically viable local communities.

Rationale

The recruitment of minorities, particularly underrepresented minorities, in the fields of science and engineering, lags behind national expectations. Statistics from the National Science Foundation (NSF) show that of the 17, 347 doctoral degrees granted in NOAA-related sciences in 2000 (the most recent data available as of July 2002), 1.9 percent were granted of African Americans, 2.3 percent were granted to Hispanics, and 0.3 percent were granted to American Indians and Alaska Natives. NOAA statistics also indicate that 3.8 percent of scientist and engineers employed by NOAA are African Americans, 1.8 percent are Hispanics, and .25 percent are American Indians and Alaska Natives. In contrast, these groups make up 26 percent of the U.S. population (African Americans, 12.3 percent, Hispanics, 12.5 percent, and American Indians and Alaska Natives, 1.2 percent). The quality and nature of academic experiences at each point of the educational pipeline are crucial to bringing more minorities into earth and environmental science and engineering fields. Bachelors, Masters and Doctoral degrees are the underpinnings of environmental science career achievement and employment.

NOAA EPP/MSI Environmental Entrepreneurship Program

The goal of the NOAA EPP/MSI Environmental Entrepreneurship Program is to strengthen the capacity of Minority Serving Institutions to foster student careers, entrepreneurship opportunities, and advanced academic study in sciences directly related to NOAA. Proposals must be firmly grounded in "environmental fields" directly related to NOAA's mission. The term "environmental fields" is defined as those environmental, natural sciences (i.e., biology, earth sciences), physical and social sciences (i.e., economics, anthropology, geography, and history), engineering, professional and technical fields that are directly related to NOAA's mission which is to "describe and predict changes in the Earth's environment, and conserve and manage wisely the Nation's coastal and marine resources." (See *http://www.noaa.gov/*)

Proposals should identify mechanisms to be employed that involve an interdisciplinary approach to enhancing MSIs capacity to foster student opportunities, interest in, and pursuit of careers, entrepreneurship and advanced study in the NOAA sciences.

Proposals will be accepted that address one of the following categories:

(i) Program Development and Enhancement—approximately six grants or cooperative agreement awards, each up to a total of $250,000 for a period of one, two or three years to support the capacity of MSIs in the development and enhancement of entrepreneurship training and educational opportunities for students directly related to the NOAA sciences. Developing and enhancing outreach, education, applied research and training capabilities at MSIs is intended to expand opportunities for students to develop the technical skills, entrepreneurial training, and experiences needed to pursue careers, entrepreneurship opportunities and advanced academic study in NOAA-related environmental fields. Activities funded under this element should include an interdisciplinary approach to developing or enhancing: coastal, oceanic, atmospheric, environmental and remote sensing science courses coupled with entrepreneurship training through curriculum enhancement in economics, marketing, product development and services, practical learning experiences for students, applied research or hands-on training. These activities a re designed to foster student careers, entrepreneurship opportunities and advanced academic study directly related to NOAA's mission.

(ii) Environmental Demonstration Projects—approximately six grants or cooperative agreement awards, each up to a total of $300,000 for a period of one, two or three years, to support the engagement of MSI students and faculty in hands-on demonstration projects that apply environmentally sound methods and technologies to address real world environmental issues in local communities that directly relate to the NOAA sciences. Field demonstration projects should encourage partnerships that enable students to address challenging environmental issues such as, enhancing and restoring coastal and estuarine habitats, preventing marine pollution, reducing coastal hazards, assessing marine protected areas, protecting coral reefs, reducing the spread of invasive species, restoring fisheries and fisheries habitat, developing and expanding aquaculture, planning community waterfront revitalization, improving the prediction of weather and climate phenomena, or employing remotely sensed data and information systems to support environmental monitoring and prediction. The demonstration projects should involve students in collaborative field projects that will empower them to pursue careers, entrepreneurship opportunities and advanced academic study. Projects should train students with the necessary knowledge, skills, tools and technology that may be applied outside the classroom to create minority business enterprise and promote environmental sustainability and economic viability in their local communities. Projects should engage students in applied research to understand the nature and extent of environmental degradation within communities and to test and monitor methods for preventing, controlling, and reducing the degradation of natural environments.

Partnerships

Strong linkages or collaborations with NOAA programs, laboratories and facilities are required. Innovative approaches to training students are sought that take maximum advantage of the synergies and partnerships with other universities, community colleges, research institutions, industry, government and nongovernmental agencies, and other organizations (public, nonprofit, or private). Partnerships should engage students in applied research projects, internships, entrepreneurial and hands-on training experiences, mentored by academic and industry professionals, that will facilitate the entry of MSI students into careers, advanced study and environmental entrepreneurship directly related to NOAA's mission. There is no requirement for a MSI or partner to provide matching funds. NOAA retains the right to allocate funds differently than indicated above if the number of proposals received is not balanced across these two categories, or the proposal quality does not warrant the stated allocation. In such cases, funds may be shifted between the two funding categories.

Proposals

Preliminary Proposals must not exceed five pages and must clearly articulate how the MSI and partners will foster student careers, entrepreneurship opportunities and advanced academic study directly related to NOAA sciences.

Full Proposals must be submitted by an eligible MSI (see Section III. Eligibility) and must submit a rigorous work plan, a strong rationale, and clearly identified and achievable goals. Proposals must identify strong linkages or collaborations with NOAA programs, laboratories and facilities. Proposals should emphasize innovative approaches to encouraging, preparing, and graduating MSI students for environmental entrepreneurial careers and opportunities. Direct student support must be at least twenty-five percent [25%] of the total budget. Projects must contain multiple-year participation by students and include effective use of role models and mentors from academia and partner organizations. A plan for evaluating the outcome of the project must be included. Proposals must identify the Principal Investigator and Co-Principal Investigator(s) who will be significantly involved in carrying out the proposal. At least one Co-Principal Investigator must be identified who is experienced enough to assume the responsibility of carrying out the proposal in the absence of the Principal Investigator.

III. Eligibility

Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as:

(i) Historically Black Colleges and Universities,
(ii) Hispanic-Serving Institutions,
(iii) Tribal Colleges and Universities,
(iv) Alaska Native or Native Hawaiian Serving Institutions

on the most recent "2002 United States Department of Education Accredited Post-Secondary Minority Institutions" list: *http://www.ed.gov/offices/OCR/minorityinst.html*

IV. Evaluation Criteria

The evaluation criteria for proposals submitted under the NOAA EPP/MSI Environmental Entrepreneurship Program are weighted as follows:

(1) *Technical and Educational Merit (40 percent):* The degree to which the activity will advance or transfer knowledge and understanding of environmental fields, education, or professional fields directly related to NOAA's mission; the qualifications and capability of the MSI (including sufficient time for the Principal Investigator, Co-Principal Investigator and other pertinent individuals and partners) to conduct the project, the ability to involve a significant number of individuals from the MSI's student population successfully in the project (including at least 25% in direct student support), and multi-year participation by students that includes the effective use of role models and mentors from academia and partner organizations; the degree to which the activity explores creative and original concepts; the overall design and organizations of the planned activity; the strength of proposed partnerships between the MSI, NOAA and the public-private sector to help meet the goals of the project (including sufficient travel funds directed for the Principal Investigator to participate in the NOAA Educational Partnership Program annual meeting).

(2) *Impact of Proposed Project (60 percent):* The contributions the project will make to enhancing the capability of the MSI to bring education, applied research or hands-on training opportunities to its student and faculty populations in the environmental fields directly related to NOAA's mission; the benefit accruing to the institution from participation in the NOAA EPP/MSI: Environmental Entrepreneurship Program; the degree to which the proposed activity develops mechanisms that will broaden and sustain the capacity of MSIs to prepare students for careers, advanced academic study and entrepreneurship opportunities in environmental fields directly related to NOAA's mission; the extent to which the proposed activity will enhance and improve outreach, education, training, and applied research at MSIs; and the adequacy of the plan for evaluating the outcome of the project. For environmental demonstration projects, the degree to which the project is expected to prevent, control, and reduce environmental degradation to communities.

V. Selection Procedures

Preliminary proposals will be reviewed by NOAA. NOAA will conduct a review to assess which preliminary proposals best meet the program goals and objectives and eligibility criteria (stated in Section IV). NOAA will make a determination of the preliminary proposals and recommend which preliminary proposals should be fully developed for evaluation. On the basis of these recommendations, the Director of the EPP/MSI program will advise proposers whether or not the submission of full proposal is recommended for consideration. Invitation to submit a full proposal does not constitute an indication that proposal will be funded. Preliminary proposals are required and must be submitted by the deadline prior to full proposal. A full proposal cannot be submitted if a preliminary proposal has not been submitted. Interested parties who submitted preliminary proposals in accordance with the procedure described in this notice may, if they wish, submit full proposals even if the Director of the EPP/MSI program does not encourage full proposal submission.

Full proposals submitted by April 17, 2003 will be reviewed by an independent peer review panel comprised of a broad representation of government, industry and academic experts. The panel members will rank proposals in accordance with the above evaluation criteria (Section IV). The panel members will provide individual evaluations on proposals, but there will be no consensus recommendation. The panel rankings and evaluations will be considered by NOAA in the final selection of proposals to be funded. NOAA may also consider programmatic or geographic balance and budget availability in the final selection of proposals, hence, awards may not necessarily be made to the highest-scored proposal.

Unsuccessful preliminary proposals and applications will be held in the program office for a period not to exceed three years. Unsuccessful applications will be notified and provided with feedback by e-mail to the Principal Investigator that may assist applicants in developing improved proposals in the future. Successful applications may be asked to modify objectives, work plans, budget levels, or project duration prior to final approval of financial assistance award. Financial Assistance awards may be a grant (e.g., whereby no substantial involvement is anticipated between NOAA and the recipient during the project performance) or cooperative agreement award that requires substantial involvement (e.g., significant collaboration, participation, or intervention by NOAA in the management of the project).

VI. Instructions for Application

Timetable

February 17, 2003—Preliminary Proposals due: Preliminary Proposals must be mailed (no attachments) to Jewel G. Linzey. Information contained should include a brief description of the scope of the work, the parties involved, and an estimated budget. Preliminary Proposals must not exceed five pages and must clearly articulate how the MSI and partners will foster student careers, entrepreneurship opportunities and advanced academic study directly related to NOAA sciences.

April 17, 2003—Full Proposals are due no later than 5 p.m. (Eastern Standard Time), April 17, 2003. (See Section VII. HOW TO SUBMIT for further details.). Facsimile transmissions and electronic mail submission of proposals will not be accepted.

May 2003—Applicants will be reviewed—Successful applicants may be asked to provide revised narratives and/or budgets.

July 1; 2003—Funds will be awarded through a grant or cooperative agreement with an expected start date July 1, 2003.

Full Proposal Guidelines

All full proposals must be typewritten on 8½ × 11 paper in 12-point font and may not exceed 20-pages. The 20 page limit includes signed title page, abstract, project description including all text and any tables and visual materials (such as charts, graphs, maps, photographs and other pictorial presentations), budget and budget justification and all standard application forms. The 20 page limitation does not include literature citation, current and pending support, curriculum vitae and letters of commitment. All information needed for review of the proposal is indicated below; no appendices are permitted.

The following information is included in the 20 page limitation:

(1) *Signed title page*: The title page must be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title with "NOAA EPP/MSI: Environmental Entrepreneurship Program" followed by either "Program Development and Enhancement" or "Environmental Demonstration Project," depending upon the type of financial assistance award application that is submitted. The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, fax number, e-mail and mailing address. The federal funding for each year of the project and total funding being requested must be listed.

(2) *Abstract*: It is critical that the abstract accurately describe the essential elements of the project being proposed. The abstract should include: 1. *Title*—Use the exact title as it appears in the application. 2. *Investigators*—List the names and affiliations of each investigator who will significantly contribute to the project. The Principal Investigator should be listed first followed by the Co-Principal Investigator that will assume the responsibility of carrying out the proposal in the absence of the Principal Investigator. 3. *Funding request* for each year of the project as well as total funding requested. 4. *Project Period*—Start and completion dates. Proposals should request a start date of July 1, 2003. 5. *Objectives, Methodology, and Rationale*—This should include a concise statement of the objectives of the project, the scientific or educational methodology to be used, and the rationale for the work proposed.

(3) *Project Description*

(a) *Introduction/Background/Justification:* How will the MSI foster student careers, entrepreneurship opportunities and advanced academic study directly related to the NOAA sciences? What is the problem or issue being addressed directly related to the NOAA sciences and what is its scientific, technical, educational, or socioeconomic importance to the region or nation?

(b) *Technical Plan:* What are the goals, objectives, and anticipated approach of the proposed project? While a detailed work plan is not expected, the proposal should present evidence that there has been thoughtful consideration of the approach to the problem under study. What capabilities do the partners possess that will benefit the project, faculty member and students?

(c) *Output/Anticipated Benefits:* What measures will be used to evaluate the outcome of the proposed project? Upon completion of the project, what are the anticipated benefits to the MSI, its students, NOAA and the environmental community?

(4) *Budget and Budget Justification:* Form SF424A Budget Information Non-Construction Programs and budget justification narrative are required. There should be an annual budget for each year of the project as well as a cumulative budget for the entire project. Subcontracts should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested. The budget must include at least twenty-five percent [25%] directed to student support including travel to attend relevant conferences, site visits to NOAA programs, laboratories, facilities or other training experiences. The budget must include sufficient travel funds directed for the Principal Investigator to participate in the NOAA Educational Partnership Program annual meeting. (Please see the NOAA budget guidelines at *http://www.rdc.noaa.gov/~grants/BUDGTGUD.PDF*).

(5) *Standard Application Forms:* Proposals submitted in response to this solicitation must be complete and submitted in accordance with instructions in the standard NOAA Grants Application package. Applicants may obtain all required application forms through the NOAA internet site *http://www.rdc.noaa.gov/~grants/pdf* or from Ms. Arlene Simpson Porter, NOAA Grants Management Division, (301) 713–0926 ext. 152, *Arlene.S.Porter@noaa.gov*.

(a) *Standard Forms 424*. Application for Federal Assistance; SF424A Budget Information Non-Construction Programs; SF424B Assurances Non-Construction, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424 or Section 10, applicants should enter "11.481" for the CFDA Number and "NOAA Educational Partnership Program with Minority Serving Institutions" for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) *Primary Applicant Certifications*. All primary applicants must submit a completed Form CD–511,

"Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(i) *Non-Procurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

(iv) *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

(c) *Lower Tier Certifications.* Recipients shall require applicants/bidders for sub grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." ORM CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or sub recipient should be submitted to DOC in accordance with the instructions contained in the award document.

The following information is not included in the 20 page limitation:

(6) *Literature Citation:* Literature cited should be included here.

(7) *Current and Pending Support:* Applicants must provide information on all their current and pending Federal support for ongoing projects and proposals, including potential subsequent funding in the case of continuing grants. The proposed project and all other projects or activities using Federal assistance or that require a portion of time of the principal investigator or other senior personnel should be included. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

(8) *Curriculum Vitae* two pages maximum per all Principal and Co-Principal Investigator(s) involved in carrying out the proposal.

(9) *Letters of commitment from partnering organizations.* Letters of commitment from partners must be included. The letters from partnering organizations should describe the type of commitment, identify key participants, and state their role in the project.

VII. How To Submit

The eligible MSI must submit three copies of the full proposal including all standard application forms (stated in Section VI, 8). Although investigators are not required to submit more than three copies of the proposal, the normal review process utilizes 12 copies. If investigators wish all reviewers to receive color materials submitted as part of the proposal, they should submit sufficient proposal copies for the full review process.

Full Proposals must be received no later than 5 p.m. (Eastern Daylight Savings Time) on April 17, 2003 to: Jewel G. Linzey, NOAA EPP/MIS: Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Room 10725, SSMC3, 1315 East-West Highway, Silver Spring, MD 20910. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

VIII. Other Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreement contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** published on October 30, 2002 (66 FR 66109), is applicable to this solicitation.

For awards receiving funding for the collection or production of geospatial data (*e.g.*, GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 FR 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet Web site: *(http://www.fqdc.gov/standards/standards/html).*

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collections of information requirements subject to the Paperwork Reduction Act. Standard Forms 424, 424A, 424B and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–58 Filed 1–2–03; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021114275–2275–01]

Joint Hurricane Testbed (JHT) Opportunities for Transfer of Research and Technology Into Tropical Cyclone Analysis and Forecast Operations

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), is soliciting preapplications (Letters of Intent) under

the United States Weather Research Program (USWRP), established under section 108 of the NOAA Authorization Act of 1992 (15 U.S.C. 313 note), as governed by the USWRP Joint Hurricane Testbed (JHT). The JHT is operated by NOAA in cooperation with the National Aeronautics and Space Administration (NASA) and the United States Navy. This notice also provides guidelines for the submission of full proposals. This notice describes opportunities and application procedures for the transfer of relevant research and technology advances into tropical cyclone analysis and forecast operations. Eligible applicants include institutions of higher education, other non-profit, and commercial organizations, state, local and Indian tribal governments. This notice calls for researchers to submit proposals to test and evaluate, and modify if necessary, in a quasi-operational environment, their own scientific and technological research applications. Projects satisfying metrics for success and operational constraints may be selected for operational implementation after the completion of the JHT-funded work. The period of the award is from one up to two years.

DATES: Preapplications submitted by Principal Investigators (PIs) must be received at the Tropical Prediction Center in Miami, Florida (address provided below) no later than 5 p.m. Eastern Standard Time (EST) on February 3, 2003. Response letters will be sent from NOAA no later than 5 p.m. EST on March 4, 2003.

PIs will be informed of the submittal deadline for full proposals in the response letter.

ADDRESSES: Preapplication and full proposals must be submitted, in accordance with the requirements described in Section VIII of this notice, to: Dr. Jiann-Gwo Jiing, Director, Joint Hurricane Testbed, Tropical Prediction Center, 11691 SW. 17th Street, Miami, FL 33165. Full proposals must be submitted as printed hard copies to the above address. Preapplications may be sent as printed hard copies to the above address, or they may be submitted electronically by sending in portable document format (PDF) via e-mail to: *Jiann-Gwo.Jiing@noaa.gov*.

The standard NOAA Grants and Cooperative Agreement Application Package, which contains required forms to be submitted with a full proposal (but not with a preapplication), and other important supplemental information to this notice (an overview of the JHT and operational Tropical Prediction Center IT environments), can be obtained by contacting Karen King, DOC/NOAA, Office of Weather & Air Quality Research, Routing Code R/WA, 1315 East-West Highway, Room 11216, Silver Spring, MD 20910, phone (301) 713–0460 ext. 202, e-mail *Karen.King@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Karen King, DOC/NOAA, Office of Weather & Air Quality Research, Routing Code R/WA, 1315 East-West Highway, Room 11216, Silver Spring, MD 20910, phone (301) 713–0460 ext. 202, e-mail *Karen.King@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 15 U.S.C. 2904(c)(3).

II. Catalog of Federal Domestic Assistance (CFDA)

11.431—Climate and Atmospheric Research

III. Program Description

The USWRP, via the JHT, seeks to accelerate the rate at which promising research and technology benefit operational tropical cyclone analysis and forecasting. The goal of this notice is to identify such promising research and technology, and to support the testing and evaluation, in a quasi-operational environment, of techniques and applications developed and provided by PIs to responding to this notice. Federal assistance is provided to PIs allow them to tailor their techniques for the operational environment. Depending upon the nature of the proposed research and technology, PIs are asked to provide documentation and instructions to facilitate the testing and evaluation of their techniques by operational center staff. Projects satisfying metrics for success and operational constraints may be selected for operational implementation after the completion of the JHT-funded work.

JHT Projects: Whereas the operational forecast center where JHT projects will be tested and evaluated could be the NOAA Tropical Prediction Center/ National Hurricane Center (TPC/NHC), the Joint Typhoon Warning Center (JTWC) operated by the United States Navy and Air Force, or the NOAA Central Pacific Hurricane Center (CPHC), TPC/NHC will be specified in this document, both for brevity and to acknowledge the current focus of the JHT on that operational center. Use of other facilities is possible depending on requirements, workload, and opportunity.

The JHT mission is to facilitate the rapid and smooth transfer of new technology, research results, and observational advances of the USWRP, its sponsoring agencies, the academic community, and other groups into improved tropical cyclone analysis and prediction at operational centers. This mission will be accomplished by funded PIs and their support staffs, in collaboration with operational center forecasters and other staff, and facilitated by JHT staff, via the following JHT project activities (as relevant to each project):

(1) Utilizing a quasi-operational environment to facilitate the testing and evaluation by operational center forecasters and support staff of research products and techniques provided by the PIs, subject to metrics that mandate good scientific performance while meeting forecaster ease-of-use needs and time constraints.

(2) Preparation for funded researchers of scientific and technical documentation that is sufficient to facilitate the testing and evaluation of the new product or technique.

(3) Utilizing advanced statistical and numerical model output and stimulating model improvement in tropical cyclone analysis and forecast applications.

(4) Completing tests of codes provided by the PIs that preferably follow established and open programming standards for ease of portability.

(5) Facilitating the transfer of tested and evaluated forecast guidance products, research codes, and observations into the computer, communication, and display systems of the operational forecast center, while incorporating adjustments necessary to generate forecast guidance products that are forecaster-friendly and time-efficient.

Upon acceptance of a proposal, JHT staff will provide project administration and facilitation. The JHT Director will coordinate with each project PI, prior to initiation, a time line and well-defined operational metric(s) for success in terms of scientific performance, ease of use, and time constraints. The time line and progress toward success will be monitored and updated during the project. Additionally, the TPC/NHC Director will designate for the project the forecaster and/or technical point(s) of contact from the TPC/NHC staff.

The JHT will provide to the funded projects access to the JHT IT infrastructure (computer hardware, software, and data) to facilitate the testing and evaluation in an environment that closely matches that of the operational center. An overview of the JHT and TPC/NHC operational IT environments can be obtained along with the standard NOAA Grants and Cooperative Agreement Application Package, as described previously in the

ADDRESSES section following the **SUMMARY** of this notice. Copies of operational codes may be made available to prospective applicants as needed, but without guaranteed support.

The PI and his/her research staff, working with JHT personnel, will modify (if necessary) their proposed system so that it may be run during the hurricane season, utilized by the operational center forecasters, and tested and evaluated quantitatively and qualitatively in a quasi-operational environment. In preparation for testing and evaluation, the funded researcher must provide sufficient documentation and instructions to the JHT staff and TPC/NHC forecasters and technical point(s) of contact to enable them to conduct the tests and evaluations. Following any necessary modifications to make the researcher's proposed system functional in the JHT environment, initial testing and evaluation will be conducted, but not necessarily in real-time or during hurricane season. When the results of these initial tests and evaluations show sufficient progress, the TPC/NHC and JHT Directors, with input from the TPC/NHC point(s) of contact, may make the decision for the proposed system to be configured for quasi-operational, real-time testing and evaluation during hurricane season in the JHT environment. Researchers should anticipate that their funded work period will include their involvement during quasi-operational testing where tuning and adjustment may be required. Experience gained from current JHT projects indicates that the process of testing and evaluation often uncovers opportunities to make modest improvements to a project during its lifetime, and a project advances most rapidly when researchers, the JHT staff, and TPC/NHC forecasters and technical points of contact remain flexible an collaborate closely.

A successful JHT project will result in one or more of the following: (1) A forecast guidance product or technique leading to improved tropical cyclone analyses and/or forecasts; (2) operational availability of data from a new observational system that has provided documented evidence of positive diagnostic or forecast impact; and/or (3) a converted research code that, running with an operational data stream on forecast center computers and display systems, is effectively utilized by the operational forecasters to improve products and services. Final testing, validation, and acceptance of the new product will be the responsibility of, and at the discretion of, the operational forecast center. When the operationally capable system is demonstrated to provide improved forecast guidance according to the agreed-upon metric(s) for success and meets operational constraints, the operational forecast center Director may make the decision for full operational implementation. The JHT-funded researcher and the JHT staff will then provide materials for the operational center to develop its own documentation and training for the new technique or product. Long-term maintenance and support of the new technique or product will then become the responsibility of the operational forecast center. Codes resulting from JHT work accepted for operational implementation will be the property of the U.S. government and will be in the public domain, which will readily facilitate cooperative work between research, educational, governmental, and other organizations.

Program Priorities: The USWRP has established the following goals for its Hurricane Landfall program:

A. Reduce landfall track and intensity errors by 20 percent.

B. Extend track forecasts to 120 hours with an average error less than 250 nautical miles.

C. Increase warning lead time to 24 hours and beyond with 95% confidence.

D. Make skillful forecasts (compared to persistence) of gale- and hurricane-force wind radii out to 48 hours with 95% confidence.

E. Extend quantitative precipitation forecasts to three days and improve skill of day-three forecasts to improve inland flooding forecasts.

The Tropical Prediction Center/National Hurricane Center (TPC/NHC) of the National Centers for Environmental Prediction (NCEP) has identified its operational forecast improvement needs, which are closely related to the USWRP goals. The highest TPC/NHC hurricane forecaster priorities involve the following six areas of need:

(TPC A–1) Improve guidance for tropical cyclone intensity change, with highest priority on the onset, duration, and magnitude of rapid intensification events.

(TPC A–2) Develop statistically-based real-time "guidance on guidance" for track, intensity and precipitation (*e.g.*, multi-model consensus approaches) and provide guidance to forecasters in probabilistic and other formats.

(TPC A–3) Improve guidance for tropical cyclone precipitation amount and distribution.

(TPC A–4) Identify and then reduce the occurrence of guidance and official track outliers, focusing on both large speed errors (*e.g.*, accelerating "recurvers" and stalling storms) and large direction errors (*e.g.*, loops and tropical cyclone tracks such as those of Mitch (1998) and Keith (2000)).

(TPC A–5) Implement improved observational systems in the storm and its environment that provide data for forecaster analysis and model initialization.

(TPC A–6) Develop guidance for changes in tropical cyclone size and related parameters, including combined sea heights.

Additional TPC/NHC areas of need include, but are not limited to:

(TPC B–1) Improve operational analysis and forecast guidance for the surface wind field, including maximum sustained winds, during tropical cyclone landfall.

(TPC B–2) Develop probabilistic forecast guidance for tropical cyclone surface wind speed.

(TPC B–3) Develop guidance for tropical cyclone genesis that exhibits a high probability of detection and a low false alarm rate.

(TPC B–4) Improve numerical and statistical guidance on specific forecast problems, including the following: interactions between upper-level troughs and tropical cyclones, track forecasts near mountainous areas, and extratropical transition.

(TPC B–5) Develop analysis techniques, which improve upon the Dvorak technique, for surface winds in tropical cyclones passing over and north of the sea-surface temperature gradient in the eastern North Pacific Ocean.

(TPC B–6) Develop generalized strike probability programs applicable to all tropical cyclone basins for which the TPC/NHC, CPHC, and JTWC are responsible.

(TPC B–7) Develop improved storm surge guidance models, including guidance on breaking waves and featuring high resolution input and output.

(TPC B–8) Improve the utility of microwave satellite and radar data in tropical cyclone analysis.

Much of the improvement in tropical cyclone forecasting is attributed to advances in numerical weather prediction (NWP). These advances are mainly the result of improvements in observations, data assimilation techniques, and improved model physics in global forecast systems and high resolution regional models, in addition to the development of ensemble-based model guidance. Individual proposals directed toward the NWP issues will be expected to be closely coordinated with the Environmental Modeling Center (EMC)

of NCEP. Work should be concluded within a two year period.

High priority areas of work associated with NWP advancements for tropical cyclone forecasting are:

(EMC 1) General model improvements to advance track and intensity forecasts.

(EMC 2) Improved boundary layer representation for coupled air/sea/land models by, for example, exploiting results from field projects such as C–BLAST (for improved parameterization of surface fluxes in high wind regimes, and effects of sea spray on transfer coefficients).

(EMC 3) Improved targeting strategies for hurricane surveillance missions to improve model track forecasts.

(EMC 4) Model validation techniques suitable for 3D high resolution verification for storms in the process of extratropical transition or storms at landfall.

(EMC 5) Diagnostic techniques to further increase the utility of global models (*e.g.*, NCEP, UKMO, NOGAPS) in forecasting tropical cyclone genesis.

IV. Funding Availability

The estimate for total JHT funding that will be available in FY 2003 is $1,500,000. Funding of any JHT proposals is contingent upon availability of these funds. NOAA issues this notice subject to appropriations made available under the current continuing resolution (CR), H.J. Res. 111, "Making continuing appropriations for the fiscal year 2003, and for other purposes," Public Law 107–229, as amended by H.J. Res. 112, Public Law 107–235, H.J. Res. 122, Public Law 107–240, H.J. Res. 123, Public Law 107–224, and H.J. Res. 124, Public Law 107–294. NOAA anticipates making awards under this program provided that funding for the USWRP is continued beyond January 11, 2003, the expiration of the current continuing resolution. Issuance of awards, however, is subject to the future availability of fiscal year 2003 funds. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities.

V. Funding Instrument

The funding instrument will be a Cooperative Agreement based on the envisioned substantial involvement of NOAA scientists in projects funded by this notice. NOAA collaborates on cooperative research activities and provides financial support to enhance the public benefits to be derived from these research activities. NOAA envisions that JHT project testing and evaluation will involve close collaboration, facilitated by the JHT staff, between JHT-funded researchers and operational center forecasters and point(s) of contact.

VI. Eligibility

Eligible applicants include institutions of higher education, other non-profit, and commercial organizations, state, local and Indian tribal governments. Funding for contractual arrangements for services and products for delivery to NOAA are not available under this notice.

VII. Award Period

The period of awards is from one up to two years. All funded PIs are required to submit written semiannual reports during the project to describe the progress made toward the goals and deliverables established in the original proposal and agreed-upon time line. A final report must also be submitted at the conclusion of the project. The due dates for these reports will be coordinated with the JHT Director upon project initiation. Two-year projects will be reviewed by the JHT Steering Committee, and/or other designated reviewers, and the JHT and TPC/NHC Directors near the end of the first year for suitability for continuation into the second year. PIs are required to submit a renewal proposal along with the second semiannual report for this review. The renewal proposal must provide updates to the project work plan, deliverables, time line. IT requirements, budget, documentation and training plans, etc. This review is also based upon the semiannual reports and upon feedback received from the TPC/NHC point(s) of contact. The criteria upon which the renewal review is based are: (1) The progress toward milestones in the original time line, (2) the potential for completing the testing and evaluation process and providing the stated deliverables by the end of the second year, and (3) appropriateness and reasonableness of the budget with respect to available JHT funds. Given a favorable review, each project may be funded for a second year.

A JHT project reaches its completion in one of two ways. A two-year project may end at any time, particularly after appropriately one year if the TPC/NHC and JHT Directors and the JHT Steering Committee (and/or other designated reviewers) decide, as described above, that insufficient progress has been made to justify continuation of the project into year two. A JHT project ends more conventionally with the submission of a final report at the conclusion of the original agreed-upon project duration, with the subsequent action being the decision by the TPC/NHC Director on whether or not operational implementation of the project deliverables will occur.

VIII. Submission Requirements

The guidelines for preparation of preapplications and full proposals provided below are mandatory (except where otherwise noted). Failure to adhere to these guidelines will result in preaplications and/or full proposals being returned without review. See the "Dates" and "Addresses" sections following the "Summary" earlier in this notice for submission deadlines and addresses.

A. Preapplications (PA)

(1) Prior to submitting a full proposal, PIs are strongly encouraged to submit a PA for each planned proposal. However, PIs who do not submit a PA will not be precluded from submitting a full proposal.

(2) The PA must be no more than two pages in length, using a 12-point font and one inch margins, and it must include the name(s) of the PI(s) and their home institution(s).

(3) The PA must contain a brief description of the intended project.

(4) The PA must include a brief budget which summarizes how resources will be allocated [*e.g.*, salaries, computing and communications, equipment (provide justification), indirect charges, and travel]. Note that funding for secretarial support and IT improvements at the PI's home institution is not generally available.

(5) Each PA will be reviewed, following the criteria specified below in Section IX of this notice, by members of the JHT Steering Committee and/or other designated reviewers, who will make their recommendations to the JHT Director and TPC/NHC Director.

(6) PIs will not be encouraged to submit a full proposal for any PA deemed to be unresponsive to this notice. However, they will not be precluded from submitting a full proposal for any such PA.

B. Full Proposals

(1) The proposal must include a title page signed by the PI(s) and the appropriate representatives(s) of their home institution(s). Each PI and institutional representative should be identified by full name, title, organization, telephone number, mailing address, and e-mail address.

(2) A one page abstract must be included and must contain a brief summary of the work to be completed. The abstract must appear on a separate

page, headed with the proposal title and the name(s) of the PI(s) and their home institution(s).

(3) All proposals must provide a Statement of Work that includes:

a. The proposed duration of the project, from one up to two years;

b. If known, suggested forecaster and/or technical point(s) of contact at TPC/NHC and, if necessary, other operational center(s);

c. A brief description of the project, with prior research results (including references) to demonstrate sufficient maturity and potential for a successful transition to operations at TPC/NHC and other operational forecast centers (*e.g.*, CPHC, JTWC) and/or, if applicable, at a numerical weather prediction center;

d. A work plan for the project, including hardware and software needs, the testing and evaluation approach, metric(s) for success, project deliverables, a time line with key milestones, real-time operational data needed as input, and a plan to port necessary codes to the operational environment of TPC/NHC and/or NCO (an overview of the JHT and TPC/NHC operational IT environments can be obtained along with the standard NOAA Grants and Cooperative Agreement Application Package, as described previously in the **ADDRESSES** section following the **SUMMARY** of this notice);

e. A time line for delivering scientific and technical documentation and training materials over the course of the project that are sufficient to enable testing and evaluation of the proposed techniques. If the proposal is funded, researchers are expected to coordinate with the JHT Director to formalize this time line;

f. Schedule and needs for expected travel (PIs are strongly encouraged to plan and budget during each year of the project to describe their work at the annual Interdepartmental Hurricane Conference (IHC), sponsored by the Office of the Federal Coordinator for Meteorological Services and Supporting Research, and visits by PIs and/or their support staff to the TPC/NHC, and any other operational center(s) as necessary, may be beneficial for training JHT staff and the forecaster and technical point(s) of contact in preparation for project testing and evaluation); and

g. Estimates of JHT staff requirements in terms of on-site (or off-site) JHT Facilitator efforts, and estimated computational, communication, and/or display requirements at the researcher's home institution and/or at JHT via remote access and data transfer.

(4) Applicants must submit a budget using the Standard Form 424A (4–92), Budget Information—Non-Construction Programs. This form is included in the standard NOAA Grants and Cooperative Agreement Application Package (see **ADDRESSES** section that follows the **SUMMARY** earlier in this notice). The budget must include PI and scientific and technical support staff salaries, JHT facility requirements, computing and communications funding, equipment funding (provide justification), indirect charges, and travel. Note that funding for secretarial support and IT improvements at the PI's home institution is not generally available.

(5) Applicants must also use the following forms when applying for financial assistance: Standard Forms 424, Application for Federal Assistance, 424B, Assurances—Non-Construction Programs, and SF–LLL (Rev. 7–97); Department of Commerce forms CD–346, Applicant for Funding Assistance, and CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying. These forms are also included in the standard NOAA Grants and Cooperative Agreement Application Package (see **ADDRESSES** section that follows the **SUMMARY** earlier in this notice).

(6) An abbreviated Curriculum Vita for the PI must be included. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(7) Current and pending Federal support: Each investigator must submit a list that includes project title; supporting agency with grant number, investigator months, dollar value and duration. Requested amounts should be listed for pending Federal support.

(8) Additional proposal requirements include:

a. One signed original and two hard copies of the complete proposal must be submitted (submission of five additional hard copies is encouraged, to expedite the review process, but is not required);

b. Each proposal must be dated with pages numbers;

c. Items 3a through 3g above must be contained within no more than ten pages, using a 12-point font and one-inch margins.

IX. Evaluation Criteria

The JHT Steering Committee, and/or other designated reviewers, and the JHT and TPC/NHC Directors will base their recommendations regarding each preapplication and each full proposal upon the extent to which the following criteria (listed with assigned weights and in order of decreasing importance) are satisfied:

A. (25% weight) Consistency with one or more of the USWRP goals, and consistency with one or more of the priorities and needs of the TPC/NHC (especially the highest priority "TPC A–1 through A–6" items) and/or EMC, as listed in Section III of this notice (**Note:** proposals with exceptional promise for improving operational tropical cyclone forecasting, but that do not fall within the scope of the listed TPC/NHC or EMC needs and priorities, will still be considered.)

B. (25% weight) Potential for improving operational tropical cyclone analysis and forecast accuracy.

C. (20% weight) Promise for a successful transition to operations within one to two years, and readiness for testing and evaluation in a quasi-operational environment.

D. (15% weight) Appropriations and reasonableness of the budget with respect to available JHT funds.

E. (10% weight) Compatibility with the communications, computing, data, and display environments of TPC/NHC and/or NCEP Central Operations (NCO) (note that in cases where the technological advances of the project require cutting-edge hardware or software not yet in place at the JHT and at TPC/NHC and/or NCO, support for such enhancement from the USWRP may be considered).

F. (5% weight) Applicability to other operational forecast centers (*e.g.*, CPHC, JTWC).

X. Selection Procedures

All full proposals will receive an independent, objective review in accordance with the criteria specified above in Section IX of this notice. Such review will be conducted by the JHT Steering Committee, and/or other designated reviewers, consisting of at least three federal and/or non-federal experts. Each member of the independent review panel will individually evaluate and rank the proposals. The reviewers will provide their rankings and recommendations to the JHT Director and TPC/NHC Director. The JHT Director and TPC/NHC Director will together decide whether to endorse each proposal based upon the rankings and recommendations from the reviewers and based upon the availability of TPC/NHC resources to support each project. The JHT Director and TPC/NHC Director will then together present their recommendations on favorably reviewed and endorsed proposals to the Directors, Office of Weather and Air Quality Research (W&AQR) of NOAA's Office of Oceanic and Atmospheric Research.

The Director of W&AQR makes the final recommendation to the NOAA Grants Officer regarding the funding of

applications, taking into account the following program policy factors: (a) Availability of funding, (b) duplication with ongoing Federal support, (c) institutional diversity and (d) inter-institutional collaboration. Successful applicants are then notified. Funded projects become a JHT activity with a duration of one to two years. Note that two-year proposals are initially funded for one year, with funding for a second year contingent upon a favorable review near the end of the first year and upon available W&AQR funds. Unsuccessful applications will be notified of the final selection upon completion of the review and selection process. Copies of all submitted preapplications and proposals will be retained by the JHT staff and will become the property of the U.S. Government.

Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917), as amended by 67 FR 66109 (October 30, 2002), are applicable to this solicitation.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Services for the Deaf

The NOAA Office of Oceanic and Atmospheric Research does not have direct Telephone Device for the Deaf (TDD) capabilities, but can be reached through the State of Maryland-supplied TDD contact number, 800–735–2258, between the hours of 8 a.m. and 4:30 p.m.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF–LLL has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person by subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Regulatory Flexibility Act

Because notice and comment are not required under 5 USC 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 USC 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 USC 601 *et seq.*, pursuant to Executive Orders 13256, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration.

In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance.

Dated: December 30, 2002.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–57 Filed 1–2–03; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Proposed Military Operational Increases and Implementation of Associated Comprehensive Land Use Management and Integrated Natural Resources Management Plan, Naval Air Weapons Station China Lake, China Lake, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act, of 1969 and the regulations implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the Department of the Navy (Navy) in cooperation with the Bureau of Land Management (BLM) prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (DEIS) on November 15, 2002, to evaluate proposed military operational increases and implementation of associated Comprehensive Land Use Management (CLUMP) and Integrated Natural Resources Management Plan (INRMP) at Naval Air Weapons Station China Lake, CA. A Notice of Intent for this DEIS was published in the **Federal Register** on April 1, 1997, (62 FR 20160). Six public scoping meetings were held between May–June 1997. The Navy and BLM will conduct five public hearings to receive oral and written comments on the DEIS. Federal, state, and local agencies, as well as interested individuals are invited to be present or represented at the public hearings. This notice announces the dates and locations of the public hearings for this DEIS.

DATES AND ADDRESSES: An open information session will precede the scheduled public hearing at each of the locations listed below. The open information session will begin at 6 p.m., followed by the public hearing beginning at 7 p.m. and ending at 9 p.m. Public hearings will be held at the following dates and locations:

—Tuesday, January 21, 2003, Kerr McGee Community Center, 100 West California Avenue, Ridgecrest, CA.

—Wednesday, January 22, 2003, Inyokern Elementary, 6601 Locust Avenue, Inyokern, CA.

—Thursday, January 23, 2003, City of Barstow Council Chamber, 220 East Mountain View Street, Suite A, Barstow, CA.

—Tuesday, January 28, 2003, Owens Valley Unified School District, 202 South Clay Street, Independence, CA.

—Wednesday, January 29, 2003, Trona School, 93600 Trona Road, Trona, CA.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Gara, Environmental Planning and Management Department, Naval Air Weapons Station China Lake, China Lake, CA. Telephone (760) 939–3213, facsimile (760) 939–2980, or e-mail: *ogaraje@navair.navy.mil.*

SUPPLEMENTARY INFORMATION: The proposed action includes a moderate increase of military operations, continuation of current non-military activities, and implementation of the CLUMP and INRMP. The preferred alternative presented in the DEIS would allow approximately a 25 percent increase in the type, tempo, and location of military testing and evaluation and training operations. There are no significant environmental impacts associated with any of the alternatives, including the preferred alternative.

The DEIS has been distributed to various Federal, state, and local

agencies, elected officials, and special interest groups, and is available for public review at the following public libraries:

—Kern County Library, Ridgecrest Branch (Document Display Shelf), 131 East Las Flores, Ridgecrest, CA.

—Inyo County Free Library, Independence Branch (Reference Section), 168 North Edwards, Independence, CA.

—San Bernardino Library, Trona Branch, 82805 Mountain View, Trona, CA.

In addition, the DEIS is available for review at the Public Affairs Office at Naval Air Warfare Center, Weapons Division, Room 1015, Building 1, 1 Administration Circle, China Lake, CA. The Executive Summary of the DEIS and other information may be viewed at the following Internet address: *http://www.nawcwpns.navy.mil/~cllump/cllump.html.*

The Navy will conduct five public hearings to receive oral and written comments concerning the DEIS at each of the locations previously listed. At each hearing location, information poster stations will be available from 6 p.m. to 7 p.m., followed by the official hearing beginning at 7 p.m. and ending at 9 p.m. Navy and BLM representatives will be available during the information session to clarify information related to the DEIS. Federal, state, and local agencies, as well as interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the DEIS and will be responded to in the Final Environmental Impact Statement (FEIS). Equal weight will be given to both oral and written statements.

In the interest of available time and to ensure that all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing, or mailed, or faxed to: Mr. John O'Gara, Environmental Planning and Management Department, Naval Air Weapons Station China Lake, China Lake, CA. Telephone (760) 939–3213, facsimile (760) 939–2980. All written comments postmarked by February 21, 2003, will become a part of the official public record and will be responded to in the FEIS.

Dated: December 23, 2002.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–54 Filed 1–2–03; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed December 23, 2002, through December 27, 2002, pursuant to 40 CFR 1506.9.

EIS No. 020528, DRAFT EIS, AFS, WY, Medicine Bow National Forest, Implementation, Draft Revised Land and Resource Management Plan, Albany, Carbon and Laramie Counties, WY, Comment Period Ends: April 04, 2003, Contact: Lynn Jackson (307) 745–2472. This document is available on the Internet at: *http://www.fs.fed.us/r2/mbr.*

EIS No. 020529, DRAFT EIS, FHW, MO, Interstate 64/U.S. Route 40 Corridor, Reconstruct the Existing 1–64/U.S. Route 40 Facility with New Interchange Configurations and Roadway, City of St. Louis, St. Louis County, MO, Comment Period Ends: February 28, 2003, Contact: Don Neumann (573) 638–2607.

EIS No. 020530, DRAFT EIS, COE, CA, Port of Long Beach Pier J South Terminal Development, Dredging and Landfilling to Expand and Modernize Port Terminals, Implementation, Facilities Master Plan (FMP), Section 10 and 404 Permits, City of Long Beach, CA, Comment Period Ends: February 18, 2003, Contact: Dr. Aaron O. Allen (805) 585–2148.

EIS No. 020531, DRAFT EIS, AFS, ID, Middle Little Salmon Vegetation Management Project, To Improve the Current Condition of Timber Stands, Payette National Forest, New Meadows Ranger District, Adam County, ID, Comment Period Ends: February 24, 2003, Contact: Sue Dixon (208) 247–0300. This document is available on the Internet at: *http://www.fs.fed.us/r4/Payette/main.html.*

EIS No. 020532, FINAL EIS, DOE, WA, Maiden Wind Farm Project, Proposes to Construct and Operate up to 494 megawatts (MW) Wind Generation on Privately- and Publicly-owned Property, Conditional Use Permits, Benton and Yakima Counties, WA , Wait Period Ends: February 03, 2003, Contact: Sarah Branum (503) 230–5115.

EIS No. 020533, FINAL SUPPLEMENT, NRC, SC, GENERIC EIS—Catawba Nuclear Station, Unit 1 and 2 (Catawba), Renewal of the Operating Licenses OLs) for an Additional 20-Year Period, Supplement 9 to NUREG–1437, York County, SC , Wait Period Ends: February 03, 2003, Contact: James Wilson (301) 415–1108.

EIS No. 020534, FINAL EIS, NRC, NC, GENERIC EIS—McGuire Nuclear Power Station Units 1 and 2, Supplement 8 to NUREG–1437, Located on the Shore of Lake Norman, Mecklenburg County, NC, Wait Period Ends: February 03, 2003, Contact: James Wilson (301) 415–1108.

Dated: December 30, 2002.

Joseph C. Montgomery,

Office of Federal Activities.

[FR Doc. 03–108 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–F65033–IL Rating EC2, Kudzu Eradication, Proposal to Eradicate Known Kudzu Infestations in the Shawne National Forest, Application for Herbicide and Mechanical Treatment, Jackson, Alexander and Pope Counties, IL.

Summary: EPA expressed environmental concerns that the draft EIS did not include pesticide risk mitigation measures, especially for triclopyr. These should be included in the final EIS.

ERP No. D–COE–E39060–GA Rating LO, Lake Sidney Lanier Project to Continue the Ongoing Operation and Maintenance Activities Necessary for Flood Control, Hydropower Generation, Water Supply, Recreation, Natural Resources Management and Shoreline Management, US Army COE Section 10 and 404 Permits, Dawson, Forsyth, Lumpkin, Hill and Gwinnett Counties, GA.

Summary: EPA has no significant objections to the various management/operational changes being proposed.

ERP No. D–COE–G32056–LA Rating LO, Bayou Sorrel Lock Replacement (formerly IWW Locks) Feasibility Study to Relieve Navigation Delays and/or Provide Adequate Flood Protection, Atchafalaya Basin Floodway, Iberville Parish, LA.

Summary: EPA expressed a lack of objections to the preferred alternative.

ERP No. D–FHW–H40176–00 Rating LO, US–81 Highway, Yankton Bridge Replacement, Missouri River Crossing between the City of Yankton, Yankton County, South Dakota and Cedar County, Nebraska, Funding and Permit Issuance, SD and NB.

Summary: EPA expressed a lack of objections to the project as proposed but offered clarification on disposal requirements for lead-based coatings if removed during the demolition phase.

ERP No. D–FTA–K54028–CA Rating LO, Transbay Terminal/Caltrain Development Downtown Extension/Redevelopment Project, New Multi-Modal Terminal Construction, Peninsula Corridor Service Extension and Establishment of a Redevelopment Plan, Funding, San Francisco, San Mateo and Santa Clara Counties, CA.

Summary: EPA found that the document adequately discussed the environmental impacts of the proposed project.

ERP No. DS–FHW–L50009–WA Rating LO, Elliott Bridge No. 3166 Replacement, Updated and Reevaluated Information, Proposal to Replace the 149th Avenue SE Crossing the Cedar River, Funding, U.S. CGD Bridge Permit and U.S. Army COE Section 404 Permit Issuance, City of Renton, King County, WA.

Summary: EPA has no objections to the project as proposed but recommends that the Final SEIS contain a Purpose and Need statement and improve discussion on how the proposed alternative will address old footing foundations.

Final EISs

ERP No. F–AFS–H65012–MO

Rams Horn Project to Accomplish the Direction and Desired Conditions Identified in the Mark Twain National Forest, Land and Resource Management Plan, Houston/Rolla/Creek Ranger District, Phelps and Pulaski Counties, MO.

Summary: EPA has a lack of objections to the proposed project. Issues identified by EPA in the Draft EIS have been adequately addressed.

ERP No. F–COE–C35014–NJ

Meadowlands Mills Project, Construction of a Mixed-Use Commercial Development, Permit Application Number 95–07–440–RS, U.S. Army COE Section 10 and 404 Permit Issuance, Boroughs of Carlstadt and Monnachie, Township of South Hackensack, Bergen County, NJ.

Summary: EPA continued to raise environmental objections to the project and the alternatives, citing that there were offsite alternatives available that needed to be examined.

ERP No. F–COE–E35021–FL

Miami River Dredged Material Management Plan, River Sediments Dredging and Disposal Maintenance Dredging, Biscayne Bay, City of Miami, Miami-Dade County, FL.

Summary: EPA continues to have environmental concerns about the project's potential impacts.

ERP No. F–COE–G35020–TX

Texas City's Proposed Shoal Point Container Terminal Project, Containerized Cargo Gateway Development, U.S. Army COE Section 404 and 10 Permits Issuance, Material Placement Area (DMPA), City of Texas, Galveston County, TX.

Summary: EPA has no objections to the selection of the preferred alternative.

ERP No. F–FRC–L05226–ID

C.J. Strike Hydroelectric Project (FERC NO. 2055), New License Issuance, Snake and Bruneau Rivers, Owyhee and Elmore Counties, ID.

Summary: EPA continues to have environmental objections with the No Action Alternative, the Idaho Power Proposal and the Idaho Power Proposal with Modifications Alternative as they would not result in appreciable improvements to instream and riparian conditions. EPA believes that the Run-of-River Alternative provides the only strategy for improving aquatic and riparian conditions. EPA also raised concerns with the lack of an identified agency-preferred alternative in the EIS.

ERP No. FS–AFS–F05123–00

Bond Falls Hydroelectric Project related to Terms and Conditions for Geology and Soils, Water Quality and Quantity, Fisheries, Terrestrial, Recreation, Aesthetic, Cultural, Socioeconomic and Land Use Resources, Ontonagon River Basin, Valas County, WI and Ontonagon and Gogebic Counties, MI.

Summary: EPA believes the specified terms and conditions will adequately protect the natural resources in the project area for this relicensing project on the Ottawa National Forest.

Dated: December 30, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–109 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7435–4]

The Commonwealth of the Northern Mariana Islands; Full Program Adequacy Determination of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy of the Commonwealth of the Northern Mariana Islands (CNMI) municipal solid waste landfill permit program.

SUMMARY: Section 4005 (c) (1) (B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945 (1) (B), requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or conditionally exempt small quantity generator waste, comply with the revised Federal MSWLF Criteria. Section 4005 (c) (1) (C) of RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate permit programs for MSWLFs. Approval of State permit programs allows the State to tailor permits to include site-specific conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that, regardless of the approval status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The CNMI is defined as a "State" in 40 CFR 258.2. The CNMI has applied for a determination of adequacy under section 4005 (c) (1) (C) of RCRA, 42 U.S.C. 6945 (c) (1) (C). EPA Region IX has reviewed the CNMI's MSWLF permit program application and has made a final determination that all portions of the CNMI's permit program application are adequate to ensure compliance with the revised MSWLF criteria.

On February 27, 2002, EPA published in the **Federal Register** its tentative determination that the CNMI MSWLF permit program would ensure compliance with the revised Federal Criteria. In the notice of tentative determination, EPA announced that the CNMI application would be available for public review during EPA's public comment period. Although not required by RCRA, EPA offered to hold a public hearing if there was sufficient public interest. EPA determined that there was not sufficient public interest to hold a public meeting, and the public comment period ended on April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Doordan, Office of Pollution Prevention and Solid Waste, mail code WST–7, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, telephone 415–972–3383, or via the Internet: *doordan.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 (c) (1) (C), 42 U.S.C. 6945 (c) (1) (C), that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the EPA has promulgated the Final State Implementation Rule (SIR), which can be found at 40 CFR part 239. The rule specifies the requirements which State programs must satisfy to be determined adequate.

EPA interprets the requirement for states to develop "adequate" programs for permits or other forms of prior approval and conditions to impose several minimum requirements. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in it jurisdiction. The State also must provide for public participation in permit issuance and enforcement, as required in section 7004 (b) of RCRA, 42 U.S.C. 6974 (b). Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an "adequate" program based on the requirements of the SIR. EPA expects States to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. CNMI

On September 19, 2001, EPA Region IX received the CNMI's MSWLF Permit Program application for adequacy determination. Region IX reviewed the application, submitted comments to the CNMI, and requested supplementary information about the state program implementation. The CNMI addressed EPA's comments, provided the requested additional information, and submitted a revised narrative portion of the final application for adequacy determination on January 4, 2002. EPA reviewed the CNMI's final application and on February 27, 2002, published in the **Federal Register** its tentative determination that the CNMI MSWLF permit program met the requirements necessary to qualify for full program approval and ensure compliance with the revised Federal Criteria.

In the notice of tentative determination, EPA announced the availability of the application for public comments. Although not required by RCRA, EPA offered to hold a public hearing if there was sufficient public interest. The public comment period ended on April 29, 2002, and EPA determined that there was not sufficient public interest to hold a public meeting.

The CNMI has three municipal solid waste dumps that are currently out of compliance with the federal criteria for MSWLFs: the Puerto Rico Dump (PRD) on Saipan, one dump on Tinian, and one dump on Rota. The CNMI has developed a schedule for closure of the PRD and construction of a new MSWLF on Saipan. The federal regulations do not allow location of a landfill in a seismic zone without an approved State program. As the entire island of Saipan is considered a seismic zone, the CNMI intends to utilize the flexibility provisions afforded to approved states under particular circumstances to construct a new MSWLF in a seismic impact zone and to use an alternative landfill liner.

During the application review process, EPA expressed concern about the CNMI's staffing capacity and anticipated schedule for bringing the dumps on Tinian and Rota into compliance with federal criteria. On January 4, 2002, the CNMI sent EPA a supplement to the original application with additional information on CNMI commitments to maintaining adequate staffing levels to oversee the program and to developing integrated solid waste management and dump closure plans for Tinian and Rota. Today's document gives public notice of EPA's final determination of full program adequacy for the CNMI MSWLF permit program.

Section 4005 (a) of RCRA, 42 U.S.C. 6945 (a), provides that citizens may use the citizen suit provisions of section 7002 of RCRA, 42 U.S.C. 6972, to enforce the Federal Criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Administrative Requirements

A. Compliance With Executive Order 12866

Executive Order 12866 requires Office of Management and Budget review of "significant regulatory actions." Significant regulatory actions are defined as those that (1) have an annual effect on the economy $100 Million or more or adversely affect a sector of the economy, including 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 or obligations of recipients; or (4) raise novel legal or policy issues. This tentative decision is a not a "significant regulatory action" and is not subject to the requirements of Executive Order 12866.

B. Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605 (b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not

impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates and Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state or local governments in the aggregate, or to the private sector, of $100 million or more. The EPA has determined that the approval action being promulgated does not include a federal mandate that may result in costs of $100 million or more to either state or local governments in the aggregate, or to the private sector. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, no additional costs to state or local governments, or to the private sector, result from this action.

D. Executive Order 12875

Executive Order 12875 is intended to develop an effective process to permit elected officials and other representatives of state or local governments to provide meaningful input in the development of regulatory proposals containing significant unfunded mandates. Since this final federal action approves preexisting requirements of state law, no new unfunded mandates result from this action. See also the discussion under C, above, Unfunded Mandates Act.

E. Executive Order 13045

Executive Order 13045, effective April 21, 1997, concerns protection of children from environmental health and safety risks, and applies to regulatory action that is "economically significant" in that such action may result in an annual effect on the economy of $100 million or more. The EPA has determined that the approval action being promulgated will not have a significant effect on the economy. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, Executive Order 13045 does not apply to this action.

G. Executive Order 12898

Executive Order 12898 requires agencies to consider impacts on the health and environmental conditions in minority and low-income communities with the goal of achieving environmental justice. This tentative determination is consistent with Executive Order 12898.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6946.

Dated: December 23, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 03–107 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0338; FRL–7284–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0338, must be received on or before February 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0338. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made

available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0338 The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0338. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0338.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0338. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 264–TNL. *Applicant*: Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: SCALA Brand SC Pyrimethanil Fungicide. Fungicide. *Active ingredient*: Pyrimethanil at 37.4%. *Proposed classification/Use*: None. For control of plant diseases on tree nuts, bulb vegetables, grapes, stone fruits (except cherries) pome fruits, tuberous and corm vegetables, strawberries, and tomatoes.

2. *File Symbol*: 264–TNU. *Applicant*: Bayer CropScience. *Product Name*: PYRIMETHANIL Technical. Fungicide. *Active ingredient*: Pyrimethanil at 98.5%. *Proposed classification/Use*: None. For formulation of fungicides only.

3. *File Symbol*: 43813–EI. *Applicant*: Janssen Pharmaceutica, Inc., 1125 Trenton-Harbourton Road, Titusville, NJ 08560–0200. *Product Name*: PH066. Fungicide. *Active ingredient*: Pyrimethanil at 37.4%. *Proposed classification/Use*: None. For postharvest use on citrus and pome fruit.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–8 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0212; FRL–7283–4]

Imazethapyr; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of imazethapyr in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0212, must be received on or before February 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0212. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0212. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0212. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0212.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Attention: Docket ID Number OPP–2002–0212. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number

assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 1E6268

EPA has received a pesticide petition (PP 1E6268) from BASF Corporation, P.O. Box 400, Princeton, NJ 08543–0400 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an import tolerance for the sum of the residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid) as its free acid or its ammonium salt (calculated as the acid), and its metabolite 2-[4,5-dihydro-4-methyl-4-(1-methylethyl-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridinecarboxylic acid in or on the raw agricultural commodity canola seed at 0.1 part per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of imazethapyr in canola is adequately understood. Based on studies conducted on soybean, edible and forage legumes, corn and canola, parent imazethapyr and common metabolite CL 288511 are the only residues of concern for tolerance setting purposes.

2. *Analytical method.* Practical analytical methods for detecting and measuring imazethapyr residues of concern in canola are submitted to EPA with this petition. The analytical methods for canola seed are based on gas chromatography and capillary electrophoresis with limits of quantitation (LOQ) of 0.05 ppm. Measurement of imazethapyr residues in canola oil and meal are accomplished by gas chromatography with LOQ of 0.05 ppm. These validated methods are appropriate for the enforcement purposes of this petition.

3. *Magnitude of residues.* A total of 13 field trials were conducted with imazethapyr and its metabolite on canola in 1992, 1993, 1994, and 1999 at several different use rates and timing intervals to represent the use patterns, conditions and areas of use of this product in Canada. Apparent residues of imazethapyr (CL 263499) and metabolite CL 288511 in all canola seed samples were below the LOQ of 0.05 ppm regardless of rate or days after treatment sampled.

B. Toxicological Profile

A complete, valid and reliable database of mammalian and genetic toxicology studies supports the proposed tolerance for imazethapyr on canola. This database was previously reviewed by EPA in support of the tolerance petitions and registration of imazethapyr on soybeans, legume vegetables, corn, alfalfa, and peanuts.

1. *Acute toxicity.* Imazethapyr technical is considered to be nontoxic (Toxicity Category IV) to the rat by the oral route of exposure. In an acute oral toxicity study in rats, the LD_{50} value of imazethapyr technical was greater than 5,000 milligrams/kilogram body weight (mg/kg bwt) for males and females. The results from an acute dermal toxicity study in rabbits indicate that imazethapyr is slightly toxic (Toxicity Category III) to rabbits by the dermal route of exposure. The dermal LD_{50} value of imazethapyr technical was greater than 2,000 mg/kg bwt for both male and female rabbits. Imazethapyr technical is considered to be non-toxic (Toxicity Category IV) to the rat by the respiratory route of exposure. The 4–hour LC_{50} value was greater than 3.27 milligram/liter (mg/L) (analytical) and greater than 4.21 mg/L (gravimetric) for both males and females.

Imazethapyr technical was shown to be non-irritating to rabbit skin (Toxicity Category IV) and mildly irritating to the rabbit eye (Toxicity Category III). Based on the results of a dermal sensitization study (Buehler), imazethapyr technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicity.* Imazethapyr technical was tested in a battery of four *in vitro* and one *in vivo* genotoxicity assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that imazethapyr does not pose a mutagenic or genotoxic risk.

3. *Reproductive and developmental toxicity.* The developmental toxicity study in Sprague Dawley rats conducted with imazethapyr technical showed no evidence of developmental toxicity or teratogenic effects in fetuses. Thus, imazethapyr is neither a developmental toxicant nor a teratogen in the rat. The no observable adverse effect level (NOAEL) for maternal toxicity was 375 mg/kg bwt/day, based on clinical signs of toxicity in the dams (e.g., excessive salivation) at 1,125 mg/kg bwt/day. Imazethapyr technical did not exhibit developmental toxicity or teratogenic effects at maternal dosages up to and including 1,125 mg/kg bwt/day, the highest dose tested.

Results from a developmental toxicity study in New Zealand White rabbits with imazethapyr technical also indicated no evidence of developmental toxicity or teratogenicity. Thus, imazethapyr technical is neither a developmental toxicant nor a teratogen in the rabbit. The NOAEL for maternal toxicity was 300 mg/kg bwt/day, based on decreased food consumption and body weight gain, abortion, gastric ulceration and death at 1,000 mg/kg bwt/day, the next highest dose tested. The NOAEL for developmental toxicity and teratogenic effects was determined to be > 1,000 mg/kg bwt/day based on no developmental toxicity or fetal malformations associated with the administration of all doses.

The results from the 2–generation reproduction toxicity study in rats with imazethapyr technical support a NOAEL for reproductive toxicity of 10,000 ppm (equivalent to 800 mg/kg bwt/day). The NOAEL for non-reproductive parameters (i.e. decreased weanling body weights) is 5,000 ppm.

4. *Subchronic toxicity.* A short-term (21–day) dermal toxicity study in rabbits was conducted with imazethapyr technical. No dermal irritation or abnormal clinical signs were observed at dose levels up to and including 1,000 mg/kg bwt/day (highest dose tested), supporting a NOAEL for dermal irritation and systemic toxicity of 1,000 mg/kg bwt/day.

In a subchronic (13–week) dietary toxicity study in rats with imazethapyr technical, no signs of systemic toxicity were noted, supporting a NOAEL of 10,000 ppm the highest concentration tested (equivalent to 820 mg/kg bwt/day).

In a subchronic (13–week) dietary toxicity study in dogs with imazethapyr technical, no signs of systemic toxicity were noted, supporting a NOAEL of 10,000 ppm (equivalent to 250 mg/kg bwt/day), the highest concentration tested.

5. *Chronic toxicity.* A 1–year dietary toxicity study was conducted with imazethapyr technical in Beagle dogs at dietary concentrations of 0, 1,000, 5,000, and 10,000 ppm. In this study, the NOAEL for systemic toxicity was 1,000 ppm (equivalent to 25 mg/kg bwt/day), based on slight anemia, i.e., decreased red cell parameters observed at 5,000 and 10,000 ppm concentrations. No treatment-related histopathological lesions were observed at any dietary concentration, including the highest concentration tested (10,000 ppm).

In a 2–year chronic dietary oncogenicity and toxicity study in rats conducted with imazethapyr technical, the NOAEL for oncogenicity and chronic systemic toxicity was 10,000 ppm (equivalent to 500 mg/kg bwt/day), the highest concentration tested. An 18–month chronic dietary oncogenicity and toxicity study in mice with imazethapyr technical supports a NOAEL for oncogenicity of 10,000 ppm, the highest concentration tested (equivalent to 1,500 mg/kg bwt/day), and a NOAEL for chronic systemic toxicity of 5,000 ppm (equivalent to 750 mg/kg bwt/day), based on decreased body weight gain in both sexes).

EPA has classified imazethapyr as negative for carcinogenicity (evidence of non-carcinogenicity for humans) based on the absence of treatment-related tumors in acceptable carcinogenicity studies in both rats and mice.

6. *Animal metabolism.* The rat, goat, and hen metabolism studies indicate that the qualitative nature of the residues of imazethapyr in animals is adequately understood.

In three rat metabolism studies conducted with radiolabeled imazethapyr technical, the major route of elimination of the herbicide was through rapid excretion in urine and to a much lesser extent in feces. In the first study, almost 100% of the administered material was recovered in excreta within 96 hours (89–95% in urine, 6–11% in feces). The major residue in urine and feces was parent compound. Approximately 2% of the dose was metabolized and excreted as the α-hydroxyethyl derivative of imazethapyr. In the second study, the test material was rapidly and completely eliminated unchanged in the urine within 72 hours of dosing. After 24 hours, 92.1% of radioactivity was excreted in the urine with 4.67% in the feces. There was no significant bioaccumulation of radioactivity in the tissues from this rat metabolism study (< 0.01 ppm after 24 hours). In the third study, four groups treated with radiolabeled imazethapyr readily excreted > 95% of the test material in the urine and feces within 48 hours. A high percentage (97–99%) of the test material was excreted in the urine as unchanged parent, the remainder as the α-hydroxyethyl derivative of imazethapyr. For all three studies, the major route of elimination of the herbicide in rats was through rapid excretion of unchanged parent compound in urine. It is clear that imazathapyr and its related residues do not accumulate in tissues and organs.

In the goat metabolism study, parent ^{14}C-imazethapyr was dosed to lactating goats at 0.25 ppm and 1.25 ppm. Results showed ^{14}C-residues of < 0.01 ppm in milk and < 0.05 ppm in leg muscle, loin muscle, blood, fat, liver and kidney. Laying hens dosed at 0.5 ppm and 2.5 ppm with ^{14}C-imazethapyr showed ^{14}C-residues of < 0.05 ppm in eggs and all tissues (blood, muscle, skin/fat, liver and kidney).

Additional animal metabolism studies have been conducted with CL 288511 (main metabolite in treated crops fed to livestock) in both laying hens and lactating goats. These studies have been repeated to support subsequent use extensions on crops used as livestock feed items which would theoretically result in a higher dosing of imazethapyr derived residues to livestock (i.e., corn, alfalfa). In these studies, lactating goats dosed at 42 ppm of ^{14}C-CL 288511 showed ^{14}C-residues of < 0.01 ppm in milk, leg muscle, loin muscle and omental fat. ^{14}C-Residues in blood were mostly < 0.01 ppm but reached 0.01 ppm on two of the treatment days. ^{14}C-Residue levels in the liver and kidney were 0.02 and 0.09 ppm, respectively. Laying hens dosed at 10.2 ppm of ^{14}C-imazethapyr showed ^{14}C-residues of < 0.01 ppm in eggs and all tissues (blood, muscle, skin/fat, liver and kidney). ^{14}C-imazethapyr or ^{14}C-CL 288511 ingested by either laying hens or lactating goats was excreted within 48 hours of dosing. These studies indicate that parent imazethapyr and CL 288511-related residues do not accumulate in milk or edible tissues of the ruminant.

7. *Metabolite toxicology.* Metabolism studies in soybean, peanut, corn, alfalfa, and canola indicate that the only significant metabolites are the α-hydroxyethyl derivative of imazethapyr, CL 288511 and its glucose conjugate CL 182704. The α-hydroxyethyl metabolite has also been identified in minor quantities in the previously submitted rat metabolism studies and in goat and hen metabolism studies. No additional toxicologically significant metabolites were detected in any of the plant or animal metabolism studies.

8. *Endocrine disruption.* Collective organ weight data and histopathological findings from the 2–generation rat reproductive study, as well as from the subchronic and chronic toxicity studies in three different animal species demonstrate no apparent estrogenic effects or treatment-related effects of imazethapyr on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* The potential dietary exposure to imazethapyr has been calculated from the proposed tolerance for use on rice and previously established tolerances for peanuts, legume vegetables, soybeans, alfalfa, endive, lettuce, and corn. This very conservative chronic dietary exposure estimate used the proposed tolerance of 0.5 ppm for rice, and tolerance values of 0.1 ppm for peanuts, 0.1 ppm for legume vegetables, 0.1 ppm for soybeans, 3.0 ppm for alfalfa, 0.1 ppm for endive (escarole), 0.1 ppm for lettuce, and 0.1 ppm for corn. In addition, these estimates assume that 100% of these crops contain imazethapyr residues. In support of this import tolerance petition, a proposed tolerance of 0.1 ppm for canola would not be expected to contribute significantly to this dietary risk assessment.

i. *Food.* Potential exposure to residues of imazethapyr in food will be restricted to intake of rice, peanuts, legume vegetables, soybeans, alfalfa (sprouts), endive, lettuce, and corn. Using the assumptions discussed above, the

Theoretical Maximum Residue Concentration (TMRC) values of imazethapyr were calculated for the U.S. general population and subgroups. Based on the tolerances given above, the TMRC values for each group are:

- 0.000419 mg/kg bwt/day for the general U.S. population;
- 0.001104 mg/kg bwt/day for all infants (< 1 year);
- 0.001298 mg/kg bwt/day for non-nursing infants;
- 0.000870 mg/kg bwt/day for children 1 to 6 years of age; and
- 0.000610 mg/kg bwt/day for children 7 to 12 years of age.

The TMRC values indicate that non-nursing infants are the most highly exposed population subgroup.

ii. *Drinking water.* As a screening-level assessment for aggregate exposure, EPA evaluates a Drinking Water Level of Comparison (DWLOC), which is the maximum concentration of a chemical in drinking water that would be acceptable in light of total aggregate exposure to that chemical. In 1990, EPA set the Reference Dose (RfD) for imazethapyr at 0.25 mg/kg bwt/day, based on the NOAEL from the 1–year dietary toxicity study in dogs of 25 mg/kg bwt/day and a 100-fold uncertainty factor. Based on the chronic RfD of 0.25 mg/kg bwt/day and EPA's default factors for body weight and drinking water consumption, the DWLOCs have been calculated to assess the potential dietary exposure from residues of imazethapyr in water. For the adult population, the chronic DWLOC was 8,735 parts per billion (ppb) and for children the DWLOC was estimated to be 2,491 ppb.

Chronic drinking water exposure analyses were calculated for imazethapyr using EPA screening models Screening Concentration in Ground Water (SCI-GROW) for ground water and Generic Expected Environmental Concentration (GENEEC) for surface water). The SCI-GROW value is 16.54 ppb and the calculated peak GENEEC value is 5.96 ppb by aerial application. For the U.S. adult population, the estimated exposures of imazethapyr residues in ground water and surface water are approximately 0.19% and 0.07%, respectively, of the DWLOC. The estimated exposures of children to imazethapyr residues in ground water and surface water are approximately 0.66%, and 0.24%, respectively, of the DWLOC. Therefore, the exposures to drinking water from imazethapyr use are negligible.

2. *Non-dietary exposure.* Imazethapyr products are not currently registered or requested to be registered for residential use; therefore the estimate of residential exposure is not relevant to this tolerance petition.

D. Cumulative Effects

Imazethapyr is a member of the imidazolinone class of herbicides. Other compounds of this class are registered for use in the U.S. However, the herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxyacid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the low toxicity of the imidazolinone compounds in animals. BASF is aware of no information to indicate or suggest that imazethapyr has any toxic effects on mammals that would be cumulative with those of any other chemical. Therefore, for the purposes of this tolerance petition no assumption has been made with regard to cumulative exposure with other compounds having a common mode of action.

E. Safety Determination

1. *U.S. population.* The RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. In 1990, EPA set the RfD for imazethapyr at 0.25 mg/kg bwt/day, based on the NOAEL from the 1–year dietary toxicity study in dogs of 25 mg/kg bwt/day and a 100-fold uncertainty factor. The chronic dietary exposure of 0.000419 mg/kg bwt/day for the general U.S. population will utilize only 0.2% of the RfD of 0.25 mg/kg bwt/day. EPA generally has no concern for exposures below 100% of the RfD. Due to the low toxicity of imazethapyr, an acute exposure dietary risk assessment is not warranted. The complete and reliable toxicity database, the low toxicity of the active ingredient, and the results of the chronic dietary exposure risk assessment support the conclusion that there is a "reasonable certainty of no harm" from the proposed use of imazethapyr on imidazolinone tolerant rice and canola.

2. *Infants and children.* The conservative dietary exposure estimates of all registered uses including the proposed tolerance for rice show exposures of 0.001104, 0.000440, 0.000870, and 0.000610 mg/kg bwt/day which will utilize 0.4, 0.2, 0.3, and 0.2% of the RfD for all infants (< 1 year), nursing infants, children 1-6 years, and children 7-12 years, respectively. The chronic dietary exposures for non-nursing infants, the most highly exposed subgroup, will utilize only 0.5% of the RfD. Results from the 2–generation reproduction study in rats and the developmental toxicity studies in rabbits and rats indicate no increased sensitivity to developing offspring when compared to parental toxicity. These results also indicate that imazethapyr is neither a developmental toxicant nor a teratogen in either the rat or rabbit. Therefore, an additional safety factor is not warranted, and the RfD of 0.25 mg/kg bwt/day, which utilizes a 100-fold safety factor is appropriate to ensure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There are no Codex maximum residue levels established or proposed for residues of imazethapyr on canola.

[FR Doc. 03–7 Filed 1–2–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7435–5]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Johnstown Landfill Site, Town of Johnstown, Fulton County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Johnstown Landfill Site ("Site") located in the Town of Johnstown, Fulton County, New York. The settlement requires the settling parties, the City of Johnstown, New York; Gloversville-Johnstown Joint Sewer Board; Milligan & Higgins, Division of Hudson Industries; Simco Leather Corporation; Johnstown Leather Corporation; Crescent Leather Finishing Co., Inc.; and Pearl Leather Finishers, Inc., to pay the sum total of $202,125 in reimbursement of EPA's past response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their payment of monies. For thirty (30) days following

the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments receive disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before February 3, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Johnstown Landfill Site located in the Town of Johnstown, Fulton County, New York, Index No. CERCLA–02–2003–2001. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Henry Guzmán, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3166.

Dated: December 18, 2002.

George Pavlou,

Division Director, Emergency and Remedial Response Division, Region II.

[FR Doc. 03–106 Filed 1–2–03; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, January 7, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, telephone: (202) 694–1220.

Darlene, Harris,

Secretary of the Commission.

[FR Doc. 02–33149 Filed 12–31–02; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Bancroft State Bancshares, Inc., Bancroft, Wisconsin; to form Hometown Insurance Agency L.L.C., Bancroft, Wisconsin, which will acquire all the assets of Rayome Insurance Agency, Inc., Bancroft, Wisconsin, and thereby engage in insurance agency activities in a town with a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, December 30, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–112 Filed 1–2–03; 8:45 am]

BILLING CODE 6210–01–S

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Harry S. Truman Scholarship 2003 Competition

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Notice of closing for nominations from eligible institutions of higher education.

SUMMARY: Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Public Law 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for 2003 Truman Scholarships. Procedures are prescribed at 45 CFR 1801.

In order to be assured consideration, all documentation in support of nominations must be received by the Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006 no later than January 27, 2003 from participating institutions.

Dated: December 17, 2002.

Louis H. Blair,

Executive Secretary.

[FR Doc. 03–72 Filed 1–2–03; 8:45 am]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collection; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov*.

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: 1. Leading Health Indicators Survey—NEW—The Office of Public Health and Science's Office of Disease Prevention and Health Promotion (ODPHP) proposes to conduct a survey of the Leading Health Indicators (LHIs). The survey seeks to measure how the LHIs are viewed by the public and explore what actions the public needs to take to improve their health and that of the community and the Nation.

Respondents: Individuals.

Number of Respondents: 8,000.

Estimated Burden per Response: 15 minutes.

Total Burden: 2,000 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201. Comments should be received within 60 days of this notice.

Dated: December 19, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 03–59 Filed 1–2–03; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

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: 1. Monitoring the United States Blood Supply—New—The Office of Public Health and Science will monitor the nation's blood supply by gathering daily supply status information from 29 select sites including 26 sentinel transfusion services and three community-wide blood banks.

Respondents: hospitals or blood banks.

Number of Respondents: 29.

Number of Responses: 5,800.

Average Burden per Response: one hour.

Total Burden: 5,800 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 60 days of this notice.

Dated: December 19, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 03–60 Filed 1–2–03; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Council on Public Health Preparedness; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the Secretary's Council on Public Health Preparedness.

The purpose of this public meeting is to convene the Council to discuss issues related to preparing the nation to respond to public health emergencies in general and bioterrorism in particular. Major areas to be considered by the Council at this meeting may include but are not restricted to the following: a status report on the CDC and HRSA cooperative agreements awarded to states and other jurisdictions for bioterrorism preparedness and response programs, overview of states' smallpox vaccination programs, update on the development of vaccines, and discussions of the role of academic health centers in local/regional public health preparedness.

Name of Committee: Secretary's Council on Public Health Preparedness.

Date: January 14–15, 2003.

Time: January 14, 10 a.m.–5:30 p.m., January 15, 9 a.m. to 3:30 p.m.

Place: Marriott Key Bridge, 1401 Lee Highway, Arlington, Virginia 22209, 703–524–6400.

Contact Person: Lily Engstrom, Executive Director, Secretary's Council on Public Health Preparedness, Office of the Assistance Secretary for Public Health Emergency Preparedness, 200 Independence Avenue, SW., Room 638G, Washington, DC 20201, 202–690–6629.

SUPPLEMENTARY INFORMATION: The Secretary's Council on Public Health Preparedness was established on October 22, 2001, by the Secretary of Health and Human Services under authorization of Section 319 of the Public Health Service Act (42 U.S.C. § 247d); Section 222 of the Public Health Preparedness will be to advise the Secretary on appropriate actions to prepare for and respond to public health emergencies including acts of bioterrorism. The function of the Council is to advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency and, specifically, a bio-terrorism event; (2) ensure that there are comprehensive contingency plans in place at the Federal, State, and local levels to respond to a public health emergency and, specifically, a bio-terrorism event; and (3) improve public health preparedness at the Federal, State, and local levels.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to attend the meeting may register by emailing *publichealth@iqsolutions.com* no later than close of business, Monday, January 6, 2003. All requests should include the name, address, telephone number, and business or professional affiliation of those registering.

Opportunities for oral statements by the public will be provided on January 14 at 4:30 p.m. (Time approximate). Oral comments will be limited to five minutes, three minutes to make a

statement and two minutes to respond to questions from Council members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of registrants. Members of the public who wish to present oral comments at the meeting may register by emailing *publichealth@iqsolutions.com* no later than close of business, Monday, January 6, 2003. All requests to present oral comments should include the name, addressed, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by e-mail to *publichealth@iqsolutions.com* for inclusion in the public record no later than close of business, Monday, January 6, 2003.

When mailing written comments, please provide your comments, if possible, as electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact staff at the address and telephone number listed above no later than close of business, Monday, January 6, 2003.

Dated: December 26, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

This notice is being published less than 15 days in advance of the meeting due to scheduling conflicts.

[FR Doc. 03–42 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0362]

"Guidance for Industry: Recommendations for Deferral of Donors and Quarantine and Retrieval of Blood and Blood Products in Recent Recipients of Smallpox Vaccine (Vaccinia Virus) and Certain Contacts of Smallpox Vaccine Recipients;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Recommendations for Deferral of Donors and Quarantine and Retrieval of Blood and Blood Products in Recent Recipients of Smallpox Vaccine (Vaccinia Virus) and Certain Contacts of Smallpox Vaccine Recipients," dated December 2002. The guidance document provides guidance on quarantine of blood and blood products previously collected from such donors. Because of the likelihood of vaccination of many people with smallpox, these measures are intended to reduce the possibility of vaccinia virus transmission by blood and blood products.

DATES: Submit written or electronic comments on agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance 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: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Recommendations for Deferral of Donors and Quarantine and Retrieval of Blood and Blood Products in Recent Recipients of Smallpox Vaccine (Vaccinia Virus) and Certain Contacts of Smallpox Vaccine Recipients," dated December 2002. The guidance document provides information that would help in instances related to the possible risk of vaccinia virus transmission by blood or blood products. Although the presence of vaccinia virus in blood has rarely been documented, this possibility has not been assessed using laboratory techniques. Therefore, the risk of vaccinia transmission by blood and blood products is uncertain. In addition, unlike many vaccines, the smallpox vaccine causes a scab, which can contain infectious vaccinia virus. It is prudent, therefore, to temporarily defer donors for an appropriate period of time. This guidance applies to collections of Whole Blood, blood components (including recovered plasma), Source Leukocytes, and Source Plasma intended for use in transfusion or for further manufacturing into injectable products. FDA developed the recommendations in this guidance in consultation with experts on vaccinia virus at the Centers for Disease Control and at the Department of Defense. This document is intended to provide guidance pertaining to pre-event, nonemergency, smallpox vaccination. In the event of widespread emergency vaccination due to an actual or impending smallpox outbreak, the risk-benefit situation may differ significantly, and these recommendations for donor deferrals, and for product quarantine and retrieval may need to be modified according to the circumstances and available scientific information.

This guidance is being issued in accordance with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The agency is soliciting public comment, but is implementing this guidance immediately because the agency has determined that prior public participation is not feasible or appropriate. FDA made this determination because vaccination programs may start soon, and blood establishments need to clarify the suitability of donors who have been recently vaccinated or who have been infected through close contact with a recently vaccinated person. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/ohrms/dockets/default.htm or www.fda.gov/cber/guidelines.htm.

Dated: August 13, 2002.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–113 Filed 1–2–03; 8:45 am]

BILLING CODE 4160–01–S

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 (OMB), 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: Emergency Medical Services for Children (EMSC) Grantee Survey—NEW

HRSA is planning to conduct a needs assessment to obtain information about the characteristics of State EMS systems, and the degree to which they have been adapted to address the needs of children. The results of this assessment will be used to determine funding priorities, including development of appropriate guidelines and provision of technical assistance to States, demonstration grants, information collection and sharing among State agencies, and training programs for health professionals.

HRSA has included national performance measures for EMSC in this survey in accordance with the requirements of the "Government Performance and Results Act (GPRA) of 1993" (Pub. L. 103–62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance.

The estimated response burden is as follows:

Collection activity	Number of respondents	Responses per respondent	Total responses	Average time per response	Total burden hours
Questionnaire	56	1	56	10	560

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 27, 2002.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 03–114 Filed 1–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Epidemiological Studies of Cancer Among Atomic Bomb Survivors (RFP NO1–CP–31012–66).

Date: January 16, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Health, 6116 Building, 6116 Executive Boulevard, Room 8061, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kirt Vener, PhD, Branch Chief, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8061, Bethesda, MD 20892, (301) 496–7174, *venerk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 27, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–39 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. CIPRA U01 Exploratory Developmental Grant Program.

Date: January 16, 2003.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Roberta Binder, PHD, Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892, 301–496–7966, *rb169n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–36 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, HIV Clinical Research Management Support.

Date: February 6–7, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: To review and Evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert C. Goldman, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2219, 6700-B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–8424, *rg159w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–37 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of RFP–NIH–ES–03–01.

Date: January 23, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709.

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: December 27, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–40 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the

National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: January 26–28, 2003.

Closed: January 26, 2003, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: January 27, 2003, 8:30 a.m. to 9:40 a.m.

Agenda: to discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: January 27, 2003, 9:40 a.m. to 10:15 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: January 27, 2003, 10:15 a.m. to 11:55 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: January 27, 2003, 11:55 a.m. to 1:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: January 27, 2003, 1:45 p.m. to 4:30 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: January 27, 2003, 4:30 p.m. to 5:20 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: January 27, 2003, 6 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: January 27, 2003, 8:30 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, (301) 435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Naurosciences, National Institutes of Health, HHS)

Dated: December 27, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–41 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of PO1 Applications.

Date: January 29–31, 2003.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Key Bridge, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Janice B Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: December 27, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–43 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prostate Brachytherapy.

Date: January 8, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Heath, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vision Research and Technology.

Date: January 10, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Weijia Ni, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, B-Lymphocite Development.
Date: January 10, 2003.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: George W. Chacko, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, (301) 435–1220, *chackoge@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, chemical Pathology Study Section.
Date: January 15–17, 2003.
Time: 5 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points Ventura, 1050 Schooner Drive, Ventura, CA 93001.
Contact Person: Victor A. Fung, Ph.D, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room, 6178, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *vf6n@nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–W (02)M;SB Member Conflict: Intestine Surgery.
Date: January 16, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Dharam S. Dhindsa, DVM, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project Sepsis Immunopathology.
Date: January 22, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–X (40) Site Visit.
Date: January 26–28, 2003.
Time: 7 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Millennium Hotel Durham, 2800 Campus Walk Avenue, Durham, NC 27705.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Emphasis Panel: Hearing Mechanisms.
Date: January 28, 2003.
Time: 10 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jim Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Structural Genomics Program Review.
Date: January 29, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership: Genetics.
Date: January 31, 2003.
Time: 3 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael R. Schaefer, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6116, MSC 7890, Bethesda, MD 20892, (301) 435–2477, *schaefem@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 26, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–38 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program, National Institute of Environmental Health Sciences, National Institutes of Health: Notice of Workshop

Summary

The National Toxicology Program (NTP) is sponsoring a workshop entitled "Genetically Modified Rodent Models for Cancer Hazard Identification: Selecting Substances for Study and Interpreting and Communicating Results' on February 21, 2003, at the Hamilton Crowne Hotel, 14th and K Street, NW., Washington, DC. Registration starts at 8 a.m. and the meeting begins at 8:30 a.m. and is open to the public with attendance limited only by the available space. Persons interested in attending are asked, if possible, to preregister with the NTP Liaison and Scientific Review Office (contact information below). As information about this workshop becomes available, it will be posted on the NTP web site (*http://ntp-server.niehs.nih.gov*).

Background

The NTP has invested considerable time and resources in addressing whether cancer bioassay results from studies conducted in genetically modified or "transgenic" rodent models are useful for identifying chemicals presumed to be of carcinogenic risk to humans, in order to determine whether these models might be integrated into NTP research and testing activities. After reviewing available information on the use of selected models in carcinogen identification, the NTP recognizes that important issues of experimental design and data interpretation need further attention to enable future regulatory acceptance and

eventual use in human risk assessment. Therefore, to begin to address these areas the NTP is sponsoring a workshop with the following objectives:

- Solicit comment on a process for selection of appropriate nominated substances to undergo cancer hazard evaluation in genetically modified or "transgenic" models.
- Solicit comment on issues related to the proper interpretation of results of "transgenic" cancer models, the implications of these findings for public health decisions, and the most appropriate interpretive language to describe the results of such studies to the scientific/regulatory communities and the public.

Preliminary Agenda

8 a.m. Registration
8:30 a.m. Introduction and Welcome
8:45 a.m. Plenary Session
- Overview of Selected Transgenic Models
- Experience with Transgenic Models in the NTP Bioassay
- Workshop Charge
- Public Comment

10 a.m. Break
10:30 a.m. Breakout Groups
- Group 1: Solicit comment on a process for selection of appropriate nominated substances to undergo cancer hazard evaluation in genetically modified or "transgenic" models.
- Group 2: Solicit comment on issues related to the proper interpretation of results of "transgenic" cancer models, the implications of these findings for public health decisions, and the most appropriate interpretive language to describe the results of such studies to the scientific/regulatory communities and the public.

Noon Lunch (on your own)
1:00 p.m. Breakout Groups continued
2:30 p.m. Break
3:15 p.m. Plenary Session
- Breakout Group Reports
- Open Discussion

4:30 p.m. Adjourn

As additional details and materials for this workshop become available, they will be posted on the NTP web site (*http://ntp-server.niehs.nih.gov*) or can be obtained by contacting Ms. Diane Spencer, NTP Liaison and Scientific Review Office (T: 919–541–2759, F: 919–541–0295, *spencer2@niehs.nih.gov*).

Registration and Public Comment

The workshop is open to the public and interested individuals are invited to attend as observers. The number of observers will be limited only by the space available. Due to space limitations, persons interested in attending are asked to pre-register by contacting Ms. Spencer (contact information above).

The NTP invites public comment and time is set-aside during the morning session for presentation of oral comments. Persons wishing to make oral comment are asked to contact Ms. Spencer in advance of the meeting and provide contact information (name, affiliation, telephone, e-mail, and sponsoring organization, if any); however, registration for oral comments will also be accepted on-site. Observers are also welcome to participate in the open discussion in the afternoon plenary session.

The NTP also welcomes receipt of written comments. If sending written comments, please include contact information (name, affiliation, telephone, e-mail, and sponsoring organization, if any) and send to Dr. Mary S. Wolfe, NTP Executive Secretary (P.O. Box 12233, MD A3–01. 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 or *wolfe@niehs.nih.gov*) by Friday, February 14, 2003. Any comments received will be provided to invited attendees at the meeting and made available for the public.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–35 Filed 1–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.)

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 10150–102 Street, Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891 x8991

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010,

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 2, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

(Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176x276.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507 / 800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, 901–474–6028

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260,

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–3714

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–141 Filed 1–2–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for The Centers for the Application of Prevention Technologies (Short Title: CAPTs).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Request for Applications (RFA), including Part I, *The Centers for the Application of Prevention Technologies (SP 03–002) (Short Title: CAPTs),* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. Funds FY 2003	Est. No. of awards	Project period
The Centers for the Application of Prevention Technologies.	March 10, 2003	$8,000,000	5	5 years.

The actual amount available for the award may vary depending on unanticipated program requirements and actual SAMHSA appropriations. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of State Training and Evaluation of Evidence-Based Practices grants. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund the grants. This program is authorized under Section 516 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from:

The National Clearinghouse for Alcohol and Drug Information (NCADI): (800) 789–2647 or (800–487–4889 TDD).

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP) is accepting applications for Fiscal Year 2003 cooperative agreements for five regional Centers for the Application for Prevention Technologies or CAPTs. The CAPTs are SAMHSA/CSAP's primary knowledge application and capacity expansion program supporting CSAP's mission to bring effective substance abuse prevention to every community. As such, the CAPTs form the cornerstone of CSAP's efforts to move science into services. Under the guidance of CSAP, the CAPTs work to expand the capacity of the substance abuse prevention field through the application of effective evidence/science-based programs, practices, and policies within every State prevention service system and community. To accomplish this, the CAPTs provide their clients with timely and effective technical assistance, training, dissemination, and communication

services that increase the transfer and application of substance abuse prevention knowledge and skills.

Eligibility: Applications may be submitted by public and domestic private non-profit entities (*e.g.*, universities, faith-based organizations, etc.). It is required that applicants have offices physically located within the CAPT region to be served. Applicants must also be experienced in the delivery of prevention technical assistance and training. Applicants are required to include a certification with their application to certify that—for a minimum of two years prior to the date of the application—the organization has been providing the general types of training and technical assistance services being proposed for this RFA.

Availability of Funds: It is expected that Approximately $8 million will be available for five awards in FY 2003. The annual award will be $1.5 million in total costs (direct and indirect). Applications with proposed Federal budgets that exceed $1.5 million will not be reviewed.

Period of Support: Awards may be requested for up to 5 years.

Criteria for Review and Funding:General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on program issues, contact: Jon Rolf, Ph.D., CSAP/SAMHSA, Rockwall II, Room 800, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0380 (direct), (301) 443–7072 (fax), e-mail: *jrolf@samhsa.gov*.

For questions on grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, e-mail: *shudak@samhsa.gov*.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: December 30, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–115 Filed 1–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–19]

Notice of Proposed Information Collection for Public Comment-Public Housing Reform-Admission and Occupancy Requirement on Residency Preferences, Individual Savings Accounts for Residents, FSS Action Plan, Over-Income Small PHAs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 4, 2003

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW.,

Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Reform-Admission and Occupancy Requirements for Residency Preferences, Community Services, Individual Savings Accounts for Residents, FSS Action Plan, Over-Income Small PHAs.

OMB Control Number: 2577–0230.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) will submit to HUD information on admission and occupancy requirements to ensure statute mandates are implemented. The Act allows PHAs to establish their own system for making dwelling units or Section 8 assistance available to families having certain characteristics. For public housing, the 1998 Act created optional deductions for PHAs to use to promote self-sufficiency; permissive deductions must be described in the agency's written policies. PHAs may establish and maintain individual savings accounts for public housing residents who pay income-based rents. The PHA's Annual Plan (2577–0226) must include a description of the community service and self-sufficiency requirements (8 hours per month).

Agency form numbers, if applicable: None.

Members of affected public: State, or Local Government.

Estimation of the total number of hours needed to pare the information collection including number of respondents, frequency of response, and hours of responses:

3,400 respondents, annually, 50 average hours per response, 169,300 total reporting burden.

Status of the proposed information collection: Extension of a currently approved collection, without change.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 27, 2002.

William Russell,

Deputy Assistant Secretary for Public Housing and Voucher Programs.

[FR Doc. 03–31 Filed 1–2–03; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–01]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, (HUD).

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 3, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 26, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–03 Filed 1–2–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Sonora Tiger Salamander Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of the final Recovery Plan for the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*). The species occurs on lands managed by the U.S. Forest Service, Coronado National Forest; U.S. Department of the Army, Fort Huachuca, Arizona State Parks, and private lands in the San Rafael Valley and adjacent portions of the Huachuca and Patagonia mountains in southeastern Santa Cruz and southwestern Cochise counties, Arizona.

ADDRESSES: Persons wishing to obtain a copy of the Recovery Plan may contact Jim Rorabaugh, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951 (602/640–2720 x238, *Jim_Rorabaugh@fws.gov).* The Plan is also available at *http://arizonaes.fws.gov*. The complete administrative record supporting the development of the Recovery Plan is available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Rorabaugh (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the

recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. On June 16, 2000, the Service published a notice of document availability in the **Federal Register** announcing the availability for public review of the draft Recovery Plan for the Sonora tiger salamander. Public comments were accepted through August 15, 2000. Three letters of comment were received during the comment period. The draft recovery plan was revised and finalized based on this input.

The Sonora tiger salamander Recovery Plan describes the status, current management, recovery objectives and criteria, and specific actions needed to reclassify the Sonora tiger salamander from endangered to threatened, and to ultimately delist it. The Recovery Plan was developed by Dr. James P. Collins and Jonathan Snyder, Arizona State University, Tempe, Arizona, in coordination with the Service and a team of stakeholders (the Participation Team), which included ranchers, land owners and managers, agency and organization representatives, and herpetologists. The salamander currently only breeds in livestock watering tanks in the San Rafael Valley of southeastern Arizona. Its natural breeding habitats are no longer present or are now unsuitable. The salamander is threatened by loss of natural habitats; predation by nonnative fish, bullfrogs, and crayfish; genetic swamping by nonnative barred tiger salamanders; disease; low genetic diversity; and collection for bait or translocation by anglers. Actions needed to recover the salamander include maintenance and enhancements of habitats, control of nonnative organisms, control of collection and transport of tiger salamanders, actions to reduce spread of disease, monitoring, research, public education and information, and adaptive management. The Recovery Plan includes a Participation Plan, prepared by the Participation Team, which details how the plan should be implemented to minimize social and economic impacts while still providing for the prompt recovery of the salamander. The Service worked with Dr. Collins and the Participation Team to address comments received on the draft Plan during the comment period.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 2002.

H. Dale Hall,

Regional Director.

[FR Doc. 03–45 Filed 1–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take by the Leander Rehabilitation PUD

SUMMARY: Fleur Land, Ltd., c/o Stone Haven Partners (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–065323–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of commercial and multi-use development on 209 acres of the Leander Rehabilitation PUD, Cedar Park, Williamson County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, PO Box 1306, Room 4012, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Sybil Vosler, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512 490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE–065323–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Fleur Land Ltd., c/o Stone Haven Partners, plans to construct and operate commercial and multi-use development on 209 acres of the Leander Rehabilitation PUD, Cedar Park, Williamson County, Texas. This action would eliminate approximately 165.8 acres of habitat resulting in take of the golden-cheeked warbler. The Applicant proposes to compensate for this incidental take of the golden-cheeked warbler by purchasing mitigation credits for 96.8 acres in a conservation bank which will be managed in perpetuity for the benefit of the golden-cheeked warbler.

Susan MacMullin,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 03–24 Filed 1–2–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 17, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) 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 each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of

Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or E-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA. Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), 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.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Independent Contractor Register.

OMB Number: 1219–0040.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Type of Response: Recordkeeping.

Number of Respondents: 15,292.

Number of Annual Responses: 99,398.

Average Response Time: 8 minutes.

Total Estimated Burden Hours: 13,250.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $174,789.

Description: 30 CFR 45.4(a) requires that each independent contractor provide the production-operator in writing the trade name, business address, and telephone number; a description and location at the mine where the work is to be performed; MSHA identification number, if any; and the contractor's business address of record. 30 CFR 45.4(b) requires each production-operator to maintain in writing the information required by paragraph (a) at the mine and to make this information available to any authorized representative of the Secretary upon request.

Type of Review: Extension of a currently approved collection.

Agency: Training Plans, New Miner Training, Newly-Hired Experienced Miner Training.

OMB Number: 1219–0131.

Affected Public: Business or other for-profit.

Frequency: On occasion and annually.

Type of Response: Recordkeeping; reporting; and third party disclosure.

Number of Respondents: 10,305.

Number of Annual Response: 167,340.

Average Response Time: Varies considerably by task and mine size; however, the total average time for all mines is approximately 1.6 hours per response.

Total Estimated Burden Hours: 263,274.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $520,683.

Description: Paragraph 9a) of § 46.3 requires mine operators to develop and implement a written training plan approved by MSHA that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training.

Paragraph (b) requires the following information, at a minimum, to be included in a training plan:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by the operator who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

Paragraph (c) requires a plan that does not include the minimum information specified in paragraph (b) to be approved by MSHA. For each size category, the Agency estimates that 20 percent of mine operators will choose to write a plan and send it to MSHA for approval.

Paragraph (d) requires mine operators to provide miners' representatives with a copy of the training plan. At mines where no miners' representatives has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (e) provides that within 2 weeks following receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to mine operators, or to the Regional Manager, as appropriate. The burden hours and costs of this provision are not borne by mine operators, but my miners and their representatives.

Paragraph (g) requires that the miners' representative with a copy of the approved plan within one week after approval. At mines where no miners' representatives has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (h) allows mine operators, miners, and miners' representatives to appeal a decision of the Regional Manager in writing to the Director for Education Policy and Development. The Director would issue a decision on the appeal within 30 days after receipt of the appeal.

Paragraph (i) requires mine operators to make available at the mine site a copy of the current training plan for inspection by MSHA and for examination of miners and their representatives. If the training plan is not maintained at the mine site, mine operators must have the capability to provide the plan upon request by MSHA, miners, or their representatives.

Paragraph (a) of § 46.5 requires mine operators to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work where an experienced miner can observe that the new miner is working in a safe manner.

Paragraph (a) of § 46.6 requires mine operators to provide each newly hired experienced miner with certain training before the miner begins work.

Paragraph (a) of § 46.7 requires, before a miner performs a task for which he or she has no experience, that the mine operator training the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, the mine operator must provide that miner with training that addresses the changes.

Paragraph (a) of § 46.8 requires, at least every 12 months, that the miner operator provide each miner with no less than 8 hours of refresher training.

Paragraph (a) of § 46.9 requires the mine operators upon completion of each

training program, to record and certify on MSHA Form 5000–23 (OMB Control No. 1219–0070/Expiration Date: 11/30/2004), or on a form that contains the required information, that the miner has completed the training.

Paragraph (a) of § 46.11 requires the mine operator to provide site-specific hazard training to non-miners, including the following persons: scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers, or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 03–10 Filed 1–2–03; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT020001 (Mar. 1, 2002)
CT020003 (Mar. 1, 2002)
CT020004 (Mar. 1, 2002)
Massachusetts
MA020001 (Mar. 1, 2002)
MA020002 (Mar. 1, 2002)
MA020003 (Mar. 1, 2002)
MA020005 (Mar. 1, 2002)
MA020006 (Mar. 1, 2002)
MA020007 (Mar. 1, 2002)
MA020008 (Mar. 1, 2002)
MA020009 (Mar. 1, 2002)
MA020010 (Mar. 1, 2002)
MA020013 (Mar. 1, 2002)
MA020015 (Mar. 1, 2002)
MA020017 (Mar. 1, 2002)
MA020018 (Mar. 1, 2002)
MA020019 (Mar. 1, 2002)
MA020020 (Mar. 1, 2002)
MA020021 (Mar. 1, 2002)
New Hampshire
NH020002 (Mar. 1, 2002)
NH020004 (Mar. 1, 2002)
New Jersey
NJ020002 (Mar. 1, 2002)
NJ020003 (Mar. 1, 2002)
New York
NY020002 (Mar. 1, 2002
NY020003 (Mar. 1, 2002)
NY020004 (Mar. 1, 2002)
NY020005 (Mar. 1, 2002)
NY020007 (Mar. 1, 2002)
NY020008 (Mar. 1, 2002)
NY020010 (Mar. 1, 2002)
NY020011 (Mar. 1, 2002)
NY020012 (Mar. 1, 2002)
NY020013 (Mar. 1, 2002)
NY020014 (Mar. 1, 2002)
NY020015 (Mar. 1, 2002)
NY020016 (Mar. 1, 2002)
NY020018 (Mar. 1, 2002)
NY020020 (Mar. 1, 2002)
NY020021 (Mar. 1, 2002)
NY020022 (Mar. 1, 2002)
NY020026 (Mar. 1, 2002)
NY020031 (Mar. 1, 2002)
NY020032 (Mar. 1, 2002)
NY020033 (Mar. 1, 2002)
NY020037 (Mar. 1, 2002)
NY020039 (Mar. 1, 2002)
NY020040 (Mar. 1, 2002)
NY020041 (Mar. 1, 2002)
NY020042 (Mar. 1, 2002)
NY020044 (Mar. 1, 2002)
NY020045 (Mar. 1, 2002)
NY020048 (Mar. 1, 2002)
NY020049 (Mar. 1, 2002)
NY020051 (Mar. 1, 2002)
NY020060 (Mar. 1, 2002)
NY020066 (Mar. 1, 2002)
NY020072 (Mar. 1, 2002)
NY020075 (Mar. 1, 2002)
NY020077 (Mar. 1, 2002)

Volume II:

Pennsylvania
PA020002 (Mar. 1, 2002)
PA020004 (Mar. 1, 2002)
PA020005 (Mar. 1, 2002)
PA020006 (Mar. 1, 2002)
PA020007 (Mar. 1, 2002)
PA020008 (Mar. 1, 2002)
PA020009 (Mar. 1, 2002)
PA020010 (Mar. 1, 2002)

PA020012 (Mar. 1, 2002)
PA020014 (Mar. 1, 2002)
PA020015 (Mar. 1, 2002)
PA020019 (Mar. 1, 2002)
PA020021 (Mar. 1, 2002)
PA020023 (Mar. 1, 2002)
PA020024 (Mar. 1, 2002)
PA020025 (Mar. 1, 2002)
PA020026 (Mar. 1, 2002)
PA020028 (Mar. 1, 2002)
PA020031 (Mar. 1, 2002)
PA020035 (Mar. 1, 2002)
PA020040 (Mar. 1, 2002)
PA020042 (Mar. 1, 2002)
PA020054 (Mar. 1, 2002)
PA020059 (Mar. 1, 2002)
PA020060 (Mar. 1, 2002)
PA020061 (Mar. 1, 2002)
Virginia
VA020005 (Mar. 1, 2002)
VA020014 (Mar. 1, 2002)
VA020015 (Mar. 1, 2002)
VA020018 (Mar. 1, 2002)
VA020022 (Mar. 1, 2002)
VA020023 (Mar. 1, 2002)
VA020033 (Mar. 1, 2002)
VA020034 (Mar. 1, 2002)
VA020039 (Mar. 1, 2002)
VA020046 (Mar. 1, 2002)
VA020051 (Mar. 1, 2002)
VA020064 (Mar. 1, 2002)
VA020076 (Mar. 1, 2002)
VA020085 (Mar. 1, 2002)
VA020087 (Mar. 1, 2002)
VA020088 (Mar. 1, 2002)

Volume III:

Alabama
AL020004 (Mar. 1, 2002)
AL020006 (Mar. 1, 2002)
AL020008 (Mar. 1, 2002)
AL020017 (Mar. 1, 2002)
AL020018 (Mar. 1, 2002)
AL020033 (Mar. 1, 2002)
North Carolina
NC020055 (Mar. 1, 2002)

Volume IV:

Illinois
IL020001 (Mar. 1, 2002)
IL020002 (Mar. 1, 2002)
IL020003 (Mar. 1, 2002)
IL020004 (Mar. 1, 2002)
IL020005 (Mar. 1, 2002)
IL020006 (Mar. 1, 2002)
IL020007 (Mar. 1, 2002)
IL020008 (Mar. 1, 2002)
IL020011 (Mar. 1, 2002)
IL020015 (Mar. 1, 2002)
IL020016 (Mar. 1, 2002)
IL020017 (Mar. 1, 2002)
IL020023 (Mar. 1, 2002)
IL020039 (Mar. 1, 2002)
IL020042 (Mar. 1, 2002)
IL020047 (Mar. 1, 2002)
IL020049 (Mar. 1, 2002)
IL020056 (Mar. 1, 2002)
IL020057 (Mar. 1, 2002)
IL020059 (Mar. 1, 2002)

Volume V:

None

Volume VI:

Alaska
AK020001 (Mar. 1, 2002)
AK020002 (Mar. 1, 2002)
AK020003 (Mar. 1, 2002)
AK020005 (Mar. 1, 2002)
AK020006 (Mar. 1, 2002)
Idaho
ID020001 (Mar. 1, 2002)
ID020003 (Mar. 1, 2002)
ID020014 (Mar. 1, 2002)
North Dakota
ND020001 (Mar. 1, 2002)
ND020004 (Mar. 1, 2002)
ND020008 (Mar. 1, 2002)
ND020010 (Mar. 1, 2002)
ND020011 (Mar. 1, 2002)
ND020015 (Mar. 1, 2002)
ND020016 (Mar. 1, 2002)
ND020018 (Mar. 1, 2002)
ND020019 (Mar. 1, 2002)
Oregon
OR020001 (Mar. 1, 2002)
OR020007 (Mar. 1, 2002)
OR020017 (Mar. 1, 2002)
Utah
UT020025 (Mar. 1, 2002)
Washington
WA020001 (Mar. 1, 2002)
WA020002 (Mar. 1, 2002)
WA020003 (Mar. 1, 2002)
WA020005 (Mar. 1, 2002)
WA020006 (Mar. 1, 2002)
WA020007 (Mar. 1, 2002)
WA020008 (Mar. 1, 2002)
WA020010 (Mar. 1, 2002)
WA020011 (Mar. 1, 2002)
WA020013 (Mar. 1, 2002)
WA020025 (Mar. 1, 2002)
WA020026 (Mar. 1, 2002)
WA020027 (Mar. 1, 2002)

Volume VII:

California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020004 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020013 (Mar. 1, 2002)
CA020019 (Mar. 1, 2002)
CA020023 (Mar. 1, 2002)
CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020031 (Mar. 1, 2002)
CA020032 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020035 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)
Hawaii
HI020001 (Mar. 1, 2002)
Nevada
NV020005 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of December 2002.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–2 Filed 1–2–03; 8:45 am]

BILLING CODE 4510–27–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Wednesday, January 15, 2003, and Thursday, January 16, 2003, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on January 15, and at 9 a.m. on January 16.

Topics for discussion include: Payment adequacy and updating Medicare payments; paying for new technologies; PPS for inpatient

psychiatric facilities; expanded transfer policy for hospital inpatient services; indirect medical education payments above the costs of teaching; MedPAC's previous recommendations on payments to rural hospitals; alternatives to administered pricing; methods used by private payers to pay for physician-administered drugs, and developing incentives to improve quality of care in Medicare.

Agendas will be e-mailed on January 7, 2003. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 03–33 Filed 1–2–03; 8:45 am]

BILLING CODE 6820–BW–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26–ISFSI, ASLBP No. 02–801–01–ISFSI]

Atomic Safety and Licensing Board; Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); Notice of Hearing (Application To Construct and Operate an Independent Spent Fuel Storage Installation)

December 27, 2002.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Jerry R. Kline and Dr. Peter S. Lam.

This proceeding concerns the December 21, 2001 application of Pacific Gas and Electric Company (PG&E) under 10 CFR part 72 for permission to construct and operate an independent spent fuel storage installation (ISFSI) at its Diablo Canyon Power Plant (DCPP) site near San Luis Obispo, California. On April 12, 2002, the NRC staff issued a notice that the agency is (1) considering this license amendment application; and (2) affording the opportunity for an adjudicatory hearing on the PG&E application. That notice was published in the **Federal Register** on April 22, 2002. (67 FR 19600 (Apr. 22, 2002).) Responding to the April 2002 notice of opportunity for a hearing, various petitioners, including the San Luis Obispo Mothers for Peace (SLOMFP), which by consent is acting as a lead petitioner, Peg Pinard, the Avila Valley Advisory Council, and nine other organizations, including the Santa Lucia Chapter of the Sierra Club, San Luis Obispo Cancer Action Now, the Cambria Legal Defense Fund, the Central Coast Peace and Environmental Council, the Environmental Center of San Luis Obispo, Nuclear Age Peace Foundation, the San Luis Obispo Chapter of Grandmothers for Peace International, Santa Margarita Area Residents Together, and the Ventura County Chapter of the Surfrider Foundation filed timely requests for hearing and petitions to intervene in accordance with 10 CFR 2.714 that, as supplemented, seek to interpose various joint contentions challenging the application. In response to those hearing requests, on May 29, 2002, the Secretary of the Commission referred the petitions to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. On May 31, 2002, this Licensing Board was appointed to preside over this proceeding. (67 FR 39073 (June 6, 2002).) The Board consists of Dr. Jerry R. Kline, Dr. Peter S. Lam, and G. Paul Bollwerk, III, who serves as Chairman of the Board. In addition, San Luis Obispo County, California (SLOC), the Port San Luis Harbor District (PSLHD), the California Energy Commission, the Diablo Canyon Independent Safety Committee (DCISC), and the Avila Beach Community Services District (ABCSD) filed requests to participate in any hearing as interested governmental entities in accordance with 10 CFR 2.715(c) and, in the case of SLOC and PSLHD, proffered particular issues they wished to have litigated in the proceeding.

Beginning on September 10, 2002, the Board conducted a two-day initial prehearing conference, during which it heard oral presentations regarding the standing of each of the petitioners, the participation of DCISC as an interested governmental entity, and the admissibility of the eight contentions and four issues raised by the section 2.714 intervenors and section 2.715(c) interested governmental entities SLOC and PSLHD. Additionally, in response to an appearance at the initial prehearing conference by an ABCSD representative regarding the status of a request for admission as a section 2.715(c) participant that it previously had submitted to the agency, the Board requested that ABCSD resubmit such a request directly to the Board, which it subsequently did, stating that it did not have any new issues it wished to raise on its own. Thereafter, in a December 2, 2002 issuance the Board ruled on the various outstanding matters, concluding that (1) although some of the section 2.714 petitioners lacked standing, the remainder not only fulfilled that jurisprudential requirement, but also set forth one admissible contention so as to warrant admission as parties, with SLOMFP as the lead intervenor; and (2) with the exception of DCISC, section 2.715(c) interested government entity status should be afforded to those requesting that designation, but that the SLOC and PSLHD-proffered issues did not meet the section 2.714 standards governing contention admissibility. (*Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP–02–23, 56 NRC__(Dec. 2, 2002), *requests for partial referral and reconsideration denied*, LBP–02–25, 56 NRC__(Dec. 26, 2002).)

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. This hearing will be governed by the formal hearing procedures set forth in 10 CFR part 2, subpart G (10 CFR 2.700 through 2.790), subject to the election that has been made by applicant Pacific Gas & Electric Company and the NRC staff to utilize the hybrid hearing procedures in 10 CFR part 2, subpart K (10 CFR 2.1101 through 2.1117).

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR. 2.755 and 2.1113, may hold additional prehearing conferences pursuant to 10 CFR 2.752, and may conduct evidentiary hearings in accordance with 10 CFR 2.750, 2.751, and 2.1115. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov*.

Additionally, as provided in 10 CFR 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence, but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send by mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or by e-mail to *hearingdocket@nrc.gov*. A

copy of the statement also should be served on the Chairman of this Atomic Safety and Licensing Board by mail to the Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by e-mail to *gpb@nrc.gov*. At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the Diablo Canyon facility. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, *http://www.nrc.gov*.

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

It is so *ordered*.

Dated in Rockville, Maryland, on December 27, 2002.

For the Atomic Safety and Licensing Board*

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 03–79 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2259]

Notice of Request to Terminate Source Material, License SUA–1524, for the Green Mountain Ion-Exchange Site in Fremont County, WY and Opportunity to Provide Comments and to Request a Hearing

I. Introduction

The U. S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 24, 2002, a final status survey (completion) report for the decommissioned Green Mountain Ion-Exchange (GMIX) site near Jeffrey City, Wyoming, and a request to terminate the U.S. Energy Corporation (USEC) license SUA–1524 for the site.

The GMIX site is located in the Crooks Gap Mining District in Fremont County. The facility consisted of two buildings and two settling ponds and separated uranium from mine water by the ion-exchange process. The facility ceased operation in 1987. When USEC bought the property in 1988, the NRC granted a "possession only" source material license. The facility remained in stand-by status and USEC submitted a decommissioning plan in 1993 that was approved, after modifications, in 1996. USEC requested a delay in initiation of decommissioning that was granted September 20, 1999. Building demolition and soil removal was accomplished in 2001.

The NRC staff has initiated review of the completion report and indicated, by electronic mail on November 25, 2002, that the submittal was incomplete. The licensee provided additional data by letter dated November 26, 2002, that completes the report. The NRC staff is now preparing a technical evaluation report for the decommissioning activities and will determine if all the applicable regulations have been met for license termination. Letters have been received from the site land managers, Bureau of Land Management (November 27, 2002) and the Wyoming Department of Environmental Quality, Land Quality Division (December 4, 2002) that indicate no objection to termination of the USEC license.

II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

III. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for termination of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register notice.**

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, U.S. Energy Corporation, 877 North 8th Street, Riverton, WY 82501, Attention: Fred Craft; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

* Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) applicant PG&E; (2) petitioners SLOMFP, *et al.*; (3) SLOC, PSLHD, CEC, ABCSD, and DCISC; and (4) the staff.

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Other Information

The application for license termination is available for inspection at NRC's Public Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html (ADAMS Accession Numbers: ML023180642 and ML023440223). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Elaine Brummett, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6606; Fax: (301) 415–5390.

Dated at Rockville, Maryland, this 24th day of December, 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–83 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation, McGuire Nuclear Station, Units 1 and 2; Notice of Availability of the Final Supplement 8 to the Generic Environmental Impact Statement Regarding License Renewal for the McGuire Nuclear Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses NPF–9 and NPF–17 for the McGuire Nuclear Station, Units 1 and 2, for an additional 20 years of operation. The McGuire Nuclear Station units are located in Mecklenburg County, North Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

As discussed in Section 9.3 of this final Supplement 8 to the GEIS, the staff recommends that the Commission determine that the adverse environmental impacts of license renewal for McGuire Nuclear Station, Units 1 and 2, are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable. This recommendation is based on (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Duke; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments.

The final Supplement 8 to the GEIS is available electronically for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Wilson, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wilson may be contacted at 301–415–1108 or by writing to James H. Wilson, U.S. Nuclear Regulatory Commission, Mail Stop O 12–D–1.

Dated at Rockville, Maryland, this 24th day of December, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–80 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation, Catawba Nuclear Station, Units 1 and 2; Notice of Availability of the Final Supplement 9 to the Generic Environmental Impact Statement Regarding License Renewal for the Catawba Nuclear Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses NPF–35 and NPF–52 for the Catawba Nuclear Station, Units 1 and 2, for an additional 20 years of operation. The Catawba Nuclear Station units are located in York County, South Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

As discussed in Section 9.3 of this final Supplement 9 to the GEIS, the staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Catawba Nuclear Station, Units 1 and 2, are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable. This recommendation is based on (1) the analysis and findings in the GEIS; (2) the Environmental Report submitted by Duke; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments.

The final Supplement 9 to the GEIS is available electronically for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Wilson, License Renewal and Environmental Impacts Program,

Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wilson may be contacted at 301–415–1108 or by writing to James H. Wilson, U.S. Nuclear Regulatory Commission, Mail Stop O 12–D–1.

Dated at Rockville, Maryland, this 24th day of December, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–81 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

Environmental Assessment and Finding of No Significant Impact for Envirocare of Utah, Inc.'s Request to Amend NRC Source Material License SMC–1559

I. Introduction

The NRC is considering an amendment to Envirocare of Utah's (Envirocare) NRC Source Material License SMC–1559. The proposed amendment will revise the methods used to suppress dust on haul roads in Envirocare's Clive, Utah facility for the disposal of byproduct material as defined in section 11e.(2) of the Atomic Energy Act. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of Envirocare's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

II. Supplementary Information

Background

Envirocare requested NRC approval to revise the methods used to suppress dust on facility haul roads, by replacing the requirement to apply magnesium chloride twice a year with a requirement to scrape the roads quarterly. The NRC staff reviewed the proposed revision and concludes that it will be effective in controlling dust from the haul roads.

By letters dated July 12, 2002 (Envirocare, 2002a) and September 4, 2002 (Envirocare, 2002b), the licensee requested NRC approval to revise its license application. The requested change would remove the requirement, in Section 17 and Appendix Z, for semi-annual application of magnesium chloride to facility haul roads and replace it with a requirement to scrape the roads at least quarterly.

Currently, the licensee is required to have a water truck on site on days when the facility is operating, to apply water to the haul roads, and to keep a record of water applications. Additionally, the licensee is required to apply magnesium chloride solution, which is a surfactant, to the haul roads twice a year.

The requested revision will not change the requirement to apply water to the roads. It would replace the requirement to semi-annually apply magnesium chloride to the haul roads with a requirement to scrape the roads quarterly. The licensee states that scraping the roads is superior to application of magnesium chloride because the radiological contaminants from the road surfaces will be disposed of in a timely manner rather than being trapped on the road surface with a potential for gradual buildup. The licensee also states that scraping the roads will preserve its condition, reducing the potential for spillage of contaminated material from equipment due to uneven road surfaces.

The proposed licensing action meets the conditions for a categorical exclusion under 10 CFR 51.22(c)(11) because the staff has determined that the following conditions have been met:

1. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite,
2. There is no significant increase in individual or cumulative occupational radiation exposure,
3. There is no significant construction impact, and
4. There is no significant increase in the potential for or occurrences from radiological accidents.

However, because the proposed revision to the licensee's dust suppression program does not comply with the statement in Section 5.5, "Mitigative Measures" of the licensee's Final Environmental Statement (NUREG–1476–August 1993) issued in support of the original license for the facility, the staff determined that an environmental assessment was necessary. That section requires Envirocare to achieve a high level of dust suppression through watering of the roads and *application of chemical dust suppressants* [emphasis added].

Identification of the Proposed Action

The proposed action would replace the requirement for the licensee to semi-annually apply magnesium chloride to the facility haul roads with a requirement to scrape the roads quarterly. The material scraped off the roads, including the contamination contained in the material, would be put into one of the facility's disposal cells.

Purpose and Need for the Proposed Action

The proposed action would remove contaminated material from the surface of facility haul roads and put it into disposal cells. It would also improve the surface of the haul roads, thus reducing the potential of spillage of contaminated material from equipment using the roads.

Cumulative Impacts

NRC has found no other current or planned activities in the area that could result in cumulative impacts.

Alternatives to the Proposed Action

An alternative to the proposed action would be for the staff to deny the licensee's request. The licensee would then continue to apply magnesium chloride to road surfaces semi-annually and not remove soil from the road.

Affected Environment

NUREG–1476 provides detailed descriptions of the Envirocare facility and the nearby environment.

Environmental Impacts of the Proposed Action

The environmental impacts of the proposed action are minimal. The potential for dust blowing from the haul roads will continue to be controlled by the application of water. There is a potential for a minor increase in dust during the actual scraping of the roads but the licensee will perform the scraping in a manner that minimizes the creation of airborne dust. The proposed action will remove contaminated material from the surface of the road and thus reduce the potential for the contaminated material to be carried away from the site. The proposed action will also eliminate the application of magnesium chloride and thus eliminate the potential of a spill or other inadvertent release of this chemical to the environment.

State Consultation

NRC provided a draft version of the EA to William J. Sinclair, Director of the Utah Division of Radiation Control (DRC), for comment. The DRC is in agreement with the proposed action and has no additional comments.

III. Finding of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a

significant effect on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The following documents are related to the proposed action:

References

Code of Federal Regulations (CFR), Title 10, Chapter I—Nuclear Regulatory Commission, Part 51, revised as of January 1, 2002.

Envirocare of Utah, Inc. 2002a. Request to amend Material License No. SMC–1599. Letter from Tye Rogers, Envirocare of Utah to Melvin Leach, Fuel Cycle Licensing Branch, NRC, dated July 12, 2002. Accession Number ML021990436.

Envirocare of Utah, Inc. 2002b. Request to amend Material License No. SMC–1599. Revised Section 17 of the license application. Letter from Tye Rogers, Envirocare of Utah to Daniel Gillen, Fuel Cycle Licensing Branch, NRC, dated September 4, 2002. Accession Number ML022680025.

NRC (U.S. Nuclear Regulatory Commission). 1993. Final Environmental Impact Statement to Construct and Operate a Facility to Receive, Store, and Dispose of 11e.(2) Byproduct Material Near Clive, Utah. NUREG–1476.

These references may be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. Some of the references may also be viewed in the NRC's Public Document Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. Any questions with respect to this action should be referred to Mr. Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6629.

Dated at Rockville, Maryland, this 24th day of November, 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–82 Filed 1–2–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 6, 2003:

Closed Meetings will be held on Tuesday, January 7, 2003, at 10 a.m., and Thursday, January 9, 2003, at 9 a.m., and an Open Meeting will be held on Wednesday, January 8, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, January 7, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Adjudicatory matters; and

Opinion.

The subject matter of the Open Meeting scheduled for Wednesday, January 8, 2003 will be:

1. The Commission will consider whether to adopt new Rule 17a–10 and amendments to Rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 under the Investment Company Act of 1940. The rule and amendments would eliminate the need for investment companies, and their portfolio affiliates and subadvisers, to obtain individual exemptive relief from the Commission to enter into transactions and arrangements that are not likely to raise the concerns that the Act was intended to address. The amendments to Rules 17a–6 and 17d–1 would expand the current exemptions for investment companies to enter into principal transactions and joint arrangements with portfolio companies that are affiliated with an investment company because the investment company controls the portfolio company, or owns more than five percent of the portfolio company's voting securities. New Rule 17a–10 and the amendments to Rules 10f–3, 12d3–1, and 17e–1 would permit investment companies to enter into a variety of transactions with subadvisers that are affiliated with the investment company but not in a position to influence the investment company's decision to enter into the transaction.

2. The Commission will consider whether to issue proposals to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act of 2002. These requirements relate to: The independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee. The proposals would implement the requirements of Section 10A(m)(1) of the Securities Exchange Act of 1934, as added by Section 301 of the Sarbanes-Oxley Act of 2002.

The subject matter of the Closed Meeting scheduled for Thursday, January 9, 2003 will be:

Litigation matters;

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 31, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33148 Filed 12–31–02; 12:05 pm]

BILLING CODE 8010–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Laurinburg-Maxton Airport, Laurinburg, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Laurinburg-Maxton Airport Commission to waive the requirement that a 8.342-acre parcel of surplus property, located at the Laurinburg-Maxton Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before February 3, 2003.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Tracie D. Kleine, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Larry Barnett, Executive Director of the Laurinburg-Maxton Airport Commission at the following address: 16701 Airport Road, Maxton, NC 28364.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Laurinburg-Maxton Airport Commission to release 8.342 acres of surplus property at the Laurinburg-Maxton Airport. The property will be purchased by Crestview Residential Properties, LLC so that they might expand their existing property to facilitate a planned expansion of their business. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Laurinburg-Maxton Airport Commission.

Issued in Atlanta, Georgia on December 26, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 03–71 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Piedmont Triad International Airport, Greensboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Piedmont Triad Airport Authority to waive the requirement that a 18.58-acre parcel of surplus property, located at the Piedmont Triad International Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before February 3, 2003.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airport District Office, Attn: Tracie D. Kleine, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mickie L. Elmore, Director of Development of the Piedmont Triad Airport Authority at the following address: Post Office Box 35445, Greensboro, NC 27425.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Piedmont Triad Airport Authority to release 18.58 acres of surplus property at the Piedmont Triad International Airport. The North Carolina Department of Transportation (NCDOT) will purchase the property. The land will be used in connection with the Greensboro Western Urban Loop, a multi-lane, limited access highway that will provide more efficient access to the airport. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Piedmont Triad Airport Authority.

Issued in Atlanta, Georgia on December 26, 2002.

Scott L. Seritt,

Manager, Atlanta Airport District Office, Southern Region.

[FR Doc. 03–70 Filed 1–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34244]

Portland & Western Railroad, Inc.—Lease and Operations Exemption—The Burlington Northern and Santa Fe Railway Company

Portland & Western Railroad, Inc. (P&WR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 76.75 miles of rail line currently owned and operated by The Burlington Northern and Santa Fe Railway Company (BNSF) from milepost 64.70 located between Quinaby and Salem, OR, to the End of Track at milepost 141.45 near Eugene, OR.[1] In comments filed December 23, 2002, the Oregon Department of Transportation generally supports the transaction.

P&WR certifies that is projected annual revenues will not exceed those that would qualify it as a Class III rail

[1] Originally, as part of the transaction, P&WR stated that it intended to grant what it called "incidental" overhead trackage rights to BNSF over the rail line between Bush (milepost 68.6) and Albany (milepost 96.5), and to Central Oregon & Pacific Railroad, Inc. (CORP), between Albany (milepost 96.5) and Eugene (milepost 141.5). Based upon a decision served on December 12, 2002 (December 12 decision), which questioned whether the trackage rights were incidental to the transaction, BNSF, on December 20, 2002, filed a separate trackage rights notice of exemption, accompanied by a motion to dismiss, in STB Finance Docket No. 34304, *The Burlington Northern and Santo Fe Railway Company—Trackage Rights Exemption—The Portland & Western Railroad, Inc.*;, and P&WR, on December 23, 2002, withdrew its request to grant trackage rights to CORP. Also on December 23, 2002, John D. Fitzgerald, on behalf of the United Transportation Union-General Committee of Adjustment, filed a petition for stay of both exemptions, which was denied in *Portland & Western Railroad, Inc;—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34255, *et al.* (STB served Dec. 26, 2002.)

carrier. Because P&WR's projected annual revenues will exceed $5 million, P&WR has certified to the Board on October 28, 2002, that the required notice of the transaction was posted at the workplace of the employees on the affected line on October 25, 2002. *See* 49 CFR 1150.42(e). The transaction is scheduled to be consummated on or after December 27, 2002 (60 days after the labor certification was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34255, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner St., PO Box 796, West Chester, PA 19381–0796.

Board decisions and notice are available on our Web site at "*www.stb.dot.gov.*"

Decided: December 27, 2002.

By the Board, Beryl Gordon, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–9 Filed 1–2–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices/Federal Consulting Group; Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)). Currently, the Federal Consulting Group within the Department of the Treasury is soliciting comments concerning the American Customer Satisfaction Index (ACSI).

DATES: Written comments should be received on or before March 4, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington DC 20552, (202) 906–5642, *Bernie.Lubran@ots.treas.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington DC 20552, (202) 906–5642, *Bernie.Lubran@ots.treas.gov*

SUPPLEMENTARY INFORMATION:

Title: American Customer Satisfaction Index Survey.

OMB Number: 3090–0271.

Abstract: The following summary of the proposed renewal of an information collection activity is designed to continue to support a means to consistently measure and compare customer satisfaction with federal government agency programs and/or services within the Executive Branch. The Federal Consulting Group of the Department of the Treasury serves as the executive agent for this project, and has partnered with the CFI Group to offer the ACSI to federal government agencies ("the partnership").

The General Services Administration selected the ACSI in 1999 through a competitive procurement process as the vehicle for obtaining the required information. From 1999 to 2001, the General Services Administration served as the executive agent for the ACSI, and in 2001, the General Services Administration transferred the OMB clearance to the Department of the Treasury.

The CFI Group, a leader in customer satisfaction and customer experience management, offers a comprehensive system that quantifies the effects of quality improvements on citizen satisfaction. The CFI Group has developed the software and licenses it to the National Quality Research Center at the University of Michigan which produces the American Customer Satisfaction Index (ACSI). This national economic indicator, published quarterly in the Wall Street Journal, was introduced in 1994 by Professor Claes Fornell under the auspices of the University of Michigan, the American Society for Quality (ASQ), and the CFI Group. IT monitors and benchmarks customer satisfaction across more than 200 companies and U.S. federal agencies.

The ACSI is the only cross-industry, cross-agency methodology for obtaining comparable measures of customer satisfaction with federal government programs and/or services. Along with other economic objectives—such as employment and growth—the quality of output (goods and services) is a part of measuring living standards. The ACSI's ultimate purpose is to help improve the quality of goods and services available to American citizens.

The surveys that comprise the federal government's portion of the ACSI will be completely subject to the Privacy Act 1074, Public Law 93–579, December 31, 1974 (5 U.S.C. 522a). The agency information collection will be used solely for the purpose of the survey. The ACSI partnership will not be authorized to release any agency information upon completion of the survey without first obtaining permission from the Federal Consulting Group and the participating agency. In no case shall any new system of records containing privacy information be developed by the Federal Consulting Group, participating agencies, or the contractor collecting the data. In addition, participating federal agencies may only provide information used to randomly select respondents from among established systems of records provided for such routine uses.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Proposed renewal of collection of information.

Type of Review: Renewal.

Affected Public: Individuals or households/business or other for-profit/not-for-profit institutions/farms/Federal Government/State, Local, or Tribal Government.

Estimated Number of Respondents

Participation by federal agencies in the ACSI is expected to vary as new customer segment measures are added or deleted. However, based on historical records, projected estimates for fiscal years 2003 through 2005 are as follows:

Fiscal Year 2003—35 Customer Satisfaction Surveys

Respondents: 9,100; annual responses: 9,100; average minutes per response: 17.0; burden hours: 2,578.

Fiscal Year 2004—50 Customer Satisfaction Surveys

Respondents: 13,000; annual responses: 13,000; average minutes per response: 17.0; burden hours: 3,683.

Fiscal Year 2005—100 Customer Satisfaction Surveys

Respondents: 26,000; annual responses: 26,000; average minutes per response: 17.0; burden hours: 7,367.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of pubic record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 26, 2002.

Bernard A. Lubran

Project Manager, Federal Consulting Group.

[FR Doc. 03–74 Filed 1–2–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of four additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designations by the Secretary of the Treasury of additional persons identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 are effective on November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notice of these additional blockings have been published in the **Federal Register**.

Additional Designations. On November 6, 2002, the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, acting pursuant to authorities set forth in the Order designated four additional persons whose property and interests in property are blocked. The names of these additional persons are set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** document, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designations by the Secretary of the Treasury pursuant to Executive Order 13224 of these additional persons listed below are effective on November 6, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President further determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In furtherance of the objectives of the Order, the Secretary of the Treasury has determined that no prior notice should be afforded to the subjects of the determinations reflected in this notice because to do so would give the subjects the opportunity to evade the measures described in the Order and, consequently, render those measures ineffectual toward addressing the national emergency declared in the Order.

The list of additional designations follow:

1. Echeberria Simarro, Leire; member ETA; DOB 20 Dec 1977; POB Basauri (Vizcaya Province), Spain; D.N.I. 45.625.646 (individual).

2. Echegaray Achirica, Alfonso; member ETA; DOB 10 Jan 1958; POB Plencia (Vizcaya Province), Spain; D.N.I. 16.027.051 (individual).

3. Iztueta Barandica, Enrique; member ETA; DOB 30 Jul 1955; POB Santurce (Vizcaya Province), Spain; D.N.I. 14.929.950 (individual).

4. Vallejo Franco, Inigo; member ETA; DOB 21 May 1976; POB Bilbao (Vizcaya Province), Spain; D.N.I. 29.036.694 (individual).

Dated: November 8, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 18, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–11 Filed 1–2–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of three additional entities whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designation by the Office of Foreign Assets Control of three additional entities identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective on November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In the annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notices of these additional blockings have been published in the **Federal Register.**

Additional Designations. On November 18, 2002, the Office of Foreign Assets Control, acting pursuant to authorities set forth in the Order, designated three additional entities whose property and interests in property are blocked. The names of these additional entities are set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** notice, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designation by the Office of Foreign Assets Control pursuant to Executive Order 13224 of these additional entities listed below is effective on November 18, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

The list of additional designations follow:

1. Benevolence International Foundation (a.k.a. Al Bir Al Dawalia; a.k.a. BIF; a.k.a. BIF–USA; a.k.a. Mezhdunarodnyj Blagotvoritel'Nyj Fond), 8820 Mobile Avenue, 1A, Oak Lawn, IL 60453, U.S.A.; P.O. Box 548, Worth, IL 60482, U.S.A.; formerly at 9838 S. Roberts Road, Suite 1W, Palos Hills, IL 60465, U.S.A.; formerly at 20–24 Branford Place, Suite 705, Newark, NJ 07102, U.S.A.; Bashir Safar Ugli 69, Baku, Azerbaijan; 69 Boshir Safaroglu St., Baku, Azerbaijan; Sarajevo, Bosnia-Herzegovina; Zenica, Bosnia-Herzegovina; "last known address," 3 King Street, South Waterloo, Ontario, N2J 3Z6 Canada; "last known address," P.O. Box 1508 Station B, Mississauga, Ontario, L4Y 4G2 Canada; "last known address," 2465 Cawthra Rd., #203, Mississauga, Ontario, L5A 3P2 Canada; Ottawa, Canada; Grozny, Chechnya; 91 Paihonggou, Lanzhou, Gansu, China 730000; Hrvatov 30, 41000, Zagreb, Croatia; Makhachkala, Daghestan; Duisi, Georgia; Tbilisi, Georgia; Nazran, Ingushetia; Burgemeester Kessensingel 40, Maastricht, Netherlands; House 111, First Floor, Street 64, F–10/3, Islamabad, Pakistan; P.O. Box 1055, Peshawar, Pakistan; Azovskaya 6, km. 3, off. 401, Moscow, Russia 113149; Ulitsa Oktyabr'skaya, dom. 89, Moscow, Russia 127521; P.O. Box 1937, Khartoum, Sudan; P.O. Box 7600, Jeddah 21472, Saudi Arabia; P.O. Box 10845, Riyadh 11442, Saudi Arabia; Dushanbe, Tajikistan; United Kingdom; Afghanistan; Bangladesh; Bosnia-Herzegovina; Gaza Strip; Yemen; U.S. FEIN: 36–3823186 (entity).

2. Benevolence International Fund (a.k.a. Benevolent International Fund; a.k.a. BIF-Canada), "last known address," 2465 Cawthra Rd., Unit 203, Mississauga, Ontario, L5A 3P2 Canada; "last known address," P.O. Box 1508, Station B, Mississauga, Ontario, L4Y 4G2 Canada; "last known address," P.O. Box 40015, 75 King Street South, Waterloo, Ontario, N2J 4V1 Canada; "last known address," 92 King Street, 201, Waterloo, Ontario, N2J 1P5 Canada (entity).

3. Bosanska Idealna Futura (a.k.a. BECF Charitable Educational Center; a.k.a. Benevolence Educational Center; a.k.a. BIF-Bosnia; a.k.a. Bosnian Ideal Future), Salke Lagumdzije 12, 71000 Sarajevo, Bosnia-Herzegovina; Hadzije Mazica Put 16F, 72000 Zenica, Bosnia-Herzegovina; Sehidska Street, Breza, Bosnia-Herzegovina; Kanal 1, 72000 Zenica, Bosnia-Herzegovina; Hamze Celenke 35, Ilidza, Sarajevo, Bosnia-Herzegovina (entity).

Dated: December 2, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 8, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–12 Filed 1–2–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the name of one additional

person whose property and interests in property has been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designation by the Office of Foreign Assets Control of one additional person identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective on October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notices of these additional blockings have been published in the **Federal Register**.

Additional Designation. On October 17, 2002, the Office of Foreign Assets Control, acting pursuant to authorities set forth in the Order, designated one additional person whose property and interests in property are blocked. The name of this additional person is set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** notice, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designation by the Office of Foreign Assets Control pursuant to Executive Order 13224 of this additional person listed below is effective on October 17, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

The additional designation follows:

Global Relief Foundation, Inc., (a.k.a. Fondation Secours Mondial, A.S.B.L; a.k.a. Fondation Secours Mondial—Belgique A.S.B.L.; a.k.a. Fondation Secours Mondial VZW; a.k.a. FSM; a.k.a. Stichting Wereldhulp—Belgie, V.Z.W.; a.k.a. Fondation Secours Mondial—Kosova; a.k.a. Fondation Secours Mondial "World Relief"; a.k.a. Secours Mondial de France), Rruga e Kavajes, Building No. 3, Apartment No. 61, P.O. Box 2892, Tirana, Albania; Vaatjesstraat, 29, 2580 Putte, Belgium; Rue des Bataves 69, 1040 Etterbeek, Brussels, Belgium; P.O. Box 6, 1040 Etterbeek 2, Brussels, Belgium; Mula Mustafe Baseskije Street No. 72, Sarajevo, Bosnia; Put Mladih Muslimana Street 30/A, Sarajevo, Bosnia; 49 Rue du Lazaret, 67100 Strasbourg, France; Rr. Skenderbeu 76, Lagjja Sefa, Gjakova, Kosovo; Ylli Morina Road, Djakovica, Kosovo; House 267 Street No. 54, Sector F—11/4, Islamabad, Pakistan; Saray Cad. No. 37 B Blok, Yesilyurt Apt. 2/4, Sirinevler, Turkey; P.O. Box 1406, Bridgeview, Illinois 60455, U.S.A.; Afghanistan; Azerbaijan; Bangladesh; Chechnya, Russia; China; Eritrea; Ethiopia; Georgia; India; Ingushetia, Russia; Iraq; Jordan; Kashmir; Lebanon; Sierra Leone; Somalia; Syria; West Bank and Gaza; V.A.T. Number: BE 454,419,759; Federal Employer Identification Number: 36–3804626. (entity).

Dated: December, 2, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–13 Filed 1–2–03; 8:45 am]

BILLING CODE 4810–25–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Draft Environmental Assessment for the Rehabilitation or Replacement of Diversion Dams on the Duchesne and Strawberry Rivers in UT

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of Availability of the Draft Environmental Assessment for the Rehabilitation or Replacement of Diversion Dams on the Duchesne and Strawberry Rivers in Utah.

SUMMARY: The Central Utah Project Completion Act (Pub. L. 102–575) authorized federal funds to rehabilitate diversion dams on the Duchesne and Strawberry Rivers in Utah. The project is needed to reduce adverse affects on fish and wildlife resources.

The Draft Environmental Assessment (DEA) was prepared as a Programmatic document. It discusses potential environmental impacts associated with reconstructing and operating an unspecified diversion dam on the Duchesne or Strawberry River. The new diversion dam could serve single or multiple diversion rights. Potential environmental impacts addressed in the document are those impacts that would be expected regardless of which diversion dam is rehabilitated. Potential impacts to wetlands, threatened and endangered species, and cultural resources are generally site specific and/or require special permits. Potential impacts to these environmental disciplines would be addressed in a Supplemental Environmental Assessment, if needed.

The DEA provides the public and decision makers information to understand and evaluate potential environmental consequences. The DEA was developed with the public in accordance with the Commissions National Environmental Policy Act (NEPA) Rule (43 CFR part 10010.20).

The DEA is related to other potential future actions, specifically the detailed design and implementation of diversion dam replacements or rehabilitation. The programmatic perspective has been considered in the document. Future

construction projects may require separate or supplemental NEPA compliance.

DATES: Written comments on the Draft Environmental Assessment are invited until January 31, 2003.

ADDRESSES: Address all comments and/or requests for further information to Mark Holden, Projects Manager, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT, 84101.

FOR FURTHER INFORMATION CONTACT: Mark Holden, Projects Manager, 801–524–3146. *mholden@uc.usbr.gov.*

Dated: December 23, 2002.

Michael C. Weland,

Executive Director.

[FR Doc. 03–75 Filed 1–2–03; 8:45 am]

BILLING CODE 4310–05–P

Corrections

Federal Register
Vol. 68, No. 2
Friday, January 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

17 CFR Part 420

RIN 1515–AA88

Government Securities Act Regulations: Large Position Rules

Correction

In rule document 02–31837 beginning on page 77411 in the issue of Wednesday, December 18, 2002 make the following corrections:

Appendix B to Part 420 [Corrected]

1. On page 77415, in Appendix B, in the second column, in the first line, remove the "$".

2. On the same page, in the same appendix, in the same column, in the second line, remove the "$".

3. On the same page, in the same appendix, in the same column, in the 12th line, add a "+" before the "$".

4. On the same page, in the same appendix, in the same column, in the 13th line, and a "+" before the "$".

[FR Doc. C2–31837 Filed 1–2–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
January 3, 2003

Part II

Federal Election Commission

11 CFR Part 100, et al.
Bipartisan Campaign Reform Act of 2002 Reporting; Coordinated and Independent Expenditures; Final Rules

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, 105, 108 and 109

[Notice 2002—26]

Bipartisan Campaign Reform Act of 2002 Reporting

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating new and revised rules regarding the reporting of electioneering communications and independent expenditures, monthly reporting by national political party committees and quarterly reporting by the principal campaign committees of candidates for the House of Representatives and Senate, as well as reporting related to party committee building funds. These rules implement several provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA") that amend the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

EFFECTIVE DATE: February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Special Assistant General Counsel, Ms. Mai T. Dinh, Acting Assistant General Counsel, or Ms. Cheryl A. F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107–155, 116 Stat. 81 (2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one in a series of rulemakings the Commission is undertaking to implement the provisions of BCRA. The deadline for the promulgation of these rules is 270 days after the date of enactment, which is December 22, 2002.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on BCRA Reporting were transmitted to Congress on December 18, 2002.

Introduction

These final rules address: (1) Reporting of electioneering communications; (2) reporting of independent expenditures; (3) quarterly reporting by the principal campaign committees of candidates for the House of Representatives and the Senate; (4) monthly reporting by political party committees; and (5) the reporting of funds for political party committee office buildings. See 2 U.S.C. 434(a), (e), (f) and (g); BCRA sec. 103, 201, 212, 501 and 503, 116 Stat. at 87–90, 93–94, and 114–115.

The Commission issued a Notice of Proposed Rulemaking ("NPRM") addressing many of BCRA's reporting requirements. See 67 FR 64,555 (Oct. 21, 2002) ("Reporting NPRM"). The Commission also previously sought comments on two of these topics in Notices of Proposed Rulemakings on Electioneering Communications, 67 FR 51,131 (Aug. 7, 2002), and Coordinated and Independent Expenditures, 67 FR 60,042 (Sept. 24, 2002). The Commission based the rules for another topic, the reporting of funds for the purchase or construction of party office buildings, on recently published final rules. See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rules, 67 FR 49,123 (July 29, 2002).

The Commission received four comments on this rulemaking. In addition, comments responding to the reporting issues in the previous NPRMs regarding electioneering communications and independent expenditures were considered by the Commission in developing these final reporting rules and are discussed in more detail below. The Commission received fifteen comments on electioneering communications reporting and two comments on coordinated and independent expenditures reporting. In addition, the Commission received testimony during the public hearings on electioneering communications on August 28 and 29, 2002, and on coordinated and independent expenditures on October 23 and 24, 2002.

The Commission also recently issued a Statement of Policy, explaining that during the transition period following BCRA's effective date, the Commission intends to refrain from pursuing reporting entities for violations of the reporting requirements if they comply with Interim Reporting Procedures, which are specified in the Statement of Policy. FEC Policy Statement: Interim Reporting Procedures, 67 FR 71,075 (Nov. 29, 2002). All comments received, hearing transcripts, NPRMs, Final Rules, and the Statement of Policy are on the Commission's Web site at *http://www.fec.gov*. The development of new reporting forms and instructions is underway, and the new materials will be posted on the Commission's Web site as they are completed. The Commission intends to have the new forms and instructions completed for reports due March 20, 2003, covering February 2003.

BCRA requires the Commission to promulgate standards for reporting computer software and also imposes certain other requirements on the Commission and on various persons who file reports with the Commission, which will take effect when that computer software becomes available. 2 U.S.C. 434(a)(12). Although these Congressional mandates are related to reporting, which is the subject of these final rules, the Commission does not propose to address computer software standards in these final rules. The computer software standards need to be developed in conjunction with revisions to the Commission's reporting forms. Therefore, the Commission proposes to address computer software standards as soon as possible and will solicit public comments on the software standards at that time.

Explanation and Justification

11 CFR 100.19 File, Filed, or Filing (2 U.S.C. 434(a))

The Commission's regulations at 11 CFR 100.19 define *file*, *filed*, and *filing*. The Commission proposed revisions in the NPRM to section 100.19 to redefine when 24-hour reports of independent expenditures would be considered filed and when the new 48-hour reports of independent expenditures and 24-hour reports of electioneering communications would be considered filed. The Commission received no comments on these proposed rules. The final rules are substantially similar to the proposed rules in the NPRM, with the changes noted below. The Commission notes that the paragraphs in 11 CFR 100.19 should be read together, and the entire section should be reviewed for applicable requirements.

Paragraph (a) of section 100.19 is unaffected by this rulemaking, except for a new heading. It retains the pre-BCRA general rule that a document is considered timely filed if it is delivered to the appropriate filing office (either the Commission or the Secretary of the Senate) by the close of business on the prescribed filing date. Paragraph (b) of section 100.19 retains the pre-BCRA

rule that a document is also considered timely filed if it is sent by registered or certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time on the prescribed filing date—except for pre-election reports. Pre-election reports must be filed no later than the 12th day before the relevant election or posted by registered or certified mail no later than the 15th day before the relevant election. See, *e.g.*, 2 U.S.C. 434(a)(2)(A)(i). The references to midnight in paragraph (b) are being changed to 11:59 PM Eastern Standard/Daylight Time, whichever is applicable, consistent with paragraphs (c), (d), and (f) of this section. The revisions to paragraph (b) of section 100.19 clarify that paragraph (b) does not apply to reports addressed by paragraph (c) through new paragraph (f). The proposed new subtitle for paragraph (b) of "general rule" is not included in the final rules because paragraphs (a) and (b) of section 100.19 could both be considered part of the general rule.

Those exceptions are as follows: Paragraph (c) for electronic filing—"filed" means received and validated by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the filing date; paragraph (d) for 24-hour and 48-hour reports of independent expenditures—"filed" means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following (24-hour reports) or the second day following (48-hour reports) the date on which the spending threshold is reached in accordance with 11 CFR 104.4(f); paragraph (e) for 48-hour notices of last-minute contributions—"filed" means received by the Commission or the Secretary of the Senate within 48 hours of the receipt of a "last-minute" contribution of $1,000 or more, which can be accomplished by using a facsimile transmission or the Commission's website; paragraph (f) for 24-hour statements of electioneering communications—"filed" means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date. *See* 11 CFR 104.20.

Paragraphs (c) and (e) of section 100.19 remain substantially unchanged, except for new headings.

Revised paragraph (d) of section 100.19 requires that both the new 48-hour reports of independent expenditures and the 24-hour reports of independent expenditures must be received by the Commission by the filing deadline. 2 U.S.C. 434(g)(4). Because the reasons behind the filing requirements for 24-hour reports apply equally to the essentially similar 48-hour reports, the final rules treat 48-hour reports the same as 24-hour reports with regard to permissible means of filing. The 24-hour and 48-hour reporting provisions allow reporting entities to submit their reports using facsimile machines or electronic mail, as long as they are not required under 11 CFR 104.18 to file electronically. Paragraph (d)(3) has also been revised since the NPRM to state that the Commission's website may be used to file 24-hour and 48-hour reports of independent expenditures. Use of the Commission's website, facsimile machines or electronic mail for such purposes or for electioneering communication statements under section 100.19(f), discussed below, does not constitute electronic filing under 11 CFR 104.18, so such use will not constitute mandatory or voluntary electronic filing under 11 CFR 104.18(a) or (b). Sending 24-hour reports by mail is not a viable option because it is unlikely these reports will be received by the Commission within 24 hours of the independent expenditures. See Independent Expenditure Reporting; Final Rules, 67 FR 12,834, at 12,835 (Mar. 20, 2002).

New paragraph (f) of section 100.19 addresses electioneering communications, which must be reported within 24 hours of the "disclosure date." See 2 U.S.C. 434(f)(1) and 11 CFR 104.20 below. The Commission is adding new paragraph (f) to 11 CFR 100.19 to require these 24-hour statements be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date, rather than filed by that time. To assist reporting entities with meeting this deadline, the final rule specifically allows filing by facsimile machine or electronic mail in addition to any other delivery method that accomplishes Commission receipt before the conclusion of the day following the disclosure date. For the same reasons that are discussed with regard to paragraph (d) of 11 CFR 100.19, new paragraph (f) follows the timing and filing methods of 24-hour and 48-hour reports for independent expenditures.

11 CFR 104.3(g) Funds for Party Office Buildings

Before BCRA, the Act and Commission regulations provided an exception to the definition of contribution for donations to a national or State party committee that were specifically designated to defray any cost incurred for the construction or purchase of its office facility. Pre-BCRA 2 U.S.C 431(8)(B)(viii); pre-BCRA 11 CFR 100.7(b)(12); 11 CFR 100.84. This exception is reflected in previous 11 CFR 104.3(g), which provided that funds or anything of value that were given to defray the costs of a party office facility and received by a political party committee must be reported as memo entries on Schedule A.

BCRA repealed the building fund exception to the definition of contribution for national party committees. BCRA, sec. 103(b)(1)(A), 116 Stat. at 87. Subsequent technical amendments at 2 U.S.C. 453(b) permit State and local political party committees to purchase or construct State and local party office buildings with non-Federal funds, subject to State law. BCRA, sec. 103(b)(2), 116 Stat. at 87–88. To implement these provisions of BCRA, the Commission promulgated new regulations at 11 CFR 300.12(b)(3) and (d), which eliminate this former exception for national party committees, and at 11 CFR 300.35, which provides that the source and reporting of donations used for the costs incurred by a State or local party committee for the purchase or construction of its office building are subject to State law if donated to a non-Federal account of the party committee. Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 FR 49,064, at 49,123 and 49,127 (July 29, 2002). However, if funds or things of value are contributed to or used by the Federal account of a State or local party committee for the purchase or construction of its office building, then these amounts or items are contributions under the Act. Consequently, new paragraph (g)(1) of 11 CFR 104.3 makes it clear that any funds or things of value received by a Federal account and used for the purchase or construction of an office building, regardless of contributor-specified purposes, are contributions and are not treated differently from other funds or things of value received by a Federal account. New paragraph (g)(2) states that gifts, subscriptions, loans, advances, deposits of money, or anything of value donated to a non-Federal account of a State or local party committee that are used for the purchase or construction of its office building are not contributions subject to the reporting requirements of FECA, but are subject to applicable State law reporting requirements. New paragraph (g)(3) specifies that national party committees' receipts used to defray the costs of the construction or purchase of its office building are contributions subject to paragraph (g)(1). Thus, the memo entries required under previous

11 CFR 104.3(g) are no longer appropriate. New section 104.3(g) should be read in conjunction with 11 CFR 300.12(b)(3) and (d), 300.13, and 300.35. The Commission received no comments on this section.

11 CFR 104.4 Independent Expenditures by Political Committees (2 U.S.C. 434(b), (d) and (g))

1. Introduction

Prior to BCRA, the Commission had established reporting requirements for political committees making independent expenditures in accordance with 2 U.S.C. 434(b) and (g). See pre-BCRA 11 CFR 104.4. In the NPRM, the Commission proposed to revise the rules for political committees reporting independent expenditures made less than 20 days but more than 24 hours before an election and proposed to add new rules regarding the 48-hour reports of independent expenditures during the rest of the calendar year to implement BCRA's new reporting requirements for such independent expenditures. *See* 2 U.S.C. 434g.

The Commission received one comment on this section in the Reporting NPRM and one, from the same commenter, when these rules were published for comment in the Coordinated and Independent Expenditures NPRM, 67 FR 60,042 (Sept. 25, 2002). The commenter agreed with the proposal that 24-hour and 48-hour reports of independent expenditures need not be filed until the communications are publicly distributed or otherwise publicly disseminated. With the exception of certain clarifying changes suggested by the commenter, the final rules mirror those proposed in the NPRM.

2. 11 CFR 104.4(a) Regularly Scheduled Reporting

Paragraph (a) of section 104.4 is unaffected, other than the addition of a new heading, minor clarifications, a grammatical correction, and an updated cross-reference.

3. 11 CFR 104.4(b) Reports of Independent Expenditures Made at Any Time Up To and Including the 20th Day Before an Election

New paragraph (b) addresses reports of independent expenditures made by a political committee at any point in the campaign up to and including the 20th day before an election.

A. 11 CFR 104.4(b)(1) Independent Expenditures Aggregating Less Than $10,000

New paragraph (b)(1) addresses independent expenditures aggregating less than $10,000 with respect to a given election during the calendar year, up to and including the 20th day before an election. This calendar-year aggregation is based on 2 U.S.C. 434(b)(4), which requires calendar-year aggregation for reports of independent expenditures by political committees. Under the new rule, political committees must report the independent expenditures on Schedule E of FEC Form 3X, filed no later than the regular reporting date under 11 CFR 104.5. The Commission interprets 2 U.S.C. 434(g), added to the Act by BCRA, to require aggregation toward the various thresholds for independent expenditure reporting to be calculated on a per-election basis within the calendar year. For example, if a political committee makes $5,000 in independent expenditures with respect to a Senate candidate, and $5,000 in independent expenditures with respect to a House of Representatives candidate, and both of these ads are publicly distributed before the 20th day before the primary election, that political committee is not required to file 48-hour reports, but must disclose the independent expenditures on its regularly scheduled reports. If the political committee makes $5,000 in independent expenditures with respect to a clearly identified candidate in the primary, and an additional $5,000 in independent expenditures with respect to the same candidate in the general election but outside the 20-day window, no 48-hour reports are required; but again the political committee must disclose the independent expenditures on its regularly scheduled reports. If, however, the political committee made $6,000 in independent expenditures supporting a Senate candidate in the primary election, and $4,000 in independent expenditures opposing that Senate candidate's opponent in the primary, and these communications are published in a newspaper more than twenty days before the primary, the political committee must file a 48-hour report. The Commission received no comments on the interpretation implemented by this paragraph.

B. 11 CFR 104.4(b)(2) Independent Expenditures Aggregating $10,000 or More

New paragraph (b)(2) addresses independent expenditures aggregating $10,000 or more during the calendar year up to and including the 20th day before an election. Political committees must file these reports on Schedule E of FEC Form 3X. These reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Further, political committees must file an additional 48-hour report each time subsequent independent expenditures reach or exceed the $10,000 threshold with respect to the same election to which the first report related.

4. 11 CFR 104.4(c) Reports of Independent Expenditures Made Less Than 20 Days, But More Than 24 Hours Before the Day of an Election

Revisions to renumbered paragraph (c) (which was pre-BCRA 11 CFR 104.4(b)) state that 24-hour reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the $1,000 threshold is reached during the final 20 days before the election. Further, revisions to this paragraph also indicate that additional 24-hour reports must be filed each time during the 24-hour reporting period in which subsequent independent expenditures reach or exceed the $1,000 threshold with respect to the same election to which the previous report related.

5. 11 CFR 104.4(d) Verification

New paragraph (d) contains the report verification information previously found in pre-BCRA paragraph (b) of section 104.4. There are non-substantive grammatical changes to conform this paragraph to the rest of section 104.4.

6. 11 CFR 104.4(e) Where to File

New paragraph (e) largely restates pre-BCRA paragraph (c) of section 104.4. However, this paragraph has been reorganized since it was published in the Reporting NPRM. In the Reporting NPRM, paragraph (e)(2) would have addressed independent expenditures related to both Senate and House of Representatives candidates, and it would have omitted reference to the Secretary of Senate. In the final rule, paragraph (e)(2) addresses independent expenditures related to Senate candidates, and it retains the former requirement in 11 CFR 104.4(c) that regularly scheduled reports of independent expenditures related to Senate candidates must be filed with the Secretary of Senate. 11 CFR 104.4(e)(2)(i). However, with respect to

24-hour and 48-hour reports of independent expenditures relating to Senate candidates under BCRA, the Commission and not the Secretary of the Senate is the place of filing. 11 CFR 104.4(e)(2)(ii); see 2 U.S.C. 434(g)(3); see also the discussion of 11 CFR 105.2, below.

Proposed paragraph (e)(3) in the Reporting NPRM is being renumbered paragraph (e)(4), and it provides that if a State has obtained a waiver under 11 CFR 108.1(b), then reports of independent expenditures are not required to be filed with that State's Secretary of State.

7. 11 CFR 104.4(f) Aggregating Independent Expenditures for Reporting Purposes

Paragraph (f) of 11 CFR 104.4 addresses aggregation of independent expenditures for reporting purposes. The provisions of pre-BCRA 11 CFR 109.1(f) are being moved to this section and revised to explain when and how political committees and other persons making independent expenditures must aggregate independent expenditures for purposes of determining whether 48-hour and 24-hour reports must be filed. Note that this aggregation rule applies to independent expenditures by political committees, as well as other persons; new 11 CFR 109.10(c) and (d) cross-reference this paragraph. Paragraph (f) establishes that every date on which a communication that constitutes an independent expenditure is "publicly distributed" or otherwise publicly disseminated serves as the date used to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts ($1,000 for 24-hour reports or $10,000 for 48-hour reports). The term "publicly distributed" has the same meaning as provided in new 11 CFR 100.29(b)(3), which the Commission promulgated as part of the electioneering communications rulemaking. Electioneering Communications Final Rules, 67 FR 65,190, 65,192, 65,211 (Oct. 23, 2002). The term "publicly disseminated" refers to communications that are made public via other media, *e.g.*, newspaper, magazines, handbills. Thus, paragraph (f) sets the same date as the starting date from which a person would have one or two days, where applicable, to file a 24-hour or 48-hour report of independent expenditures.

Congress changed the reporting requirements for independent expenditures by adding the phrase "or contracts to make" in 2 U.S.C. 434(g)(1) and (2). By doing so, BCRA ties 24-hour and 48-hour reporting of independent expenditures to the time when a person "makes or contracts to make independent expenditures" aggregating at or above the $1,000 and $10,000 thresholds, respectively. Therefore, under new 11 CFR 104.4(f), each person must include in the calculation of the aggregate amount of independent expenditures, both disbursements for independent expenditures and all contracts obligating funds for disbursements for independent expenditures. Under this new rule and the timing requirements described above, when a communication that constitutes an independent expenditure is publicly distributed or publicly disseminated, the person who paid for, or who contracted to pay for, the communication is able to determine whether the communication satisfies the "express advocacy" requirement of the definition of an independent expenditure (*see* 11 CFR 100.16) and therefore must determine whether the disbursement for that communication constitutes an independent expenditure. A person reaching or exceeding the applicable reporting threshold is required to submit a report by 11:59 p.m. Eastern Standard/Daylight Time on the day after, for 24-hour reporting, or two days after, for 48-hour reporting, the date of the public distribution or public dissemination of that communication. Please note that under these rules, independent expenditures must be reported by political committees after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 11:59 p.m. on the day following the date on which the independent expenditure is first publicly distributed or otherwise publicly disseminated.

In some situations, a political committee does not make a payment or incur a reportable debt before the communication that constitutes the independent expenditure is publicly distributed or otherwise publicly disseminated. If the communication is both publicly distributed or otherwise publicly disseminated and paid for in the same reporting period, then the political committee must report the independent expenditure on Schedule E for that reporting period. If the communication is aired in one reporting period (*e.g.*, during August for a monthly filer) and payment is made in a later reporting period (*e.g.*, during September), then the political committee must report the independent expenditure as a memo entry on Schedule E on its August report if the $10,000 threshold has been exceeded and on Schedule D if it is a reportable debt under 11 CFR 104.11. The September report should show a payment on Schedule E and the same payment on Schedule D, if applicable.

In other situations, however, a political committee may pay the production and distribution costs associated with an independent expenditure in one reporting period, but not publicly distribute or otherwise publicly disseminate it until a later reporting period. In this case, the political committee must report the payment as a disbursement on Schedule B for operating expenditures. When, in a subsequent reporting period, the communication is publicly distributed or otherwise publicly disseminated, the political committee must file a Schedule E for the independent expenditure referencing the earlier Schedule B transaction. The political committee must also report the disbursement for the independent expenditure as a negative entry on Schedule B so the total disbursements are not inflated. Alternatively, if the political committee wishes to disclose the independent expenditure before the communication is publicly disseminated, it could report the independent expenditure on Schedule E for the reporting period in which the disbursement is made, with no further reporting obligation except for the 48-hour report if the total amount of disbursements for independent expenditures equals or exceeds $10,000 on the day the communication is publicly distributed or otherwise publicly disseminated.

Obligations incurred, but not yet paid that are reportable debts, must be reported on Schedule D. For independent expenditures once the $10,000 threshold is exceeded, political committees must also report memo entries on Schedule E. When, in a subsequent reporting period, the communication is publicly distributed or otherwise publicly disseminated, the political committee must file a Schedule E referencing the debt on Schedule D. The political committee must continue to report the debt on Schedule D and any payment on the debt on Schedules D and E, until the debt is extinguished.

The Commission received one comment supporting this proposal to base reporting of independent expenditures on the date of public distribution or public dissemination, rather than on the date a contract is executed. The policy reasons for adopting this reading of BCRA are the same as those set forth in the Explanation and Justification below for the reporting of electioneering communications.

8. Additional Requirements in the Internal Revenue Code

The Commission received one comment from the Internal Revenue Service ("IRS") on the coordinated and independent expenditure NPRM, which noted generally that even though some entities that are political organizations within the meaning of section 527 of the Internal Revenue Code may not be obliged to report contributions or expenditures to the Commission, these entities may still be required to report to the IRS. The IRS offered the following explanation, which the Commission is including here to provide additional guidance regarding the potential overlap between the Internal Revenue Code and the Commission's regulations. Section 527(j) of the Internal Revenue Code requires the reporting on IRS Form 8872 of certain contributions received and expenditures made by a tax-exempt political organization unless (i) the organization reports under the FECA as a political committee; (ii) the organization is a State or local committee of a political party or political committee of a State or local candidate; (iii) the organization is a qualified State or local political organization within the meaning of section 527(e)(5) of the Internal Revenue Code; (iv) the organization reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year; (v) the organization is otherwise exempt from Federal income taxation under section 501(a) of the Internal Revenue Code because it is described in section 501(c) of the Internal Revenue Code; or (vi) the expenditure made is treated as an independent expenditure under the FECA. In certain situations this could require a tax-exempt political organization making coordinated expenditures to report such expenditures on IRS Form 8872 even though that organization would not be required to report such items to the Commission. Moreover, a tax-exempt political organization that is required to report one or more independent expenditures to the Commission might also have to report certain contributions received and other expenditures to the IRS.

11 CFR 104.5 Filing Dates (2 U.S.C. 434(a)(2))

Section 104.5 sets forth filing dates for all reporting entities, including political committees. The NPRM proposed revisions to the rules for 24-hour reports of independent expenditures and proposed adding provisions for 24-hour reports of electioneering communications and 48-hour reports of independent expenditures. The final rules in section 104.5 track the proposed rules, with the changes described below.

Section 104.5(a) is being revised to set forth the new reporting schedule for the principal campaign committees of House of Representatives and Senate candidates. Prior to BCRA, the principal campaign committees of these candidates were allowed to file semi-annually in non-election years. After November 5, 2002, excluding reports for 2002 runoff elections, principal campaign committees of House of Representatives and Senate candidates must file quarterly reports in non-election years, as well as in the election year. 2 U.S.C. 434(a)(2)(B). Revised paragraphs (a) and (a)(1) of section 104.5 now state that these committees must file quarterly reports. Like other quarterly reports, these must be complete as of March 31, June 30, September 30, and December 31, and must be filed by April 15, July 15, October 15, and January 31 of the following year, respectively. Paragraph (a)(2) of 11 CFR 104.5 sets forth the requirements for pre-election and post-general election reports in the election year and is identical to paragraphs (a)(1)(i) and (ii) of pre-BCRA 11 CFR 104.5. The rules regarding semi-annual reporting from pre-BCRA section 104.5(a) are being deleted. Please note that these new reporting dates do not affect the principal campaign committees or other authorized committees of Presidential candidates.

Revisions to paragraph (c) state that while unauthorized political committees may choose to file quarterly or monthly, a national committee of a political party must report monthly under new 11 CFR 104.5(c)(4), which is discussed below. Consequently, national party committees are no longer permitted to change their filing frequency. Paragraphs (c) and (c)(4) have been revised since the NPRM to consolidate the references to the national party committees, including the national congressional campaign committees.

Paragraph (c)(4) of 11 CFR 104.5 is a new provision implementing the BCRA requirement that all national political party committees must report on a monthly basis. 2 U.S.C. 434(a)(4)(B). Previously, national party committees were allowed to file quarterly in the election year and semi-annually in the non-election years. Under the changes to the Act made by BCRA, national political party committees must file monthly, and must file pre-general election and post-general election reports. BCRA's changes to FECA in this regard may be intended to remove any doubt as to whether national political party committees that file quarterly must file these pre-election reports if they do not make any contributions or expenditures on behalf of candidates in these elections during pre-election reporting periods. These rules implement BCRA's amendment. No commenters addressed this topic.

The Commission sought, but received no comments on whether the national Congressional campaign committees of the political parties should be included in this new monthly filing requirement for national political party committees. The final rules require the Congressional campaign committees of national parties to file monthly for several reasons. First, Congressional campaign committees are treated as committees of a national political party elsewhere in the Act and the regulations. For example, 11 CFR 110.1 specifically includes the Congressional campaign committees as committees that are "established and maintained by a national political party." Further, the Supreme Court in *FEC* v. *Democratic Senate Campaign Committee*, 454 U.S. 27, 39 (1981), stated that the National Republican Senatorial Committee is part of the Republican Party organization. By analogy, the other Congressional campaign committees are also a part of their national party organizations. Moreover, the Commission notes that BCRA included a committee of a national political party in this monthly filing requirement, rather than the committee of a national political party. The wording seems to foreclose the argument that Congress intended to include only the national committees of the political parties in the monthly filing requirement.

Paragraph (g) of 11 CFR 104.5 moves the pre-BCRA contents of paragraph (g) to new paragraph (g)(2) with revisions, and adds a new paragraph (g)(1), which requires that 48-hour reports of independent expenditures must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. The Commission received one comment on paragraph (g) of section 104.5, which urged the Commission to clarify that the filing requirements for subsequent reports of independent expenditures (24-hour and 48-hour reports) would be triggered by the public dissemination or distribution of the communication (as with the initial reports). Note that the term "publicly distributed" refers to communications distributed by radio or

television (*see* 11 CFR 100.29(b)(3)) and the term "publicly disseminated" refers to communications that are made public via other media, *e.g.*, newspaper, magazines, handbills. New paragraph (g)(4) explains when communications that are mailed are considered to be "publicly distributed."

New paragraph (j) of section 104.5 addresses the filing dates for electioneering communications. Specifically, it provides that the 24-hour statements must be received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date.

11 CFR 104.19 [Reserved]

Section 104.19 of 11 CFR is added and reserved for future use.

11 CFR 104.20 Reporting Electioneering Communications

1. Introduction

In the Explanation and Justification for the Electioneering Communications Final Rules, the Commission stated it would revise the proposed rules on reporting electioneering communications and re-propose the rules as part of this rulemaking.[1] 67 FR at 65,209. Consequently, the NPRM for this reporting rulemaking included the revised proposed rules for the reporting requirements for electioneering communications at proposed 11 CFR 104.20. The following explanation and justification for 11 CFR 104.20 discusses comments resulting from the Reporting NPRM and the Electioneering Communications NPRM. Although the Electioneering Communications NPRM would have designated the reporting of electioneering communications as section 104.19, the proposed rules in the Reporting NPRM designated reporting of electioneering communications as proposed section 104.20. In the following explanation and justification, citations to 104.19 refer to the original proposed rules in the Electioneering Communications NPRM, and citations to 104.20 refer to the proposed rules in the Reporting NPRM and the final rules.

2. 11 CFR 104.20(a) Definitions

New section 104.20(a) includes the definitions for the relevant terms that are used throughout new section 104.20. These terms are: (1) Disclosure date; (2) direct costs of producing or airing electioneering communications; (3) persons sharing or exercising direction or control; (4) identification; and (5) publicly distributed.

[1] The original proposed rules were part of the Electioneering Communications NPRM. *See* 67 FR at 51,145.

A. 11 CFR 104.20(a)(1) Definition of "Disclosure Date"

BCRA requires persons who make electioneering communications that cost more than $10,000 to file disclosure statements with the Commission within 24 hours of the disclosure date. 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed section 104.19(b) would have defined "disclosure date" as "the first date by which a person has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000." 67 FR at 51,145. The Electioneering Communications NPRM, however, also sought comment on whether the disclosure date should be the date on which the electioneering communication aired. Thus, under this proposal, an organization could make disbursements or enter into a contract to make disbursements that exceed $10,000, but would not be required to disclose the disbursements or contract until the electioneering communication is aired. Although BCRA uses the term "airing," the Commission has determined that "publicly distributed" more accurately encompasses how electioneering communications are disseminated to the public, including the airing of these communications. *See* below for discussion of the definition of "publicly distributed."

All of the commenters who addressed this issue disagreed with the proposed rule in the Electioneering Communications NPRM and advocated adopting a final rule that would define "disclosure date" as the date of the public distribution of the electioneering communication. They argued that there is no electioneering communication, and therefore no reporting requirement, until the communication is actually publicly distributed.

Taking into consideration the comments described above, proposed section 104.20(a)(1) in the Reporting NPRM would have defined "disclosure date" as the date on which an electioneering communication is publicly distributed where there have been disbursements, or executed contracts for disbursements, for the direct costs of producing or airing an electioneering communication aggregating in excess of $10,000. The Commission received one comment on the revised proposed definition of "disclosure date" at section 104.20(a)(1), which supported this approach. The final rule in section 104.20(a)(1) is similar to the proposed rule. This date reflects the Commission's concerns that there are legal and practical issues associated with compelling disclosure of potential electioneering communications before they are finalized and publicly distributed, and premature disclosure may require reporting entities to divulge confidential strategic and political information about their possible future activities.

Consequently, under new section 104.20(a)(1)(i), "disclosure date" means the first time in a calendar year that an electioneering communication is publicly distributed where the maker of the electioneering communications has also surpassed the $10,000 disbursement threshold. Counting toward the threshold are disbursements made at any time for the direct costs of producing or airing either that communication or any other previously unreported electioneering communication. Thus, even disbursements for the direct costs of producing or airing the electioneering communication made in calendar years prior to the public distribution of the electioneering communication are aggregated toward the $10,000 threshold. Conversely, any costs already reported for earlier electioneering communications are not aggregated toward the $10,000 threshold. After the first disclosure date, subsequent disclosure dates occur in the same calendar year in which an electioneering communication is publicly distributed, if that person has made additional disbursements for the direct costs of producing or airing an electioneering communication that, in the aggregate, exceed $10,000. 11 CFR 104.20(a)(1)(ii). The following example illustrates how the definition of "disclosure date" operates. From November of one year to March of the next year, Person X spends $25,000 in direct costs to produce and air an electioneering communication, and the communication is publicly distributed on March 15. Thus, March 15 is the initial disclosure date under 11 CFR 104.20(a)(1)(i). Person X then pays another $5000 to publicly distribute the same communication on April 1. April 1 is not a disclosure date because the subsequent disbursement does not exceed $10,000. On April 15, Person X publicly distributes a different electioneering communication for which she spent $7000 in direct costs to produce and air. April 15 is a disclosure date under 11 CFR 104.20(a)(1)(ii) because that is the date on which the communication was publicly distributed and the aggregation of the

disbursements for the direct costs after the initial disclosure date ($5000 plus $7000) exceeds $10,000.

B. 11 CFR 104.20(a)(2) Definition of "Direct Costs of Producing or Airing Electioneering Communications"

In the Electioneering Communications NPRM, proposed section 104.19(a) would have required every person who makes a disbursement, or executes a contract, for the direct costs of producing or airing electioneering communications that aggregate in excess of $10,000 during a calendar year, to file a statement with the Commission. Electioneering Communications NPRM, 67 FR at 51,145–46. Furthermore, proposed section 104.19(a)(2) would have included a non-exhaustive list of what constitutes direct costs of electioneering communications. *Id.* The Commission sought comment on two issues relating to this proposed requirement. The first was whether the list in proposed section 104.19(a)(2) was adequate and whether the list should be exhaustive. The second issue was whether the direct costs of producing an electioneering communication and the direct costs of airing it should be aggregated separately or together to determine whether such costs exceed $10,000. The second issue is discussed in further detail in the explanation and justification for new section 104.20(b).

The commenters on the Electioneering Communications NPRM were split on the issue of whether the list of direct costs in proposed section 104.19(a)(2) should be exhaustive or non-exhaustive. One commenter who supported an exhaustive list argued that it is clear what is involved in producing a communication, and the proposed rule adequately addresses those costs. Another commenter recommended a non-exhaustive list so that the Commission could retain flexibility to identify other costs associated with producing and airing communications not listed in the proposed rules.

In order to provide clear guidance on this issue, proposed 11 CFR 104.20(a)(2) in the Reporting NPRM included an exhaustive list of direct costs associated with producing or airing an electioneering communication. The Commission sought comments on whether the proposed definition should include any other direct costs associated with producing or airing electioneering communications. In particular, the Commission sought comment on what, if any, additional in-house production costs should be considered direct costs.

The final rule in new section 104.20(a)(2) is similar to the proposed rule in the Reporting NPRM, and defines "direct costs of producing or airing" with an exhaustive list. Paragraph (a)(2)(i) has been clarified to include "costs charged by a vendor" to show that the nature of service, not the nature of the vendor providing the service, controls whether its cost should be included. (The NPRM version listed "costs charged by a production company," which unduly focused on the type of company providing the service.) Paragraph (a)(2)(ii) has been revised to include the cost of studio time and material costs, which are in-house out-of-pocket production costs. The Commission understands "direct cost of producing or airing electioneering communications" as used in 2 U.S.C. 434(f)(4)(A) and (B) to include all such out-of-pocket costs and to not distinguish between those provided by vendors or those provided by in-house resources.

One commenter addressed the issue of what should be included in an exhaustive list. The commenter supported an exhaustive list and agreed with the items on the list in proposed section 104.20(a)(2). The commenter also suggested that the Commission make clear in the final rule that the definition does not "include planning or preparatory costs such as polling and focus groups, or in-house costs such as staff compensation and other overhead."

Paragraph (a)(2)'s list of vendor production costs, in-house production costs, and airtime costs is exhaustive. Only costs that fit within these categories are included. Illustrative examples of costs charged by a vendor are also included in the regulation, and these examples are not exhaustive. Paragraph (a)(2)(ii) makes clear that part of the costs addressed by the commenter, which are described as "in-house costs such as staff compensation and other overhead," are not among the enumerated out-of-pocket costs, so they will not be included in paragraph (a)(2)(ii). The other of the commenter's examples of polling and focus groups are not production costs as they are too attenuated from the resulting communication to be considered "direct costs of producing or airing an electioneering communication" under 2 U.S.C. 434(f)(4).

The final rule requires statements of electioneering communications to be filed when the direct costs of producing or airing electioneering communications exceed $10,000. In both the Reporting NPRM and the Electioneering Communications NPRM, the Commission sought comment on how to aggregate the direct costs of producing or airing an electioneering communication to determine whether the $10,000 threshold has been exceeded. The commenters on the Electioneering Communications NPRM disagreed on this issue. Some commenters argued that BCRA should be read to require that production costs should be aggregated separately for the airtime costs. Under this interpretation, if it costs a person $7,000 to produce the electioneering communication and $7,000 to air it, the threshold is not met because neither the direct costs of producing or airing the electioneering communication exceeded $10,000. In contrast, other commenters argued that BCRA mandates that the direct costs of producing and airing the electioneering communication be aggregated. Under this approach, the example above would result in the $10,000 threshold being met because the direct costs of producing and airing are $14,000.

The Commission has decided that it is appropriate to require that the costs of producing and the costs of airing be added together, rather than counted separately, to determine whether the threshold has been met. Thus, when the direct costs of producing or airing an electioneering communication exceed $10,000 when combined, the person who makes the electioneering communication would be required to file a statement with the Commission when the electioneering communication is publicly distributed. Additionally, the Commission agrees with a commenter who noted that, as a practical matter, for most electioneering communications, the $10,000 threshold will be exceeded, regardless of whether the production costs and the airing costs are aggregated separately or together.

C. 11 CFR 104.20(a)(3) Definition of "Persons Sharing or Exercising Direction or Control"

The Electioneering Communications NPRM included two proposed alternatives, identified as Alternative 4–A and Alternative 4–B, to implement the BCRA requirement to disclose "any person sharing or exercising direction or control over the activities" of the person making the disbursement for electioneering communications. See 2 U.S.C. 434(f)(2)(A). Many of the commenters asserted that both alternatives were vague and could encompass a large number of people, especially for electioneering communications made by membership organizations. Some of the commenters were also concerned that disclosing this information may reveal sensitive or confidential information and the decision-making processes of organizations, especially non-profit organizations, thereby placing them at a

competitive disadvantage. For these reasons, these commenters argued that the Commission should require limited, if any, disclosure of persons who share or exercise direction or control over the person who makes disbursements for electioneering communications or the activities involved in making electioneering communications.

In contrast, several commenters, including the Congressional sponsors of BCRA, disagreed with both alternatives because in their view neither would disclose sufficiently the information required by BCRA. *See* 2 U.S.C. 434(f)(2)(A). They asserted that BCRA requires disclosure of not only those who have direction or control over the electioneering communications, but also those who have direction or control over the organization that makes the electioneering communications.

While the Commission recognizes the concerns of those who objected to disclosure of the decision-making process of their organizations, BCRA requires persons who make electioneering communications to disclose those who share or exercise direction or control over the person making the disbursement for electioneering communications. 2 U.S.C. 434(f)(2)(A). Because neither Alternative 4–A nor Alternative 4–B in the Electioneering Communications NPRM appeared to encompass the disclosure required by BCRA, proposed section 104.20(c)(2) in the Reporting NPRM did not incorporate either of the two alternatives. Instead, proposed paragraph (c)(2) followed the wording of 2 U.S.C. 434(f)(2)(A).

To provide further guidance on proposed section 104.20(c)(2), the proposed rules included a definition of "sharing or exercising direction or control." Because it appears that the term "direction or control" in 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making process of an organization, including a qualified nonprofit corporation ("QNC"), proposed section 104.20(a)(3) would have defined "sharing or exercising direction or control" to mean exercising authority or responsibility for policy formulation, day-to-day management, obligation of funds, or hiring or firing employees.

The Commission also sought comment on an alternative definition of "sharing or exercising direction or control" that was not in the proposed rule. Reporting NPRM, 67 FR at 64,560. Under the alternative definition described in the NPRM, the term would mean the officers, directors, partners, or any other individuals who have the authority to bind the organization; entity, or person making the disbursement for electioneering communication. With this alternative the Commission sought a more objective, bright-line definition of "direction or control" that focused the definition on those persons who have the authority to act on behalf of the organization. One commenter addressed this issue. The commenter supported the alternative definition arguing that proposed section 104.20(a)(3) was overly broad and that the alternative definition better captured the requirements of BCRA. The commenter also suggested that the alternative definition be further narrowed to include only officers, directors, and partners.

The Commission is adopting this bright-line alternative approach described in the NPRM, with the clarifications described below, as new section 104.20(a)(3) because it properly encompasses BCRA's clear requirement to identify persons who exercise direction or control over the person making the electioneering communication. The Commission prefers the clarity of the bright-line approach to what may be the broader coverage of the NPRM's proposed rule text in order to avoid the vagueness involved in describing the functions that the rule intended to capture. New section 104.20(a)(3) defines "persons sharing or exercising direction or control" with a list of organizational positions that are readily known and verifiable: officer, director, executive director, partner, and in the case of unincorporated organizations, owner. In addition to this list, new section 104.20(a)(3) includes the "equivalent" of executive director. This term is intended to include the senior staff position in an organization, whatever its title, that functions as an executive director does. Thus, the Commission believes that the positions named or described in new section 104.20(a)(3) provide sufficient scope to capture responsible persons without sweeping too broadly.

D. 11 CFR 104.20(a)(4) Definition of "Identification"

New section 104.20(a)(4) incorporates the definition of the term "identification" in 11 CFR 100.12. This definition is identical to the proposed definition. No commenter discussed this definition.

E. 101 CFR 104.20(a)(5) Definition of "Publicly Distributed"

In the Electioneering Communications Final Rules, the Commission defines "publicly distributed" to mean "aired, broadcast, cablecast, or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system." 11 CFR 100.29(b)(6). Therefore, new section 104.20(a)(5) adopts the definition of "publicly distributed" in 11 CFR 100.29(b)(6). The term "publicly distributed" is used throughout the final rules instead of "airing," except in the definition of "direct costs of producing or airing."

3. 11 CFR 104.20(b) Who Must Report and When

New section 104.20(b) details who must report electioneering communications to the Commission and when those statements are due. The final rule states that every person who makes a disbursement or executes a contract to make a disbursement for electioneering communications that exceeds $10,000 in direct costs must file a statement with the Commission by the end of the day following the disclosure date. The various elements of this final rule are discussed in further detail below.

The definitions of "electioneering communication" in 11 CFR 100.29 and "disclosure date" in 11 CFR 104.20(a)(1) must be satisfied in order for an electioneering communication reporting obligation to arise. Thus, for example, because expenditures are exempted from the definition of "electioneering communication" by 2 U.S.C 434(f)(3)(B)(ii) and 11 CFR 100.29(c)(3), political committees that pay for communications with funds reportable as expenditures do not report these payments under 11 CFR 104.20. Similarly, a "disclosure date" must have occurred, so the provisions of 11 CFR 104.20(a)(1)(i) or (ii) must have been satisfied.

BCRA requires that statements of electioneering communications be filed within 24 hours of the disclosure date, that is the date on which an electioneering communication is publicly distributed, assuming the $10,000 threshold has been exceeded. 11 CFR 104.20(a)(1). One witness at the August 28, 2002 public hearing on electioneering communications acknowledged that in some cases it may be difficult to ascertain when an electioneering communication is publicly distributed for purposes of triggering the 24-hour reporting period. This is because the contract may not specify a precise time that the communication will be publicly distributed or because in some instances the broadcaster does not air the communication during the block of time specified in the contract, although the

day of initial broadcast will generally be known. To address the concern that a person may not know the exact time an electioneering communication is publicly distributed during the day that it is scheduled to air, the Commission is interpreting the 24-hour period in which to report the electioneering communication as starting at the end of the day in which the communication is publicly distributed. Therefore, new section 104.20(b) requires reporting of an electioneering communication by the end of the following day. The Commission did not receive any comments on this rule.

The last sentence of proposed section 104.20(b) stated that "[p]ersons *other than political committees* must file these 24-hour statements on FEC Form 9" (emphasis added). One commenter correctly noted that the highlighted language may be misleading because the Commission had stated in the Electioneering Communications Final Rules that, by operation of the expenditure and independent expenditure exemption from the definition of "electioneering communications," political committees do not make disbursements for electioneering communications. See 67 FR at 65,197–98. Therefore, the final rule includes a sentence that makes clear that political committees report communications that are described in 11 CFR 100.29(a) as expenditures or independent expenditures and not as an electioneering communication. For those persons who are required to report electioneering communications, new section 104.20(b) requires all the information specified in new section 104.20(c) be reported on FEC Form 9.

4. 11 CFR 104.20(c) Contents of Statements

New section 104.20(c) lists eight items that must be included in the statements of electioneering communications that must be filed with the Commission. No commenters addressed the introductory part of paragraph (c). The final rule slightly rewords the proposed rule to clarify that the information to be reported on FEC Form 9 pertains to electioneering communications.

A. 11 CFR 104.20(c)(1) Identification of the Person Making the Disbursements

New section 104.20(c)(1) requires identification of the persons who make a disbursement, or execute a contract to make a disbursement, for an electioneering communication. Under 11 CFR 100.12, as incorporated by new section 104.20(a)(4), "identification" means an individual's first name, middle name or initial, if available, and last name; mailing address; occupation; and the name of his or her employer; and, if the person is not an individual, the person's full name and address. New section 104.20(c)(1) additionally requires a person that is not an individual to list its principal place of business. This rule implements the requirements in BCRA at 2 U.S.C. 434(f)(2)(A) and (B). The Commission did not receive any comments concerning this paragraph.

B. 11 CFR 104.20(c)(2) Identification of Persons Sharing or Exercising Direction or Control

As mandated by BCRA at 2 U.S.C. 434(f)(2)(A), new section 104.20(c)(2) requires identification of persons sharing or exercising direction or control over persons described in paragraph (c)(1), disclosing the same type of information. While one commenter addressed the definition of "sharing or exercising direction or control," *see* above, no commenter specifically discussed this rule.

C. 11 CFR 104.20(c)(3) Identification of the Custodian of the Books and Accounts

BCRA at 2 U.S.C. 434(f)(2)(A) requires disclosure of the person who is the custodian of the books and accounts from which electioneering communication disbursements are made. New section 104.20(c)(3) implements this new provision. The information that must be disclosed about that person under BCRA and the new rules is the same as the information that must be disclosed about the persons described in paragraphs (c)(1) and (c)(2), except for paragraph (c)(1)'s requirement that a person that is not an individual state its principal place of business. The Commission did not receive any comments on this rule.

D. 11 CFR 104.20(c)(4) Disclosure of the Amount of Each Disbursement

BCRA also requires disclosure of disbursements of more than $200 during the period covered by the statement, the date the disbursement was made, and the identification of the person who receives the disbursement. 2 U.S.C. 434(f)(2)(C). The final rule in new section 104.20(c)(4) follows the wording of the proposed rule without change in implementing this BCRA provision. No commenter discussed this provision in the proposed rules.

E. 11 CFR 104.20(c)(5) Disclosure of Candidates and Elections

Under 2 U.S.C. 434(f)(2)(D), the elections to which electioneering communications pertain, as well as the names of all clearly identified candidates referred to in the electioneering communications, must be disclosed. The Electioneering Communications NPRM provided two alternatives to proposed 11 CFR 104.19(b)(5), identified as Alternative 5–A and Alternative 5–B, which would have implemented this statutory provision. 67 FR 51,146. Both alternatives would have required disclosure of the elections and all clearly identified candidates who are referred to in the electioneering communication, but would have contained different wording. Commenters preferred the wording of Alternative 5–B because it was easier to read and was more consistent with 2 U.S.C. 434(f)(2)(D). Because Alternative 5–B arguably was more consistent with the definition of "disclosure date," see above, leaving no doubt as to which clearly identified candidates appear in an electioneering communication, proposed section 104.20(c)(5) in the Reporting NPRM incorporated the wording of Alternative 5–B. As such, the final rule remains unchanged from the proposed rule. No comments were received in response to the Reporting NPRM concerning proposed section 104.20(c)(5).

F. 11 CFR 104.20(c)(6) Disclosure Date

New section 104.20(c)(6) requires that electioneering communications statements list the disclosure date, as defined in section 104.20(a)(1), of each electioneering communication. While BCRA does not specifically require the disclosure date to be reported, this information is necessary as it is the triggering mechanism for filing the statement. This is similar to requiring the disclosure of the date an independent expenditure aggregating $1,000 or more is made during the 24-hour reporting period. The Commission did not receive any comments on this requirement.

G. 11 CFR 104.20(c)(7) Disclosure of Donors to a Segregated Bank Account

BCRA requires persons who make disbursements for electioneering communications exclusively from segregated bank accounts to disclose the names and addresses of contributors who contribute an aggregate of $1,000 or more to that segregated account. 2 U.S.C. 434(f)(2)(E). In the Electioneering Communications NPRM, the Commission sought comment on whether amounts given to persons who make disbursements for electioneering communications are contributions subject to the limitations, prohibitions, and reporting requirements of the Act.

In the new reporting provisions for electioneering communications in BCRA, the statute uses the terms "contributor" and "contributed," but it does not use the term "contribution." 2 U.S.C. 434(f)(2)(E) and (F). BCRA uses the more general "disbursement" more frequently. 2 U.S.C. 434(f)(2)(A), (B), (C), (E), and (F). Nor does BCRA amend the definition of "contribution." *See* 2 U.S.C. 431(8). Additionally, the Commission concluded that political committees do not make disbursements for electioneering communications by operation of the expenditure and independent expenditure exemptions. Based on this analysis, the Commission proposed to treat funds given to persons who make electioneering communications as "donations." *See* also Reporting NPRM, 67 FR at 64,560–61. One commenter agreed with the Commission's approach and none opposed it. At this point, the Commission concludes that its analysis of the statutory wording is correct. Accordingly, the final rules treat these funds as "donations" and not as "contributions."

In reading 2 U.S.C. 434(f)(2)(E) and (F) together with 2 U.S.C. 441b(c)(3)(B), the Commission stated in the Electioneering Communications NPRM that the disclosure requirements for segregated bank accounts appear to apply only to qualified nonprofit corporations (QNCs) organized under 26 U.S.C. 501(c)(4). *See* 67 FR at 51,143 and 11 CFR 114.10. Therefore, proposed 11 CFR 104.19(b)(6) would have permitted only QNCs to use segregated bank accounts to limit disclosure of their donors to only those who donate $1000 or more to that account. Commenters on the Electioneering Communications NPRM urged that this option be made available to all persons who make electioneering communications, and not just QNCs. Because the Commission agreed with this suggestion, proposed 104.20(c)(7) in the Reporting NPRM made this option available to all persons.

The Commission continues to agree with this approach. Accordingly, new section 104.20(c)(7) in the final rules allows all persons who establish a separate bank account consisting of funds provided solely by individuals who are United States citizens, nationals, or permanent residents to limit their reporting of the identities of their donors of $1,000 or more to those donors who have given directly to that bank account, as long as only funds from the separate bank account are used to pay for electioneering communications. Please note that the final rules at 11 CFR 114.14(d)(2), as published previously in the Electioneering Communications Final Rules, provide such persons that are not QNCs with the option of establishing a segregated bank account similar to that allowed to QNCs. 67 FR 65,212.

Although no commenter addressed this provision specifically, one joint comment questioned the requirement that QNCs disclose their donors. The joint commenter made constitutional arguments and cited *FEC* v. *Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (*"MCFL"*) and other cases in support of the assertions that disclosure of its donors imposes a burden on its free speech rights. They also stated that the segregated bank account option creates an administrative burden and would still require disclosure of some of their donors. The joint comment suggested that, with regard to QNCs, the Commission impose the same requirements for disclosure of electioneering communication as it does for independent expenditures arguing that legislative history indicates that Congress intended them to be treated similarly.

In some respects, the reporting rules applicable to QNCs' electioneering communications require less disclosure than those applicable to QNCs' independent expenditures. Electioneering communication rules require disclosure of donors of $1,000 or more, while independent expenditure rules require disclosure of contributors of more than $200. Compare new 11 CFR 104.20(c)(7) or (8) with new 11 CFR 109.10(e)(1)(vi). Additionally, electioneering communications are not subject to disclosure until disbursements related to them exceed $10,000, and the similar threshold for independent expenditures is $250. See 11 CFR 104.20(a)(1). While reporting of independent expenditure contributors is limited to those who contributed specifically for independent expenditures, 11 CFR 109.10(e)(1)(vi), QNCs can also reduce their reporting obligations by using separate bank accounts pursuant to 11 CFR 104.20(c)(7).

More generally, a commenter on the Electioneering Communications NPRM and the joint comment on the Reporting NPRM argued that the members of the organizations they represent could be subject to negative consequences if their names are disclosed in connection with an electioneering communication. The FECA provides for an advisory opinion process concerning the application of any of the statutes within the Commission's jurisdiction or any regulations promulgated by the Commission, and such groups could also seek an advisory opinion from the Commission to determine if the groups would be entitled to an exemption from disclosure that would be analogous to the exemption provided to the Socialist Workers Party. See Advisory Opinions 1990–13 and 1996–46 (both of which allowed the Socialist Workers Party to withhold the identities of its contributors and persons to whom it had disbursed funds because of a reasonable probability that the compelled disclosure of the party's contributors' names would subject them to threats, harassment, or reprisals from either Government officials or private parties). BCRA's legislative history shows that some in Congress recognized the need for limited exceptions in these circumstances. See 148 Cong. Rec. S2136 (daily ed. Mar. 20, 2002) (remarks of Sen. Snowe). The Commission disagrees with the joint commenters' assertion that the standard for obtaining a waiver is too high, given the significant disclosure interests Congress sought to protect in the political arena.

Nevertheless, *MCFL* status does not exempt a corporation from the independent expenditure reporting requirements. It only exempts the *MCFL* corporation's use of its own funds from the prohibitions of 2 U.S.C. 441b. The Supreme Court in *MCFL* specifically noted the reporting requirements of 2 U.S.C. 434(c) and stated that "these reporting obligations provide precisely the information necessary to monitor MCFL's independent spending activity and its receipt of contributions." *MCFL*, 479 U.S. at 262. Thus, the Commission's extension of the exemption of *MCFL* does not apply to reporting requirements for electioneering communications. Therefore, the Commission declines to create separate electioneering communication reporting requirements for QNCs.

H. 11 CFR 104.20(c)(8) Disclosure of Donors When Not Using a Segregated Bank Account

The Electioneering Communications NPRM explaining proposed section 104.19(b)(7) clearly stated that all persons who make electioneering communications, including QNCs that do not use segregated bank accounts, would be required to disclose their contributors who contribute an aggregate of $1,000 or more during the prescribed time period. 67 FR 51,143. Nevertheless, some commenters interpreted proposed section 104.19(b)(7) to apply only to QNCs and objected to limiting the disclosure requirements to only QNCs. They argued that BCRA does not limit the requirements of 2 U.S.C. 434(f)(2)(E) and (F) to just QNCs. Consequently, they

recommended that all persons who make electioneering communications should be required to disclose their contributors under proposed section 104.19(b)(7). Additionally, some commenters expressed concern as to the requirement that organizations would be required to disclose their donors because donors may become inhibited from making donations aggregating $1,000 or more.

In order to eliminate the confusion, proposed 11 CFR 104.20(c)(8) in the Reporting NPRM differed from proposed section 104.19(b)(7) in the Electioneering Communications NPRM in that it removed the reference to QNCs. Thus, proposed section 104.20(c)(8) sought to clarify that all persons who make electioneering communications would be required to disclose their donors who donate $1,000 or more in the aggregate during the prescribed period, if they do not use segregated bank accounts. Other than the commenters that objected to disclosure of their donors, discussed above, the Commission did not receive any comments on this requirement. Because BCRA at 2 U.S.C. 434(f)(2)(F) specifically mandates disclosure of this information, the final rule at 11 CFR 104.20(c)(8) is identical to the proposed rule in the Reporting NPRM.

I. Disclosure Requirements for Individuals Who Make Electioneering Communications

The Commission also sought comments on how the proposed rules would apply to individuals making electioneering communications. The Commission did not receive any comments on this topic. The Commission concludes that, in instances where an individual makes a disbursement for an electioneering communication, 11 CFR 104.20(c)(1) requires disclosure of the identification of the individual, which means his or her name, address, occupation, and employer.

New 11 CFR 104.20(c)(2) requires the identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement, or who executed a contract to make a disbursement, which implements 2 U.S.C. 434(f)(2)(A). The term "direction or control" in 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making process of an organization, as the Commission has noted. See Explanation and Justification for 11 CFR 104.20(c)(2), above, and Reporting NPRM, 67 FR at 64,560. Therefore, the Commission defines "sharing or exercising direction or control" in new 11 CFR 104.20(a)(3) with a four-part test applicable only to organizations and entities. Individuals are required to disclose any person sharing or exercising direction or control over their electioneering communication activities.

For purposes of new 11 CFR 104.20(c)(7) and (8), individuals are required to disclose donations received, which does not include salary, wages, or other compensation for employment. Donations required to be disclosed do include, however, gifts of $1,000 or more from any source. The remainder of 11 CFR 104.20(c) applies to individuals in the same manner it applies to any other persons making electioneering communications. See 11 CFR 104.20(c)(3) through (6).

8. 11 CFR 104.20(d) Recordkeeping Requirement

The final rules at 11 CFR 104.20(d) require all persons who make electioneering communications or accept donations for the purpose of making electioneering communications to maintain records in accordance with 11 CFR 104.14. In the Electioneering Communications NPRM, proposed section 104.19(c) would have exempted QNCs from the recordkeeping requirements. The commenters who addressed this issue were split on whether QNCs should be exempted from the recordkeeping requirements. A commenter who did not support the exemption argued that because these entities are required to report their electioneering communications, they should also be required to maintain records that relate to the electioneering communications to support their reports.

In determining that all of the reporting and recordkeeping requirements for political committees were too burdensome for QNCs making independent expenditures, the Supreme Court in *MCFL* noted that MCFL, Inc. was subject to more "extensive requirements and more stringent restrictions" than unincorporated nonprofit organizations. 479 U.S. at 254–255. For this reason, proposed section 104.20(d) in the Reporting NPRM required QNCs to maintain only those records that pertain to their electioneering communications, which is a much reduced obligation. Additionally, this recordkeeping requirement is identical to what is required of any other person, including unincorporated nonprofit organizations, that make disbursements for electioneering communications. Furthermore, the availability of these records is necessary to assess the accuracy of the electioneering communications reports filed by QNCs. Thus, proposed paragraph (d) in the Reporting NPRM did not include an exemption for QNCs. No subsequent comments were received concerning this paragraph. After consideration of the reasons stated above and in the NPRM, the Commission has concluded that a QNC exemption from recordkeeping is unwarranted. Therefore, new section 104.20(d) requires all persons, including QNCs, who make or accept donations for electioneering communications to maintains records in accordance with 11 CFR 104.14.

9. 11 CFR 104.20(e) State Waivers

Paragraph (e), which was not included in the NPRM, repeats the information in 11 CFR 104.20(b) that the place of filing for statements of electioneering communications is the Commission. This paragraph also states that like all other reports or statements, copies of the statement filed with the Commission must also be filed with the appropriate State official unless the state has obtained a waiver under 11 CFR 108.1(b). The NPRM sought comment on whether this waiver should apply to statements of electioneering communications. The Commission received no comments on this issue. Because section 108.1 of 11 CFR applies to all reports and statements filed with the Commission (and when appropriate the Secretary of the Senate), statements of electioneering communications clearly fall within its rubric. See discussion of 11 CFR 108.1, below.

11 CFR 105.2 Place of Filing; Senate Candidates, Their Principal Campaign Committees, and Committees Supporting Only Senate Candidates (2 U.S.C. 434(g)(3))

The Commission's pre-BCRA regulations required that 24-hour reports of independent expenditures supporting or opposing Senate candidates be filed with the Secretary of the Senate. See pre-BCRA 11 CFR 104.4(c)(2), 105.2, and 109.2(b). Revisions to 11 CFR 105.2 place the text of pre-BCRA 11 CFR 105.2 in paragraph (a), and add the heading, "General Rule."

New paragraph (b) of 11 CFR 105.2, headed, "Exceptions," implements exceptions to this general rule created by BCRA. BCRA establishes the Commission as the place of filing for both 24-hour and 48-hour reports of independent expenditures, regardless of the office sought by the clearly identified candidate. 2 U.S.C. 434(g)(3)(A). In the Reporting NPRM, the proposed revisions to section 105.2

would have made the Commission the point of filing for all 24-hour and 48-hour reports of independent expenditures. The Commission received no comments on this section, and the final rules follow the proposed rules regarding independent expenditures.

Similarly, BCRA establishes the Commission as the place of filing for electioneering communication statements, regardless of the office sought by the clearly identified candidate. 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed revisions to section 105.2 would have made the Commission the point of filing for all electioneering communication statements. 67 FR at 51,146. However, the Reporting NPRM proposed that 11 CFR 105.2(b) would not mention electioneering communication statements because section 105.2 only discusses reporting by political committees. 67 FR at 64,562. By operation of 2 U.S.C. 434(f)(3)(B)(ii) and 11 CFR 100.29(c)(3), communications paid for with expenditures and independent expenditures are excluded from the definition of "electioneering communications." Therefore, revised section 105.2(b), as proposed in the Reporting NPRM and as promulgated in these final rules, does not mention statements of electioneering communications. Nonetheless, electioneering communications by others may refer to Senatorial candidates. Under 11 CFR 104.20(b), electioneering communication statements related to electioneering communications that refer to a clearly identified candidate for Senate must be filed with the Commission, not the Secretary of the Senate.

11 CFR 108.1 Filing Requirements

Paragraph (a) of 11 CFR 108.1 contains the general rule that a copy of each report and statement that is required to be filed with the Commission or the Secretary of the Senate must be filed with the Secretary of State for the appropriate State. The Commission is not making any changes to this general rule.

The rules at 11 CFR 108.1(b) provide an exception to the requirement that reporting entities must file copies of their reports with the Secretary of State for the appropriate State. This exception is allowed in States that have received a waiver from the Commission because the State can electronically receive and duplicate reports and statements filed with the Commission. The reporting requirements for both independent expenditures and electioneering communications specifically explain that if a State has obtained a waiver under 11 CFR 108.1(b), then reporting entities are not required to file reports or statements with the Secretary of State for that State. See 11 CFR 104.4(e)(4) and 104.20(e). In the NPRM, the Commission proposed adding to paragraph (b) a statement that the list of States that have obtained waivers under this section is available on the Commission's website. The Commission received no comments on this proposal, and the final rule follows the proposed rule.

11 CFR 109.2 [Reserved]

Section 109.2 of 11 CFR is removed and reserved for future use.

11 CFR 109.10 Independent Expenditure by Persons Other Than Political Committees

The NPRM proposed to move the reporting requirements for persons other than political committees who make independent expenditures from pre-BCRA 11 CFR 109.2 to new 11 CFR 109.10. Other proposed revisions to this section generally followed the proposals regarding independent expenditure reporting by political committees, which are discussed above in the Explanation and Justification for 11 CFR 104.4. The Commission received no comments on this section. The final rules generally follow the proposed rules except as explained below.

Under new section 109.10, persons other than political committees must report their independent expenditures on either FEC Form 5 or in a signed statement containing certain information regarding the person who made the independent expenditure and the nature of the independent expenditure itself.

Paragraph (a) of new 11 CFR 109.10 states that political committees must report independent expenditures under 11 CFR 104.4.

Section 109.10(b) contains the general reporting requirement for persons other than political committees previously found in 11 CFR 109.2(a). New paragraph (b) states that persons other than political committees must report independent expenditures in excess of $250 in a calendar year. New paragraph (b) specifically states that these reports must be filed in accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii). Paragraph (b) has been revised since the NPRM to establish that reporting entities must follow the quarterly reporting schedule.

Paragraph (c) addresses reports of independent expenditures aggregating $10,000 or more with respect to a given election from the beginning of the calendar year up to and including the 20th day before an election. This paragraph requires that 48-hour reports of independent expenditures be received rather than filed by 11:59 pm on the second day after the date on which the $10,000 threshold is reached.

Revisions to paragraph (d) of new 11 CFR 109.10 (which was pre-BCRA 11 CFR 109.2(b)) also follow the changes in 11 CFR 104.4(c) regarding 24-hour reports of independent expenditures aggregating $1,000 or more after the 20th day before the election.

Paragraph (e) of new 11 CFR 109.10 (which was pre-BCRA 11 CFR 109.2(a)(1) and (c)) addresses the contents and verification of statements and reports filed under this section. Paragraph (e) has been clarified so that the information required to be disclosed applies to those using FEC Form 5 or a verified statement. Paragraph (e) includes one significant change from pre-BCRA section 109.2(a)(1) and (c): a person making an independent expenditure is now required to certify that the expenditure was made independently from a political party committee and its agents, in addition to pre-BCRA requirement of certification that the expenditure was not coordinated with a candidate, a candidate's authorized committee, or an agent of either of the foregoing. This change reflects the addition of political party committees to the definition of "independent expenditure" in 2 U.S.C. 431(17) and the description of coordination in 2 U.S.C. 441a(a)(7)(B)(ii) under BCRA.

In BCRA, Congress deleted the term "consultation" from the list of activities that compromise the independence of expenditures. *See* 2 U.S.C. 431(17)(B). Notwithstanding that change, in the Reporting NPRM the Commission proposed the retention of the term "consultation" because it remains, post-BCRA, in other related provisions of the Act. Reporting NPRM, 67 FR at 64,558 and 64,568. For the same reasons explained with reference to the definition of "independent expenditure" in 11 CFR 100.16, *see Coordinated and Independent Expenditures, NPRM*, 67 FR 60,042, 60,061 (Sept. 24, 2002); *Coordinated and Independent Expenditures, Final Rules*, 67 FR (forthcoming Dec. 2002), the Commission is continuing to include "consultation" in the description of activity that would cause an expenditure to lose its independence (*i.e.*, "in cooperation, *consultation*, or concert with" a candidate or political party committee), even though the

statutory definition in 2 U.S.C. 431(17) does not retain the term.

The comment from the Internal Revenue Service, which is described in the Explanation and Justification of 11 CFR 104.4, above, will be of interest to political organizations within the meaning of section 527 of the Internal Revenue Code.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The bases of this certification are several. There are four areas in which new rules are being promulgated. The economic impact on small entities of each new rule is addressed below.

1. Independent Expenditure Reporting

First, with regard to the final rules addressing independent expenditures, the national, State, and local party committees of the two major political parties, and other political committees, are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. Further, individuals operating under these rules are not small entities.

The small entities to which the rules do apply will not be unduly burdened by the final rules because there is no significant extra cost involved, as independent expenditures must already be reported. Collectively, the differential costs will not exceed $100 million per year. In addition, new reporting requirements will not significantly increase costs, as they only apply to those spending $10,000 or more on independent expenditures, and the actual reporting requirements are the minimum necessary to comply with the new statute enacted by Congress.

2. Electioneering Communications

Second, with regard to the final rules addressing electioneering communications, the only burden the final rules impose is on persons who make electioneering communications, and that burden is a minimal one, requiring persons who make such communications to provide the names and addresses of those who made donations of $1000 or more to that person when the costs of the electioneering communication exceed $10,000 per year. If that person is a corporation that qualifies as a QNC, then it must also certify that it meets that status. The number of small entities affected by the final rules is not substantial.

In addition, the Commission is promulgating several rules that reduce any burden that might be placed on persons who must file electioneering communication reports. First, the Commission interprets the reporting requirement such that no reporting is required until after an electioneering communication is publicly distributed. More than likely, this will only require that person to file one report with the Commission. Also, the Commission is allowing all persons paying for electioneering communications to establish segregated bank accounts, and to report the names and addresses of only those persons who contributed to those accounts. Further, the Commission interprets the statute to not require that a certification of QNC status be filed until the person is also required to file a disclosure report. These are significant steps the Commission is taking to reduce the burden on those who make electioneering communications. The overall burden on the small entities affected by these final rules for reporting electioneering communications will not be $100 million on an annual basis. Moreover, these final rules are no more than what is strictly necessary to comply with the new statute enacted by Congress.

3. Reporting Schedules for House of Representatives and Senate Candidates

Third, regarding the new rules requiring a new reporting schedule for non-election years for the authorized committees of House of Representatives and Senate candidates, the frequency of reports has increased. However, the additional cost will not reach $100 million on an annual basis. Moreover, these final rules are no more than what is strictly necessary to comply with the new statute enacted by Congress.

4. Reporting Schedules for National Committees of Political Parties

Fourth, regarding the new rules requiring a different reporting schedule for national committees of political parties, as noted above, the two major national party committees are not small entities under 5 U.S.C. 601. In addition, the new reporting schedule applicable to other national party committees will not result in a cost of $100 million per year, and is no more than what is strictly necessary to comply with the new statute enacted by Congress.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 105

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.19 is revised as follows:

(a) Revising the introductory text and paragraphs (b) through (e).

(b) Adding a heading to paragraph (a) and adding paragraph (f).

The revisions and additions read as follows.

§ 100.19 File, filed, or filing (2 U.S.C. 434(a)).

With respect to documents required to be filed under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms *file, filed,* and *filing* mean one of the actions set forth in paragraphs (a) through (f) of this section. For purposes of this section, document means any report, statement, notice, or designation required by the Act to be filed with the Commission or the Secretary of the Senate.

(a) *Where to deliver reports.* * * *

(b) *Timely filed.* A document, other than those addressed in paragraphs (c) through (f) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

(c) *Electronically filed reports.* For electronic filing purposes, a document is timely filed when it is received and validated by the Federal Election Commission by 11:59 p.m. Eastern Standard/Daylight Time on the filing date.

(d) *48-hour and 24-hour reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* A 48-hour report of independent expenditures under 11 CFR 104.4(b) or 109.10(c) is timely filed when it is received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which independent expenditures aggregate $10,000 or more in accordance with 11 CFR 104.4(f), any time during the calendar year up to and including the 20th day before an election.

(2) *24-hour reports of independent expenditures.* A 24-hour report of independent expenditures under 11 CFR 104.4(c) or 109.10(d) is timely filed when it is received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which independent expenditures aggregate $1,000 or more, in accordance with 11 CFR 104.4(f), during the period less than 20 days but more than 24 hours before an election.

(3) *Permissible means of filing.* In addition to other permissible means of filing, a 24-hour report or 48-hour report of independent expenditures may be filed using a facsimile machine or by electronic mail if the reporting entity is not required to file electronically in accordance with 11 CFR 104.18. Political committees, regardless of whether they are required to file electronically under 11 CFR 104.18, may file 24-hour reports using the Commission's website's on-line program.

(e) *48-hour statements of last-minute contributions.* In addition to other permissible means of filing, authorized committees that are not required to file electronically may file 48-hour notifications of contributions using facsimile machines. All authorized committees that file with the Commission, including electronic reporting entities, may use the Commission's website's on-line program to file 48-hour notifications of contributions. *See* 11 CFR 104.5(f).

(f) *24-hour statements of electioneering communications.* A 24-hour statement of electioneering communications under 11 CFR 104.20 is timely filed when it is received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. (*See* 11 CFR 104.20(a)(1) and (b)). In addition to other permissible means of filing, a 24-hour statement of electioneering communications may be filed using a facsimile machine or by electronic mail if the reporting entity is not required to file electronically in accordance with 11 CFR 104.18.

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and 439a.

4. In § 104.3, paragraph (g) is revised to read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).

* * * * *

(g) *Building funds.*

(1) A political party committee must report gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by the political party committee's Federal accounts to defray the costs of construction or purchase of the committee's office building. See 11 CFR 300.35. Such a receipt is a contribution subject to the limitations and prohibitions of the Act and reportable as a contribution, regardless of whether the contributor has designated the funds or things of value for such purpose and regardless of whether such funds are deposited in a separate Federal account dedicated to that purpose.

(2) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are donated to a non-Federal account of a State or local party committee and are used by that party committee for the purchase or construction of its office building are not contributions subject to the reporting requirements of the Act. The reporting of such funds or things of value is subject to State law.

(3) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by a national committee of a political party to defray the costs of construction or purchase of the national committee's office building are contributions subject to the requirements of paragraph (g)(1) of this section.

* * * * *

5. Section 104.4 is revised to read as follows:

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (d), and (g)).

(a) *Regularly scheduled reporting.* Every political committee that makes independent expenditures must report all such independent expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person that is not a political committee must report independent expenditures in accordance with paragraphs (e) and (f) of this section and 11 CFR 109.10.

(b) *Reports of independent expenditures made at any time up to and including the 20th day before an election.*

(1) *Independent expenditures aggregating less than $10,000 in a calendar year.* Political committees must report on Schedule E of FEC Form 3X at the time of their regular reports in accordance with 11 CFR 104.3, 104.5 and 104.9, all independent expenditures aggregating less than $10,000 with respect to a given election any time during the calendar year up to and including the 20th day before an election.

(2) *Independent expenditures aggregating $10,000 or more in a calendar year.* Political committees must report on Schedule E of FEC Form 3X all independent expenditures aggregating $10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election. Political committees must ensure that the Commission receives these reports by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more, the political committee must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the communication is publicly distributed or otherwise publicly disseminated. (*See* paragraph (f) of this section for aggregation.) Each 48-hour report must contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. In addition to other permissible means of filing, a political committee may file the 48-hour reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(c) *Reports of independent expenditures made less than 20 days, but more than 24 hours before the day of an election.* Political committees must ensure that the Commission

receives reports of independent expenditures aggregating $1,000 or more with respect to a given election, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of the election, by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $1,000 or more, the political committee must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. (See paragraph (f) of this section for aggregation.) Each 24-hour report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. Political committees may file reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(d) *Verification.* Political committees must verify reports of independent expenditures filed under paragraph (b) or (c) of this section by one of the methods stated in paragraph (d)(1) or (2) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(1) For reports filed on paper (*e.g.*, by hand-delivery, U.S. Mail or facsimile machine), the treasurer of the political committee that made the independent expenditure must certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(2) For reports filed by electronic mail, the treasurer of the political committee that made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(e) *Where to file.* Reports of independent expenditures under this section and 11 CFR 109.10(b) shall be filed as follows:

(1) For independent expenditures in support of, or in opposition to, a candidate for President or Vice President: with the Commission and the Secretary of State for the State in which the expenditure is made.

(2) For independent expenditures in support of, or in opposition to, a candidate for the Senate:

(i) For regularly scheduled reports, with the Secretary of the Senate and the Secretary of State for the State in which the candidate is seeking election; or

(ii) For 24-hour and 48-hour reports, with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(3) For independent expenditures in support of, or in opposition to, a candidate for the House of Representatives: with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(4) Notwithstanding the requirements of paragraphs (e)(1), (2), and (3) of this section, political committees and other persons shall not be required to file reports of independent expenditures with the Secretary of State if that State has obtained a waiver under 11 CFR 108.1(b).

(f) *Aggregating independent expenditures for reporting purposes.* For purposes of determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent expenditures must be calculated as of the first date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly distributed or otherwise publicly disseminated. Every person must include in the aggregate total all disbursements during the calendar year for independent expenditures, and all enforceable contracts, either oral or written, obligating funds for disbursements during the calendar year for independent expenditures, where those independent expenditures are made with respect to the same election for Federal office.

6. In § 104.5, paragraph (a), the intro text and heading of paragraph (c), and paragraph (g) are revised to read as follows, and paragraphs (c)(4) and (j) are added to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

(a) *Principal campaign committee of House of Representatives or Senate candidate.* Each treasurer of a principal campaign committee of a candidate for the House of Representatives or for the Senate must file quarterly reports on the dates specified in paragraph (a)(1) of this section in both election years and non-election years, and must file additional reports on the dates specified in paragraph (a)(2) of this section in election years.

(1) *Quarterly reports.*

(i) Quarterly reports must be filed no later than the 15th day following the close of the immediately preceding calendar quarter (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year must be filed no later than January 31 of the following calendar year.

(ii) The report must be complete as of the last day of each calendar quarter.

(iii) The requirement for a quarterly report shall be waived if, under paragraph (a)(2) of this section, a pre-election report is required to be filed during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(2) *Additional reports in the election year.*

(i) *Pre-election reports.*

(A) Pre-election reports for the primary and general election must be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, the report must be mailed no later than the 15th day before any election.

(B) The pre-election report must disclose all receipts and disbursements as of the 20th day before a primary or general election.

(ii) *Post-general election report.*

(A) The post-general election report must be filed no later than 30 days after any general election in which the candidate seeks election.

(B) The post-general election report must be complete as of the 20th day after the general election.

* * * * *

(c) *Political committees that are not authorized committees of candidates.* Except as provided in paragraph (c)(4) of this section, each political committee that is not the authorized committee of a candidate must file either: Election year and non-election year reports in accordance with paragraphs (c)(1) and (2) of this section; or monthly reports in accordance with paragraph (c)(3) of this section. A political committee reporting under paragraph (c) of this section may elect to change the frequency of its reporting from monthly to quarterly and semi-annually or *vice versa.* A political committee reporting under this paragraph (c) may change the frequency of its reporting only after notifying the Commission in writing of its intention at the time it files a required report

under its current filing frequency. Such political committee will then be required to file the next required report under its new filing frequency. A political committee may change its filing frequency no more than once per calendar year.

* * * * *

(4) *National party committee reporting.* Notwithstanding anything to the contrary in this paragraph, a national committee of a political party, including a national Congressional campaign committee, must report monthly in accordance with paragraph (c)(3) of this section in both election and non-election years.

* * * * *

(g) *Reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* Every person that must file a 48-hour report under 11 CFR 104.4(b) must ensure the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $10,000 or more, that person must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the $10,000 threshold is reached or exceeded. (*See* 11 CFR 104.4(f) for aggregation.)

(2) *24-hour reports of independent expenditures.* Every person that must file a 24-hour report under 11 CFR 104.4(c) must ensure that the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $1,000 or more, that person must ensure that the Commission receives a 24-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the $1,000 threshold is reached or exceeded. (*See* 11 CFR 104.4(f) for aggregation.)

(3) Each 24-hour or 48-hour report of independent expenditures filed under this section shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(4) For purposes of this part and 11 CFR part 109, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

* * * * *

(j) *24-hour statements of electioneering communications.* Every person who has made a disbursement or who has executed a contract to make a disbursement for the direct costs of producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in excess of $10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement shall be filed under penalty of perjury and in accordance with 11 CFR 104.20.

§ 104.19 [Reserved.]

7. Section 104.19 is added and reserved.

8. Section 104.20 is added to read as follows:

§ 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).

(a) *Definitions.*

(1) *Disclosure date* means:

(i) The first date on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of $10,000; or

(ii) Any other date during the same calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of $10,000 since the most recent disclosure date during such calendar year.

(2) *Direct costs of producing or airing electioneering communications* means the following:

(i) Costs charged by a vendor, such as studio rental time, staff salaries, costs of video or audio recording media, and talent; or

(ii) The cost of airtime on broadcast, cable or satellite radio and television stations, studio time, material costs, and the charges for a broker to purchase the airtime.

(3) *Persons sharing or exercising direction or control* means officers, directors, executive directors or their equivalent, partners, and in the case of unincorporated organizations, owners, of the entity or person making the disbursement for the electioneering communication.

(4) *Identification* has the same meaning as in 11 CFR 100.12.

(5) *Publicly distributed* has the same meaning as in 11 CFR 100.29(a)(3).

(b) *Who must report and when.* Every person who has made an electioneering communication, as defined in 11 CFR 100.29, aggregating in excess of $10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement shall be filed under penalty of perjury, shall contain the information set forth in paragraph (c) of this section, and shall be filed on FEC Form 9. Political committees that make communications that are described in 11 CFR 100.29(a) must report such communications as expenditures or independent expenditures under 11 CFR 104.3 and 104.4, and not under this section.

(c) *Contents of statement.* Statements of electioneering communications filed under paragraph (b) of this section shall disclose the following information:

(1) The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and, if the person is not an individual, the person's principal place of business;

(2) The identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement or who executed a contract to make a disbursement;

(3) The identification of the custodian of the books and accounts from which the disbursements were made;

(4) The amount of each disbursement, or amount obligated, of more than $200 during the period covered by the statement, the date the disbursement was made, or the contract was executed, and the identification of the person to whom that disbursement was made;

(5) All clearly identified candidates referred to in the electioneering communication and the elections in which they are candidates;

(6) The disclosure date, as defined in paragraph (a) of this section;

(7) If the disbursements were paid exclusively from a segregated bank account consisting of funds provided solely by individuals who are United States citizens, United States nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20), the name and address of each donor who donated an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year; and

(8) If the disbursements were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section, the name and address of each donor who donated an amount aggregating $1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.

(d) *Recordkeeping.* All persons who make electioneering communications or who accept donations for the purpose of making electioneering communications must maintain records in accordance with 11 CFR 104.14.

(e) *State waivers.* Statements of electioneering communications that must be filed with the Commission must also be filed with the Secretary of State of the appropriate State if the State has not obtained a waiver under 11 CFR 108.1(b).

PART 105—DOCUMENT FILING (2 U.S.C. 432(g))

9. The authority citation for part 105 is revised to read as follows:

Authority: 2 U.S.C. 432(g), 434, 438(a)(8).

10. Section 105.2 is revised to read as follows:

§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g), 434(g)(3)).

(a) *General Rule.* Except as provided in paragraph (b) of this section, all designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) that supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received by, the Secretary of the Senate, as custodian for the Federal Election Commission.

(b) *Exceptions.* 24-hour and 48-hour reports of independent expenditures must be filed with the Commission and not with the Secretary of the Senate, even if the communication refers to a Senate candidate.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

11. The authority citation for part 108 would continue to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

12. Paragraph (b) of § 108.1 is revised to read as follows:

§ 108.1 Filing Requirements (2 U.S.C. 439(a)(1))

* * * * *

(b) The filing requirements and duties of State officers under this part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission. Once a State has obtained a waiver pursuant to this paragraph, the waiver shall apply to all reports that can be electronically accessed and duplicated from the Commission, regardless of whether the report or statement was originally filed with the Commission. The list of States that have obtained waivers under this section is available on the Commission's website.

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a, Pub. L. 107–155 sec. 214(c) (March 27, 2002))

13. The authority citation for part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 441a; Pub. L. 155–107 sec. 214(c).

§ 109.2 [Removed and Reserved]

14. Section 109.2 is removed and reserved.

15. Section 109.10 is added to read as follows:

§ 109.10 How do political committees and other persons report independent expenditures?

(a) Political committees, including political party committees, must report independent expenditures under 11 CFR 104.4.

(b) Every person that is not a political committee and that makes independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year shall file a verified statement or report on FEC Form 5 in accordance with 11 CFR 104.4(e) containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so in accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii) and shall file a report or statement for any quarterly period during which any such independent expenditures that aggregate in excess of $250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made.

(c) Every person that is not a political committee and that makes independent expenditures aggregating $10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election, must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation.) The person making the independent expenditures aggregating $10,000 or more must ensure that the Commission receives the report or statement by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of this section.

(d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election, independent expenditures aggregating $1,000 or more with respect to a given election must report those independent expenditures and ensure that the Commission receives the report or signed statement by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate $1,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. (See 11 CFR 104.4(f) for aggregation.) Such report or statement shall contain the information required by paragraph (e) of this section.

(e) *Content of verified reports and statements and verification of reports and statements.*

(1) *Contents of verified reports and statement.* If a signed report or statement is submitted, the report or statement shall include:

(i) The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date, and purpose of each expenditure;

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents; and

(vi) The identification of each person who made a contribution in excess of $200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) *Verification of independent expenditure statements and reports.* Every person shall verify reports and statements of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (2)(i) or (ii) of this section. Any report or statement verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(i) For reports or statements filed on paper (*e.g.*, by hand-delivery, U.S. Mail, or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports or statements filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by paragraph (e)(1)(v) of this section.

Dated: December 17, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 03–91 Filed 1–2–03; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 109, 110, and 114

[Notice 2002—27]

Coordinated and Independent Expenditures

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is issuing final rules regarding payments for communications that are coordinated with a candidate, a candidate's authorized committee, or a political party committee. The final rules also address expenditures by political party committees that are made either in coordination with, or independently from, candidates. These final rules implement several requirements in the Bipartisan Campaign Reform Act of 2002 ("BCRA") that significantly amend the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). Further information is contained in the Supplementary Information that follows.

EFFECTIVE DATE: February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John Vergelli, Acting Assistant General Counsel, or Attorneys Mr. Mark Allen (coordinated party expenditures), and Mr. Richard Ewell (coordinated communications paid for by other political committees and other persons), 999 E Street NW., Washington, DC, 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Public Law 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, 2 U.S.C. 431 *et seq.* This is one in a series of rulemakings the Commission is undertaking in order to implement the provisions of BCRA and to meet the rulemaking deadlines set out in BCRA.

Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA, which is December 22, 2002. The final rules do not apply with respect to runoff elections, recounts, or election contests resulting from the November 2002 general election. 2 U.S.C. 431 note.

Because of the brief period before the statutory deadline for promulgating these rules, the Commission received and considered public comments expeditiously. The Notice of Proposed Rulemaking ("NPRM"), on which these final rules are based, was published in the **Federal Register** on September 24, 2002. 67 FR 60,042 (September 24, 2002). The written comments were due by October 11, 2002. The Commission received 27 comments from 21 commenters. The names of the commenters and their comments are available at *http://www.fec.gov/register.htm* under "Coordinated and Independent Expenditures." A public hearing was held on Wednesday, October 23, 2002, and Thursday, October 24, 2002, at which 14 witnesses testified. A transcript of those hearings is also available at *http://www.fec.gov/register.htm.*

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on coordinated and independent expenditures were transmitted to Congress on December 18, 2002.

Introduction

These final rules primarily address communications that are made in coordination with a candidate, an authorized committee of a candidate, or a political party committee. The regulations set forth the meaning of "coordination." They also set forth statutory requirements for political party committees with respect to the permitted timing of independent and coordinated expenditures, and transfers and assignments.

Explanation and Justification

1. Statutory Overview

FECA limits the amount of contributions to Federal candidates, their authorized committees, and other political committees. 2 U.S.C. 441a(a). Under FECA and the Commission's regulations, these contributions may take the form of money or "anything of value" (the latter is an "in-kind contribution" provided to a candidate or political committee.) *See* 11 CFR 100.52(d)(1). Candidates must disclose

all contributions they receive. 2 U.S.C. 434(b)(2). Since the recipient does not actually receive a cash payment from an in-kind contribution, the recipient must report the value of an in-kind contribution as both a contribution received and an expenditure made so that the receipt of the contribution will be reported without overstating the cash-on-hand in the committee's treasury. *See* 11 CFR 104.13.

2. Overview of BCRA's Changes to the FECA and Commission Regulations

In BCRA, Congress revised the FECA's definition of "independent expenditure" in 2 U.S.C. 431(17). The revision added a reference to political party committees and their agents and reworked other aspects of the former definition. Corresponding revisions are being made to the regulations in 11 CFR 100.16.

Congress repealed the Commission's pre-BCRA regulations regarding "coordinated general public political communications" at former 11 CFR 100.23, and directed the Commission to adopt new regulations on "coordinated communications" in their place. Public Law 107–155, sec. 214(b), (c) (March 27, 2002). A new section 11 CFR 109.21 implements this Congressional mandate.

In addition, the new and revised rules implement several new restrictions found in BCRA on the timing of independent and coordinated expenditures made by committees of political parties. 2 U.S.C. 441a(d)(4). Those regulations are located in new 11 CFR part 109, subpart D. Similarly, Congress established new restrictions on transfers between committees of a political party. 2 U.S.C. 441a(d)(4). Those changes, as well as amendments to the rules on the assignment of coordinated party expenditure authority in pre-BCRA 11 CFR 110.7, are reflected in new 11 CFR part 109, subpart D.

Finally, Congress established new reporting obligations for independent expenditures. 2 U.S.C. 434(a)(5) and (g). These reporting obligations have been addressed in a separate rulemaking. *See* Final Rules and Explanation and Justification for Bipartisan Campaign Reform Act of 2002 Reporting, published elsewhere in this issue of the **Federal Register**. The comments received regarding the reporting of independent expenditures have been addressed separately in the Explanation and Justification for the amended reporting rules.

11 CFR 100.16 Definition of Independent Expenditure

In light of several Congressional changes to the statutory definition of "independent expenditure" at 2 U.S.C. 431(17), the Commission is making several corresponding changes to the definition of the same term in 11 CFR 100.16. Most significantly, the statutory definition of "independent expenditure" is modified to exclude expenditures coordinated with a political party committee or its agents (in addition to the pre-BCRA exclusion of coordination with candidates). 2 U.S.C. 431(17).

Paragraph (a) of section 100.16 contains the revised pre-BCRA section 100.16. The first sentence of paragraph (a) is being changed by adding a reference to political party committees and their agents, thereby tracking BCRA's changes in 2 U.S.C. 431(17).

In BCRA, Congress deleted the term "consultation" from the list of activities that compromise the independence of expenditures. See 2 U.S.C. 431(17)(B). Notwithstanding that change, in the NPRM the Commission proposed the retention of the term "consultation" because it remains, post-BCRA, in other related provisions of the Act. Most importantly, the term "consultation" was used in a closely related provision added by BCRA itself. See 2 U.S.C. 441a(a)(7)(B)(ii) as amended by Public Law 107–155, sec. 214(a) (expenditures made in "cooperation, *consultation*, or concert, with, or at the request or suggestion of, a national, State, or local committee of a political party"); see also 2 U.S.C. 441a(a)(7)(B)(i) (expenditures that are made in "cooperation, consultation, or concert with, or at the request or suggestion of" candidates, political committees, and agents thereof are contributions) (emphasis added).

Similarly, while Congress referred to expenditures "not made in concert or cooperation with * * * a political party committee or its agents" in 2 U.S.C. 431(17) (emphasis added), it did not refer to agents of a party committee in 2 U.S.C. 441a(a)(7)(B)(ii) when describing coordination with a party committee. The Commission proposed in the NPRM including agents of political party committees as persons who might take actions that would cause a communication to be coordinated with that party committee.

The Commission received one joint comment from two commenters [1] on each of the two proposals above, urging the Commission to include in the final rules both terms as proposed. The final rules retain the term "consultation" in paragraph (a) as an element in the regulatory definition of "independent expenditure," for the reasons outlined in the NPRM. The Commission is similarly including agents of a political party within the scope of its independent expenditure definition. 11 CFR 100.16(a).

In BCRA, Congress repealed the pre-BCRA regulatory definition of "coordinated general public political communication." See former 11 CFR 100.23 (January 1, 2001), repealed by Public Law 107–155, section 214(b) (March 27, 2002). Therefore, in one additional change to paragraph (a) of section 100.16, the Commission is deleting the term "coordinated general public political communication," and replacing it with references to a "coordinated communication" from section 109.21 and a "party coordinated communication" from 11 CFR 109.37.

The Commission is also moving pre-BCRA 11 CFR 109.1(e), which clarifies the basic definition of "independent expenditure," to paragraph (b) of section 100.16, without other changes. This rule provides that expenditures made by a candidate's authorized committee on behalf of that candidate never qualify as independent expenditures.

The Commission is adding a new paragraph (c) to provide examples of activities that would disqualify a communication from being treated as an independent expenditure. This provision does not in any way change the scope of the definition of coordinated communication in 11 CFR 109.21; it is merely intended to provide additional guidance.

11 CFR 100.23 [Removed and Reserved]

Prior to the enactment of BCRA, the Commission initiated a series of rulemakings in response to the Supreme Court's ruling on the appropriate application of the so-called "coordinated party expenditure" provisions of FECA. *See Colorado Republican Federal Campaign Committee* v. *Federal Election Commission*, 518 U.S. 604 (1996) (*"Colorado I"*). For example, the Commission addressed the issue of coordination when it promulgated former 11 CFR 100.23 (January 1, 2001) in December 2000. See Explanation and Justification of General Public Political Communications Coordinated with Candidates and Party Committees; Independent Expenditures, 65 FR 76,138 (Dec. 6, 2000). Former section 100.23 defined a new term, "coordinated general public political communication," drawing from judicial guidance in *Federal Election*

[1] For the purposes of this Explanation and Justification, all persons who expressed their views on the rules proposed in the NPRM are referred to as "commenters" without regard to whether those views were expressed to the Commission in writing or through testimony at the hearing.

Commission v. *The Christian Coalition*, 52 F.Supp.2d 45, 85 (D.D.C. 1999) (*"Christian Coalition"*), to determine whether expenditures for communications by unauthorized committees, advocacy groups, and individuals were coordinated with candidates or qualified as independent expenditures. Consistent with *Christian Coalition*, *id.* at 92, the Commission's regulations stated that such coordination could be found when candidates or their representatives influenced the creation or distribution of the communications by making requests or suggestions regarding, or exercising control or decision making authority over, or engaging in "substantial discussion or negotiation" regarding, various aspects of the communications. Former 11 CFR 100.23(c)(2) (January 1, 2001). The regulations explained that "substantial discussion or negotiation may be evidenced by one or more meetings, conversations or conferences regarding the value or importance of the communication for a particular election." Former 11 CFR 100.23(c)(2)(iii) (January 1, 2001). The Commission provided an exception, however, for a candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues. *See* former 11 CFR 100.23(d) (January 1, 2001).

As explained above, Congress repealed 11 CFR 100.23 in BCRA and directed the Commission to promulgate new regulations to address coordinated communications. Those new regulations are discussed below in the Explanation and Justification for 11 CFR part 109. Accordingly, the Commission is now removing former section 100.23 from Title 11, Chapter 1, of the Code of Federal Regulations.

11 CFR 102.6(a)(1)(ii) Transfers

As a result of the enactment of 2 U.S.C. 441a(d)(4) and other provisions from BCRA affecting transfers between political party committees, the Commission revises 11 CFR 102.6(a)(1)(ii) to clarify the interaction of this section with those provisions of BCRA. Before BCRA, the Commission permitted unlimited transfers between or among national party committees, State party committees and/or any subordinate committees. See pre-BCRA 11 CFR 102.6(a)(1)(ii).

First, in BCRA, Congress provided that a national committee of a political party, including a national Congressional campaign committee of a political party, may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(a); *see* Explanation and Justification for 11 CFR 300.10(a), 67 FR 49,122 (July 29, 2002).

Second, in BCRA's "Levin Amendment," Congress placed restrictions on how State, district, and local party committees raise "Levin funds" and prohibited certain transfers between political party committees. *See* 2 U.S.C. 441i(b)(2)(C)(i); Explanation and Justification for 11 CFR 300.31, 67 FR 49,124 (July 29, 2002).

Third, also in the Levin Amendment, Congress provided that a State, district, or local committee of a political party that spends Federal funds and Levin funds for the newly defined term, Federal election activity, must raise those funds solely by itself. These committees may not receive or use transferred funds for this purpose. 2 U.S.C. 441i(b)(2)(B)(iv); *see* Explanation and Justification for 11 CFR 300.34(a) and (b), 67 FR 49,127 (July 29, 2002).

Fourth, Congress provided in BCRA that a committee of a political party that makes coordinated party expenditures under 2 U.S.C. 441a(d) in connection with the general election campaign of a candidate shall not, during that election cycle, transfer any funds to, assign authority to make coordinated party expenditures under this subsection to, or receive a transfer from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate. 2 U.S.C. 441a(d)(4)(C); *see* Explanation and Justification for 11 CFR 109.35(c), below.

The Commission adds a new opening clause in paragraph (a)(1)(ii) of section 102.6 incorporating these restrictions by reference into the rules regarding the transfer of funds and the use of transferred funds.

The Commission received no comments on this section, and the final rule is unchanged from the proposed rule.

Part 109—Coordinated and Independent Expenditures (2 U.S.C. 431(17), 441a(a) and (d), and Pub. L. 107–155 Sec. 214(c))

The Commission is reorganizing 11 CFR part 109 into four subparts in an effort to simplify and clarify its regulations while implementing the Congressional mandates in BCRA regarding payments for coordinated communications and coordinated expenditures by political party committees. Subpart A explains the scope of part 109 and defines the key term "agent." Subpart B, which addresses the reporting and recordkeeping requirements for independent expenditures, has been addressed in a separate rulemaking. *See* Final Rules and Explanation and Justification for Bipartisan Campaign Reform Act of 2002 Reporting, published elsewhere in this issue of the **Federal Register**. Subpart C addresses coordination between a candidate or a political party and a person making a communication. Subpart D sets forth provisions applicable only to political party committees, including those pertaining to independent expenditures and support of candidates through coordinated party expenditures. *See* 2 U.S.C. 441a(d). The special authority for coordinated expenditures by political party committees, previously set forth in pre-BCRA 11 CFR 110.7, is being relocated to 11 CFR 109.32 and other sections in subpart D.

11 CFR Part 109, Subpart A—Scope and Definitions

11 CFR 109.1 When Will This Part Apply?

New section 109.1 introduces the scope of part 109. Section 109.1 explains that the regulations in part 109 set forth the general reporting requirements for both "independent expenditures" and "coordinated communications." Note that the definition of "agent" found in pre-BCRA section 109.1 is being revised and moved to section 109.3. No comments were received regarding this section.

11 CFR 109.3 Definitions

The Commission proposed new 11 CFR 109.3 to define the term "agent," which is used throughout 11 CFR part 109. This definition of agent is based on the same concept that the Commission used in framing the definition of "agent" in the revised "soft money" rules. *See* Final Rules and Explanation and Justification on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49,081 (July 29, 2002). The definition of "agent" proposed in the NPRM focused on whether a purported agent has "actual authority, either express or implied," to engage in one or more specified activities on behalf of specified principals.

In the NPRM, the Commission listed those specific sets of activities, which vary slightly depending on whether the agent engages in those activities on behalf of a national, State, district, or local committee of a party committee, or on behalf of a Federal candidate or

officeholder. See proposed 11 CFR 109.3(a) and (b), respectively. The activities specified in the NPRM closely paralleled the conduct activities associated with coordinated communications, as described in 11 CFR 109.21(b). These activities included requesting or suggesting that a communication be created, produced, or distributed; making or authorizing certain campaign-related communications; and being materially involved in decisions regarding specific aspects of communications. See proposed 11 CFR 109.3(a)(1) through (5) and (b)(1) through (5).

Several commenters requested additional clarification of the meaning of "material involvement," while other commenters suggested broadening this provision to include authority to be "materially involved" in discussions, in addition to decisions, regarding a communication. The Commission notes that the term "materially involved" is merely incorporated into the specified activities of an agent to preserve the parallel structure between the definition of "agent" and the coordination conduct standards in 11 CFR 109.21. See Explanation and Justification of 11 CFR 109.21(d)(2), below.

One commenter noted that because the proposed regulations contemplate the possibility that one candidate for Federal office might pay for a communication that is coordinated with a different candidate for Federal office, proposed 11 CFR 109.3(a)(5) should also be included as a specified activity in 11 CFR 109.3(b). The Commission agrees and is adding a new paragraph (b)(6) to 11 CFR 109.3 to make it clear that a person who works for one candidate and is authorized by that candidate to make a communication on behalf of other candidates based on material information derived from those other candidates, is to be considered an agent.

A number of commenters addressed the general scope of the definition. Seven commenters argued that the proposed definition would be overly broad because it would not expressly limit the definition of "agent" to situations where the person is acting within the scope of his or her "actual authority" as an agent. These commenters also urged the addition of a requirement that an agent's "coordination" conduct (see 11 CFR 109.21(d), below) toward a third party be based on information that was gained only due to his or her role as an agent. One of these commenters asserted that a person should not be considered an "agent" solely based on his or her authority to act, but should only become an agent when he or she takes some action. Two commenters expressed their opposition to any attempt to categorize specific campaign positions or groups of people as agents *per se*, and one additional commenter suggested that if the Commission does include a class of *per se* agents, it should identify the specific persons within the campaign who would be placed in this category.

Several commenters expressed concern as to a candidate's or political party committee's "liability" for a person who qualifies as an agent but takes actions beyond the scope of his or her actual authority. Two other commenters expressed concerns that a principal would assume "liability" for a person who represents more than one candidate or group engaged in specified conduct while "wearing a different hat" (acting on behalf of a different person or group.) One of these commenters recommended an amendment to the rule text to provide that actions must be undertaken "on behalf of the principal" in order for liability to attach to the principal. Another commenter raised a particular concern with respect to common vendors that an "agent" who wears different hats for different groups might be deemed to engage in coordination *per se* by essentially sharing information within his or her own head.

On the other hand, eight commenters, including BCRA's principal sponsors, expressed concern that the scope of the proposed definition was underinclusive and would allow candidates or political parties to effectively coordinate communications with an outside spender through the use of conduits, including lower-level employees, consultants, or others with "apparent authority," who could sit in on a discussion and receive important information and convey that information to the third-party spender. BCRA's principal sponsors and two other commenters asserted that the definition of "agent" should not be drawn too narrowly because the analysis of whether a communication is coordinated should focus on whether the information was conveyed, not who conveyed it, or whether the conveyance was authorized. A different commenter suggested that the Commission's approach would create an incentive for a candidate, authorized committee, or a political party committee to share material information with staff members but make no effort to control the staff members' disclosures to outside entities. Three commenters urged that a person be deemed an agent if he or she discloses information to an outside entity in the absence of a strictly enforced policy against such disclosure. One of these commenters indicated that a non-disclosure agreement might be employed to rebut the presumption of agency.

In the final rules, the Commission recognizes the Congressional determination that a spender can effectively coordinate a communication by acting in cooperation, consultation, or concert, with, or at the request or suggestion of, an agent as well as directly with a candidate, authorized committee, or political party committee. See, *e.g.*, 2 U.S.C. 431(17) and 2 U.S.C. 441a(a)(7)(B)(i). In recognition of the concerns about overbreadth, the Commission is limiting the scope of the definition of "agent" in three ways. For the purposes of a coordination analysis under 11 CFR part 109, a person would only qualify as an "agent" when he or she: (1) Receives actual authorization, either express or implied, from a specific principal to engage in the specific activities listed in 109.3; (2) engages in those activities on behalf of that specific principal; and (3) those activities would result in a coordinated communication if carried out directly by the candidate, authorized committee staff, or a political party official. Contrary to the assertions of several commenters, a principal would not assume "liability" for agents who act outside the scope of their actual authority, nor would a person be considered an "agent" of a candidate if that person approaches an outside spender on behalf of a different organization or person. See Restatement (Second) of Agency § 219(1). The Commission rejects, however, the argument that a person who has authority to engage in certain activities should be considered to be acting outside the scope of his or her authority any time the person undertakes unlawful conduct. It is a settled matter of agency law that liability may exist "for unlawful acts of [] agents, provided that the conduct is within the scope of the agent's authority, whether actual or apparent." *U.S.* v. *Investment Enterprises, Inc.*, 10 F.3d 263, 266 (5th Cir. 1993).

One commenter specifically requested an exemption for "all persons in the legislative offices of federal officeholders" unless the "person dealing with them knows that they are acting on behalf of the officeholder in her capacity as a candidate." The Commission has intentionally avoided promulgating a regulation based on apparent authority, which is the authority of an actor as perceived by a third party, because such authority is often difficult to discern and would place the definition of "agent" in the

hands of a third party. Therefore, in the Commission's judgment, apparent authority is not a sufficient basis for agency for the purposes of revised 11 CFR part 109. The commenter's suggested approach would necessitate a determination of agency solely on the basis of apparent authority and is therefore inconsistent with the structure and purpose of the regulations.

These limitations, however, are not intended to establish any presumption against the creation of an agency relationship. The grant and scope of the actual authority, whether the person is acting within the scope of his or her actual authority, and whether he or she is acting on behalf of the principal or a different person, are factual determinations that are necessarily evaluated on a case-by-case basis in accordance with traditional agency principles. For example, the issue of whether or not an authorized person is acting on behalf of the principal is an objective, fact-based examination that is not dependent on that person's own characterization of whether he or she is acting in an individual capacity or on behalf of a different principal.

As explained in the NPRM, the Commission's pre-BCRA regulations include a special definition of "person" for 11 CFR part 109. See pre-BCRA 11 CFR 109.1(b)(1). The Commission did not include this separate definition of the term "person" in the NPRM because the term is already defined in pre-BCRA 11 CFR 100.10 and the Commission was concerned that a separate definition of "person" in 11 CFR part 109 might be confusing or misinterpreted as permitting labor organizations, corporations not qualified under 11 CFR 114.10(c), or other entities or individuals otherwise prohibited from making contributions or expenditures under the Act and Commission regulations, to pay for coordinated communications or to make independent expenditures. See, *e.g.*, 11 CFR 110.20 and 114.2. The Commission has specifically addressed these prohibitions in 11 CFR 109.22, below, and the Commission did not receive any comments on the inclusion of a separate definition of "person" in 11 CFR part 109. Therefore, no new definition of "person" is included in the final rules.

11 CFR Part 109, Subpart B—Independent Expenditures

11 CFR 109.10 How Do Political Committees and Other Persons Report Independent Expenditures?

In the NPRM, the Commission included proposed 11 CFR 109.10 on reporting requirements for independent expenditures. The Commission announced in the NPRM its expectation that these rules would not be included in the final rule of this rulemaking but would instead be finalized in a separate rulemaking. The Commission has subsequently promulgated 11 CFR 109.10 as part of a separate rulemaking. See Final Rules and Explanation and Justification for Bipartisan Campaign Reform Act of 2002 Reporting, published elsewhere in this issue of the **Federal Register**. There are no changes to 11 CFR 109.10 in this rulemaking.

11 CFR 109.11 When is a Non-Authorization Notice (Disclaimer) Required? (2 U.S.C. 441d)

The Commission is moving the disclaimer requirements for independent expenditures from pre-BCRA 11 CFR 109.3 to new 11 CFR 109.11. There are no substantive changes to this section. Additional changes to disclaimer requirements are provided at 11 CFR 110.11, which the Commission addressed in a separate rulemaking in light of BCRA's changes to the statutory disclaimer requirement. See 2 U.S.C. 441d and Final Rules and Explanation and Justification for Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76,962 (Dec. 13, 2002).

11 CFR Part 109, Subpart C—Coordination

11 CFR 109.20 What Does "Coordinated" Mean?

Congress did not define the term "coordinated" in FECA or in BCRA, but it did provide that an expenditure is considered to be a contribution to a candidate when it is "made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of," that candidate, the authorized committee of that candidate, or their agents. 2 U.S.C. 441a(a)(7)(B)(i). Similarly, in BCRA, Congress added a new paragraph to section 441a(a)(7)(B) to require that expenditures "made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert, with, or at the request or suggestion of, a national, State, or local committee of a political party shall be considered to be contributions made to such party committee." 2 U.S.C. 441a(a)(7)(B)(ii). Also, as explained above, an expenditure is not "independent" if it is "made in cooperation, consultation, or concert, with, or at the request or suggestion of," a candidate, authorized committee, or a political party committee. See 11 CFR 100.16.

New section 109.20(a) implements 2 U.S.C. 441a(a)(7)(B)(i) and (ii) by defining "coordinated" to mean "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents." While the definition of "coordinated" in 11 CFR 109.20(a) potentially encompasses a variety of payments made by a person on behalf of a candidate or political party committee, paragraph (a) is not intended to change current Commission interpretations other than to recognize the addition of the concept of coordination with political party committees under 2 U.S.C. 441a(a)(7)(B)(ii). The Commission notes that it may provide additional guidance in this area through a subsequent rulemaking.

The Commission recognizes, however, that many issues regarding coordination involve communications, and in BCRA Congress required the Commission to address coordinated communications. Public Law 107–155, sec. 214(c) (March 27, 2002). Therefore, the regulations in 11 CFR 109.21, explained below, specifically address the meaning of the phrase "made in cooperation, consultation, or concert, with, or at the request or suggestion of" in the context of communications paid for by a person other than the candidate with whom the communication was coordinated, that candidate's authorized committee, or a political party committee. Similarly, the regulations in 11 CFR 109.37, explained further below, specifically address the meaning of the phrase "made in cooperation, consultation, or concert with, or at the request or suggestion of" in the context of communications paid for by a political party committee.

In addition, paragraph (b) of section 109.20 addresses expenditures that are not made for communications but that are coordinated with a candidate, authorized committee, or political party committee. It is the successor to pre-BCRA 11 CFR 109.1(c). Paragraph (b) is being revised from its predecessor to reflect the addition of the concept of coordination with political party committees under 2 U.S.C. 441a(a)(7)(B)(ii), as well as the replacement of the reference to former 11 CFR 100.23, see Public Law 107–155, section 214(b) (March 27, 2002), and grammatical changes to reflect the new location of the rule. The Commission emphasizes that the relocation of paragraph (b) is not intended to change or alter current Commission interpretations of its predecessor in pre-BCRA section 109.1(c). One commenter asserted that only express advocacy

communications can constitute coordination, and urged the Commission to provide explicitly that non-communication expenditures will *not* be considered to be coordination. The Commission disagrees with the commenter's assertion because Congress has not so limited the statutory provisions relating to coordination. See 2 U.S.C. 431(17) and 441a(a)(7)(B)(i) and (ii). Therefore, the Commission is moving pre-BCRA 11 CFR 109.1(c), to section 109.20(b) with revisions to make it clear that these other expenditures, when coordinated, are also in-kind contributions (or coordinated party expenditures, if a political party committee so elects) to the candidate or political party committee with whom or with which they are coordinated. The exceptions contained in 11 CFR part 100, subpart C (exceptions to the definition of "contribution") and subpart E (exceptions to the definition of "expenditure") continue to apply.

11 CFR 109.21 What Is a "Coordinated Communication"?

In BCRA, Congress expressly repealed 11 CFR 100.23, Public Law 107–155, sec. 214(b) (March 27, 2002), and instructed the Commission to promulgate new regulations on "coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees." Public Law 107–155, sec. 214(c) (March 27, 2002). Congress also mandated that the new regulations address four specific aspects of coordinated communications: (1) Republication of campaign materials; (2) the use of a common vendor; (3) communications directed or made by a former employee of a candidate or political party; and (4) communications made after substantial discussion about the communication with a candidate or political party. See Public Law 107–155, sec. 214(c)(1) through (4) (March 27, 2002).

The Commission is promulgating new 11 CFR 109.21 to comply with this Congressional mandate. This rule applies to communications coordinated with candidates, their authorized committees, political party committees, or the agents of any of the foregoing. Paragraph (a) of this section begins by defining "coordinated communication." Paragraph (b) spells out the treatment of "coordinated communications" as in-kind contributions, which must be reported. Next, paragraph (c) sets out the content standard for coordinated communications. Paragraph (d) establishes conduct standards for the coordination analysis. Paragraph (e) addresses the Congressional guidance that an agreement or formal collaboration is not required for a communication to be considered "coordinated." Paragraph (f) provides a safe harbor for certain inquiries as to legislative and policy issues.

The Commission notes that Congress has provided that candidates and any entity "acting on behalf of 1 or more candidates" must not "solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act. * * *" 2 U.S.C. 441i(e)(1)(A). The Commission has addressed this restriction in a separate rulemaking (see Final Rules and Explanation and Justification on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49,081 (July 29, 2002)), and does not necessarily equate activity resulting in a coordinated communication under 11 CFR 109.21 with "acting on behalf of 1 or more candidates" in 2 U.S.C. 441i(e)(1). Therefore, a determination of whether a coordinated communication exists must be made separately from, and without reference to, a determination of whether an entity is "acting on behalf of 1 or more candidates" under 2 U.S.C. 441i(e)(1)(A).

1. 11 CFR 109.21(a) Definition

Paragraph (a) of new section 109.21 sets forth the required elements of a "coordinated communication," which comprise a three-pronged test. For a communication to be "coordinated," all three prongs of the test must be satisfied. While no one of these elements standing alone fully answers the question of whether a communication is for the purpose of influencing a Federal election, see 11 CFR 100.52(a), 100.111(a). the satisfaction of all three prongs of the test set out in new 11 CFR 109.21 justifies the conclusion that payments for the coordinated communication are made for the purpose of influencing a Federal election, and therefore constitute in-kind contributions. Nevertheless, the Commission notes that the inclusion of one prong of its test, the content standard, could function efficiently as an initial threshold for the coordination analysis.

Under the first prong, in paragraph (a)(1), the communication must be paid for by someone other than a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing. However, a person's status as a candidate does not exempt him or her from this section with respect to payments he or she makes for communications on behalf of a different candidate. Under paragraph (a)(2), the second prong of the three-pronged test is a "content standard" regarding the subject matter of the communication. Under paragraph (a)(3), the third prong of the test is a "conduct standard" regarding the interactions between the person paying for the communication and the candidate or political party committee. A sentence proposed in the NPRM regarding republication of campaign materials is being moved from proposed paragraph (a)(3) in the NPRM to paragraph (c)(2) in the final rules.

Of the seven commenters who specifically commented on this three-part structure for the regulations, two expressed general support for the approach. The other five, including BCRA's principal sponsors, urged the Commission to emphasize the actual conduct and minimize the importance of any content standard. The final rules, however, maintain the same structure as the proposed rules for the reasons described below. The Commission recognizes that a content requirement may serve to exclude some communications that are made with the subjective intent of influencing a Federal election, thereby potentially narrowing the reach of 2 U.S.C. 441a(a)(7)(B)(i) and (ii), but the Commission believes that a content standard provides a clear and useful component of a coordination definition in that it helps ensure that the coordination regulations do not inadvertently encompass communications that are not made for the purpose of influencing a federal election.

2. 11 CFR 109.21(b) Treatment as an In-Kind Contribution; Reporting

Under the Act and the Commission's regulations, a "contribution" is defined as "a gift, subscription, loan ... advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office," subject to a number of specific exceptions. See 11 CFR 100.52(a), *et seq.*; see also 2 U.S.C. 431(8)(A), *et seq.* An "expenditure" is similarly defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office," and is also subject to a list of specific exceptions. See 11 CFR 100.111(a), *et seq.*; see also 2 U.S.C. 431(9)(A), *et seq.* Thus, a "payment" that is "made for the purpose of influencing any election for Federal

office" qualifies as either an "expenditure," a "contribution," or both, unless it is specifically excepted.

As explained above, the coordination provisions in the statute, 2 U.S.C. 441a(a)(7)(B)(i) and (ii), state that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of," a candidate or a political party committee "shall be considered to be a contribution" to that candidate or political party committee. Several commenters argued that the Commission must first determine whether or not the payment for a communication constitutes an "expenditure" before proceeding to a coordination analysis. The Commission concludes that, when read as whole sentences, 2 U.S.C. 441a(a)(7)(B)(i) and (ii) require that for a contribution to exist, three requirements must be met: (1) There must be some conduct to differentiate the activity from an "independent expenditure," *see* 2 U.S.C. 431(17); (2) there must be some form of payment; and (3) that payment must be made for the purpose of influencing any election for Federal office. The Commission has determined that a payment that satisfies the content and conduct standards of 11 CFR 109.21 satisfies the statutory requirements for an expenditure in the specific context of coordinated communications, and thereby constitutes a contribution under 2 U.S.C. 441a(a)(7)(B)(i) and (ii).

A. 11 CFR 109.21(b)(1) General Rule

Paragraph (b)(1) of section 109.21 provides that a payment for a coordinated communication is made "for the purpose of influencing" an election for Federal office, the same phrase used by Congress in the definition of both "expenditure" and "contribution." 2 U.S.C. 431(8)(A) and (9)(A). Paragraph (b)(1) also states the general rule that a payment for a coordinated communication constitutes an in-kind contribution to the candidate, authorized committee, or political party committee with whom or with which it is coordinated, unless excepted under subpart C of 11 CFR part 100. Please note that this section encompasses electioneering communications under 11 CFR 100.29(a)(1), in addition to other communications. Congress expressly provided that when these communications are coordinated with a candidate, authorized committee, or political party committee, they must be treated like other coordinated communications in that disbursements for these communications are in-kind contributions to the candidate or party committee with whom or which they were coordinated. See 2 U.S.C. 441a(a)(7)(C). Under BCRA, these coordinated electioneering communications, like other coordinated communications, must be treated as expenditures by the candidate, authorized committee, or political party committee with whom or with which they are coordinated. *Id.*

B. 11 CFR 109.21(b)(2) In-Kind Contributions Resulting From Conduct Described in Paragraphs (d)(4) or (d)(5) of This Section

Paragraph (b)(2) clarifies the application of the general rule of paragraph (b)(1) in a particular circumstance. Under the general rule in paragraph (b)(1), a candidate's authorized committee or a political party committee receives an in-kind contribution, subject to the contribution limits, prohibitions, and reporting requirements of the Act. As explained below, two of the conduct standards, found in paragraphs (d)(4) and (d)(5) of section 109.21, do not focus on the conduct of the candidate, the candidate's authorized committee or agents, but focus instead on the conduct of a common vendor or a former employee with respect to the person paying for the communication. To avoid the result where a candidate, authorized committee, or political party committee might be held responsible for receiving or accepting an in-kind contribution that did not result from its conduct or the conduct of its agents, the Commission explicitly provides that the candidate, the candidate's authorized committee, or political party committee does not receive or accept in-kind contributions that result from conduct described in the conduct standards of paragraphs (d)(4) and (d)(5) of this section. This treatment is generally analogous to the handling of republished campaign materials under new 11 CFR 109.23 and the Commission's pre-BCRA regulations. See former 11 CFR 109.1(d)(1). However, please note that the person paying for a communication that is coordinated because of conduct described in paragraphs (d)(4) or (d)(5) still makes an in-kind contribution for purposes of the contribution limitations, prohibitions, and reporting requirements of the Act.

One commenter suggested that the text of paragraph (b)(2) should be clarified to indicate that a candidate or political party committee receives and accepts an in-kind contribution resulting from a coordinated communication in which an agent of either engages in the conduct described in paragraphs (d)(1) through (d)(3). The Commission agrees and is incorporating that suggested change into the final rules.

C. 11 CFR 109.21(b)(3) Reporting of Coordinated Communications

Paragraph (b)(3) of 11 CFR 109.21 provides that a political committee, other than a political party committee, must report payments for coordinated communications as in-kind contributions made to the candidate or political party committee with whom or which they are coordinated. Paragraph (b)(3) also clarifies that the recipient candidate, authorized committee, or political party committee with which a communication is coordinated must report the payor's payment for that communication as an in-kind contribution received under 11 CFR 104.13 and must also report making a corresponding expenditure in the same amount. 11 CFR 104.13.

3. 11 CFR 109.21(c) Content Standards

The NPRM sought comments as to whether content standards should be included in the coordinated communications rules, and if so, what the appropriate standard should be. A number of alternative content standards were included in the NPRM. Two commenters opposed the inclusion of any content standard, arguing that to do so would inappropriately narrow the scope of the rules when the conduct of the person paying for the communication and the candidate or political party committee is sufficient, by itself, to eliminate the independence of the communication, thereby creating an in-kind contribution under 2 U.S.C. 441a(a)(7)(B)(i) and (ii). Several other commenters, however, generally supported the inclusion of a content standard, although they disagreed as to what that standard should be.

The Commission is including content standards in the final rules on coordinated communications to limit the new rules to communications whose subject matter is reasonably related to an election. In the NPRM, the Commission proposed three distinct content standards, in paragraph (c), along with three alternatives for a fourth standard. The three proposed standards were an "electioneering communication" standard, a standard encompassing the republication of candidate campaign materials, and a standard for communications that "expressly advocate" the election or defeat of a clearly identified candidate for Federal office. In addition, the three alternative content standards ranged

from a minimal threshold that would have encompassed any "public communication" that refers to a "clearly identified candidate" (Alternative A), a public communication that "promoted, supported, attacked, or opposed" a candidate for Federal office (Alternative B), and a public communication that was made during a specific time period shortly before an election, was directed to a specific group of voters, and discussed the views or record of a candidate (Alternative C). The Commission proposed that a communication that satisfies any one of the standards would satisfy the "content" requirement of 11 CFR 109.21.

Commenters expressed a wide range of views as to the appropriate content standard. One commenter attempted to craft a stand-alone unitary content standard through a combination of the electioneering communication and republication standards. Four commenters argued that an "express advocacy" content standard is necessary to provide clear guidance and to ensure that the regulation is not vague or overly broad. Most other commenters acknowledged that the three standards of electioneering, republication, and express advocacy clearly comport with guidance from Congress and the courts, but three commenters argued that no additional content standards are warranted in the absence of any further directive from Congress. A joint comment by three commenters urged the Commission to focus the content standard on the content of the communication, rather than "external criteria" such as the timing or distribution of the communication. The same commenters also requested that the Commission adjust its content standard to ensure that communications between a political party committee and its "affiliates" are not covered.

Based generally on the approach taken by Congress with respect to electioneering communications, five commenters recommended a dual time-period approach to the content standard in which communications made 30 to 60 days before an election would be subject to lesser, if any, content restrictions than communications made outside of that time period. BCRA's principal sponsors agreed with this approach in their comments and observed that communications made within 30 days of a primary or 60 days of a general election are usually campaign related. A different commenter also recommended temporal limits, but suggested that any communications made outside the 30 or 60 days should be completely excluded from being treated as coordinated communications. BCRA's principal sponsors specifically rejected this approach in their comments.

After considering the concerns raised by the commenters about overbreadth, vagueness, underinclusiveness, and potential circumvention of the restrictions in the Act and the Commission's regulations, the Commission is setting forth four content standards to implement the statutory requirements. These standards all provide bright-line tests and subject to regulation only those communications whose contents, in combination with the manner of its creation and distribution, indicate that the communication is made for the purpose of influencing the election of a candidate for Federal office.

A. 11 CFR 109.21(c)(1) Electioneering Communications

Congress provided in BCRA that when "any person makes * * * any disbursement for any electioneering communication * * * and such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, state, or local political party committee thereof, or an agent or official of any such candidate, party or committee * * * such disbursement shall be treated as a contribution to the candidate supported by the electioneering communication * * * and as an expenditure by that candidate." 2 U.S.C. 441a(a)(7)(C). To implement that statutory directive, the Commission proposed in the NPRM that the first content standard paragraph (c)(1) simply focus on whether the communication is an "electioneering communication" under 11 CFR 100.29. See Final Rule on Electioneering Communications, 67 FR 51,131 (Oct. 23, 2002). Although the proposed rule in the NPRM described a communication "that would otherwise be an electioneering communication," this indirect reference has been removed and replaced with a direct reference to an electioneering communication.

Four commenters opined that the electioneering communication provisions in BCRA are unconstitutional, and opposed their inclusion as a content standard. One of these commenters argued that the electioneering communication content standard should be limited to include only communications containing "express advocacy." The Commission concludes, however, that such an interpretation would undermine the scope of Congress's definition of an electioneering communication, 2 U.S.C. 434(f)(3)(A), especially in light of the Congressional mandate in 2 U.S.C. 441a(a)(7)(C). Another commenter argued that the Commission should nonetheless exclude the electioneering communications from the content standards because Congress did not specifically require its inclusion in that exact manner. In the Commission's judgment, however, including the electioneering communication standard specifically authorized by Congress as one of the content standards in the definition of "coordinated communication" is a simple and straightforward way to implement 2 U.S.C. 441a(a)(7)(C). As one commenter noted, the inclusion of electioneering communications as a content standard promotes consistency because the term is already defined by Congress at 2 U.S.C. 434(f)(3)(A) and in the Commission's new rules at 11 CFR 100.29.

The Commission considered and rejected constructing a separate definition of "coordination" that would have applied specifically to electioneering communications. A separate construction would be redundant because the relevant conduct under it would be identical to the conduct standards for other coordinated communication containing other types of content. Similarly, the Commission notes that Congress provided that an electioneering communication could be coordinated with an "official" of a candidate, party, or committee, in addition to the candidate, committees, and their agents. 2 U.S.C. 41a(a)(7)(C)(ii). The Commission is not, however, separately addressing coordination with an official in the final rule because such an official is subsumed within the definition of "agent" in 11 CFR 109.3.

B. 11 CFR 109.21(c)(2) Dissemination, Distribution, or Republication of Campaign Material

The second content standard implements the Congressional mandate that the Commission's new rules on coordinated communications address the "republication of campaign materials." See Public Law 107–155, sec. 214(c)(1) (March 27, 2002). The Commission's former rule on republication of campaign materials, which has been moved from former 11 CFR 109.1(d) to new section 109.23 with minor changes explained below, sets out the required treatment of both the coordinated and uncoordinated dissemination, distribution, or republication of campaign material prepared by a candidate, an authorized committee, or an agent of either. Under section 109.23, discussed below, the

reporting responsibilities of candidates, authorized committees, and political party committees vary depending on whether they "coordinate" with a person financing the dissemination, distribution, or republication of a candidate's campaign material.

In the final rules the "republication" content standard in paragraph (c)(2) of section 109.21 expressly links to paragraph (d)(6) of section 109.21. This link is important because paragraph (d)(6) of this section clarifies the application of the conduct standards of paragraph (d) of this section to the unique circumstances of republication. This change from the NPRM is intended to emphasize the relationship between paragraphs (c)(2) and (d)(6) of section 109.21. In addition, section 11 CFR 109.21(c)(2) includes a cross-reference to 11 CFR 109.23 to ensure that certain uses of campaign material exempted by 11 CFR 109.23(b) from the definition of "contribution" will not satisfy the content standard in 11 CFR 109.21(c)(2).

The Commission is making one change to the republication content standard from the rule proposed in the NPRM. In the NPRM, a communication would have satisfied the content standard proposed in 11 CFR 109.21(c)(2) when "the communication" disseminated, distributed, or republished campaign materials prepared by a candidate. The Commission is changing the standard so that the content standard will only be satisfied when "the public communication" disseminates, distributes, or republishes campaign materials. Although the Commission did not receive specific comments on this point, the Commission is employing the term "public communication," as defined at 11 CFR 100.26, to conform the scope of this standard with the approach the Commission has consistently taken for the other content standards discussed below, with the exception of the "electioneering communication" standard.

C. 11 CFR 109.21(c)(3) Express Advocacy

The third content standard in paragraph (c)(3) of section 109.21 states that a communication also satisfies the content standard if it "expressly advocates" the election or defeat of a clearly identified candidate for Federal office. Although the commenters expressed widely differing opinions about whether this "express advocacy" standard should be the sole content standard, none of the commenters opposed including "express advocacy" as a content standard in the regulations.

D. 11 CFR 109.21(c)(4) Additional Content Standard

In addition to electioneering communications described in 11 CFR 100.29, communications that republish campaign materials, and communications that "expressly advocate" the election or defeat of a clearly identified candidate, the Commission proposed three other possible content standards in the NPRM and requested comment on additional alternatives. Each of these alternatives was premised on the communication qualifying as a "public communication," with additional requirements. Alternative A required only that the communication qualify as a public communication and contain a reference to a clearly identified candidate for Federal office. Alternative B provided that the communication must also promote, support, attack, or oppose the clearly identified candidate. Alternative C required that the public communication refer to a clearly identified candidate, be made within 120 days of an election, be directed to voters within the jurisdiction of that candidate, and include an "express statement about the record or position or views on an issue, or the character, or the qualifications or fitness for office, or party affiliation," of the clearly identified candidate.

Several commenters criticized Alternative A as overly broad, asserting that a clearly identified candidate is the minimal standard necessary to distinguish "issue ads" from communications made for the purpose of influencing an election. In contrast, several different commenters argued that the requirement of a clearly identified candidate was too restrictive because it would fail to encompass communications urging recipients to "vote Democrat" or "vote Republican." These commenters suggested that at a minimum the Commission expand the reference to include a reference to a "clearly identified political party." Furthermore, two commenters argued that the requirement of a clearly identified candidate also fails to encompass communications that "reflect and reinforce the themes and messages of the campaign."

Five commenters criticized Alternative B, arguing that the terms "promote, support, attack, or oppose" are overly broad. Two different commenters suggested that the proposed standard relied on subjective criteria and would discourage public speech and weaken the value of having a content standard.

Several commenters also criticized Alternative C as overly broad and containing subjective criteria. One commenter specifically objected to including communications containing statements about a candidate's positions on an issue. A different commenter cited a lack of a statutory basis or empirical support for the 120-day time limit and pointed out that the rule might be applied to cover communications made in a jurisdiction other than the jurisdiction of the clearly identified candidate.

In contrast, four commenters expressed general support for this standard, but with the removal of the 120 day limit, which they believed would exclude many coordinated communications made early in the election cycle. Two of these commenters also suggested that the Commission remove the word "express" from the requirement of an "express statement." In addition, a different commenter proposed an alternative standard to cover a communication that (1) "expressly refers to" a candidate in his capacity as a candidate; (2) refers to the next election; and (3) is publicly disseminated and actually reaches 100 eligible voters.

The Commission is including a modified version of Alternative C in the final rules at 11 CFR 109.21(c)(4). Taking into consideration the suggestions of the commenters, this content standard is largely based on, but is somewhat broader than, Congress's definition of an electioneering communication. A communication meets this content requirement if (1) it is a public communication; (2) it refers to a clearly identified candidate or political party; (3) it is directed to voters in the jurisdiction of the clearly identified Federal candidate; and (4) it is publicly distributed or publicly disseminated 120 days or fewer before a primary or general election.

The term "publicly distributed" refers to communications distributed by radio or television (*see* 11 CFR 100.29(b)(3)) and the term "publicly disseminated" refers to communications that are made public via other media, *e.g.*, newspaper, magazines, handbills. In this respect, paragraph (c)(4) reflects the fact that coordinated communications can occur through media other than television and radio. Moreover, for purposes of establishing a content standard in a coordination rule, there is no reason to exclude communications that meet the content requirements of an electioneering communication, but fail to constitute an electioneering communication only because of the media chosen for the communication.

Perhaps most importantly, paragraph (c)(4) creates parallel requirements for those whose communications do not technically qualify as electioneering communications. Because electioneering communications are by definition limited to broadcast, cable, or satellite communications (see 11 CFR 100.29), communications made through other media, such as print communications, are not included under the electioneering communication-based content standard of paragraph (c)(1). Similarly, political committees such as separate segregated funds or non-connected committees do not make electioneering communications because their payments are treated as expenditures. Therefore, under new paragraph (c)(4), for example, where a candidate and the separate segregated fund paying for the communication satisfy the conduct requirements of new 11 CFR 109.21(d), the separate segregated fund makes a coordinated communication if it pays for a newspaper advertisement. Thus, to avoid an arbitrary distinction in the content standards, paragraph (c)(4) applies to all "public communications," a term defined and set forth in BCRA by Congress. 2 U.S.C. 431(22); 11 CFR 100.26. The use of the term "public communication" provides consistency within the regulations and distinguishes covered communications from, for example, private correspondence and internal communications between a corporation or labor organization and its restricted class. The three commenters who specifically addressed the proposed use of this term expressed support for its inclusion. One of these commenters pointed out that the use of "public communication" provides "helpful consistency within the regulations." In addition, a different commenter suggested that the Commission "completely exempt" e-mail and Internet communications from its coordination regulations. By framing the content standard in terms of a "public communication," the Commission addresses that comment. Although the term "public communication" covers a broad range of communications, it does not cover some forms of communications, such as those transmitted using the Internet and electronic mail. 11 CFR 100.26.

This new standard focuses as much as possible on the face of the public communication or on facts on the public record. This latter point is important. The intent is to require as little characterization of the meaning or the content of communication, or inquiry into the subjective effect of the communication on the reader, viewer, or listener as possible. *See Buckley* v. *Valeo*, 424 U.S. 1, 42–44 (1976). The new paragraph (c)(4) is applied by asking if certain things are true or false about the face of the public communication or with limited reference to external facts on the public record. This fourth content standard does not require a description of a candidate's views or positions, a requirement in the proposed rules that raised objections from commenters.

Paragraph (c)(4)(ii) of section 109.21 requires that the public communication must be publicly distributed or publicly disseminated 120 days or fewer before a primary election or a general election. The 120-day time frame is based on 2 U.S.C. 431(20)(A)(i) (see 11 CFR 100.24(b)(1)) and has several advantages. First, it provides a "bright-line" rule. Second, it focuses the regulation on activity reasonably close to an election, but not so distant from the election as to implicate political discussion at other times. As noted, Congress has, in part, defined "Federal election activity" in terms of a 120-day time frame, deeming that period of time before an election to be reasonably related to that election. See 2 U.S.C. 431(20)(A)(i). In contrast, the "express advocacy" content standard in paragraph (c)(3) of section 109.21 applies without time limitation. Similarly, this 120-day time frame is more conservative than the treatment of public communications in the definition of Federal election activity, which regulates public communications without regard to timeframe. 2 U.S.C. 431(20)(A)(iii); 11 CFR 100.24(b)(3).

The Commission has considered, but rejected, the use of a shorter time-frame, specifically, thirty days before a primary election and sixty days before a general election. This shorter time-frame would have been derived by analogy from the definition of "electioneering communication." See 2 U.S.C. 434(f)(3)(A). The shorter time-frames would have had the advantage of symmetry with the electioneering communication definition. There is, however, an important difference between the electioneering communication concept and the paradigm adopted here for regulating coordination. Although this content standard (*i.e.*, paragraph (c)(4)(ii)) is obviously similar to the definition of "electioneering communication," this content standard is only one part of a three-part test (see discussion of paragraph (a) of section 109.21, above), whereas the definition of "electioneering communication" is complete in itself. Under this final rule, even if a political communication satisfies the content standard, the conduct standards must still be satisfied before the political communication is considered "coordinated." In this light, the content standard may be viewed as a "filter" or a "threshold" that screens outs certain communications from even being subjected to analysis under the conduct standards.[2] Thus it is appropriate to consider a broader time-frame when applying this content standard because it serves only to identify political communications that may be coordinated if other conditions (*i.e.*, the conduct standards) are satisfied, and thus may be inappropriately underinclusive if too narrow.

The new standard also encompasses communications that refer to political parties as well as those that identify candidates, as suggested by several commenters. This extension of the content standards implements 2 U.S.C. 441a(a)(7)(B)(ii), added by section 214(c) of BCRA, which provides that expenditures made by any person in coordination with a political party committee is considered to be a contribution to that party committee.

Several commenters said that there should be an exception to the content standards for communications that refer to the "popular name" of a bill or law that includes the name of a Federal candidate who was a sponsor of the bill or law. In addition to questions whether such an exception is necessary in light of the other restrictions explained above, the Commission believes that the "popular name" proposal would also open new avenues for the circumvention of the Act and the Commission's regulations. Because the "popular name" of a bill is not a defined term, and is not subject to specific restrictions by Congress, an exemption for the use of a candidate's name in the popular name of a bill might shield a communication that clearly attacks or supports a candidate by naming the bill in a way that associates the candidate with a popular or disfavored stance. The Commission concludes that if one or more of the conduct standards is met and the communication is directed to voters in that candidate's jurisdiction and made within 60 days of general election, Congress does not intend for such a communication to be exempted from the statutory requirements merely

[2] In effect, the content standard of paragraph (c)(4)(ii) operates as a "safe harbor" in that communications that are publicly disseminated or distributed more than 120 days before the primary or general election will not be deemed to be "coordinated" under this particular content standard under any circumstances.

because the communication contains a reference to a crafted name for a piece of legislation in addition to the name of the clearly identified candidate.

The new standard also incorporates the concept of the "targeting" of the communication as an indication of whether it is election-related. BCRA's principal sponsors commented that a "key factor" in determining whether a communication should be covered under these rules is whether the communication is "targeted" to a specific voter audience. By requiring that the communication be "directed to voters in the jurisdiction of the clearly identified Federal candidate," the Commission is addressing this concern. In order to encompass communications that are coordinated with a political party committee and refer to a political party, but do not refer to a candidate, the Commission also provides that the content standard in paragraph (c)(4) would be satisfied when the communication is directed "to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot." The "directed to voters" requirement focuses on the intended audience of the communication, rather than a quantitative analysis of the number of possible recipients or the expected geographic limits of a particular media, that will be determined on a case-by-case basis from the content of the communication, its actual placement, and other objective indicators of the intended audience. For example, a public communication that otherwise makes express statements about promoting or attacking Representative X or Senator Y for their stance on the "X–Y Bill" does not satisfy this requirement if it is only broadcast in Washington, DC, and not in either Member's district or State. For purposes of new paragraph (c)(4), "jurisdiction" means a member of Congress' district, the State of a U.S. Senator, and the entire United States for the President and Vice President in the general election or before the national nominating convention.

4. 11 CFR 109.21(d) Conduct Standards

Paragraph (d) of section 109.21 lists five types of conduct that satisfy the "conduct standard" of the three-part coordination test. Under these rules, if one of these types of conduct is present, and the other requirements described in paragraphs (a) and (c) are satisfied, the communication is not made "totally independently" from the candidate, the candidate's authorized committee, or the political party committee, *see Buckley*, 424 U.S. at 47, and thus is coordinated. The introductory sentence of paragraph (d) implements the Congressional mandate in BCRA that the coordination regulation not require "agreement or formal collaboration." Pub. L. 107–155, sec. 214(c) (March 27, 2002); *see* more complete discussion below.

In the NPRM, the Commission proposed five categories of conduct that would each satisfy the conduct standard when material information is conveyed or used: (1) A request or suggestion; (2) material involvement in decisions; (3) a substantial discussion; (4) use of a common vendor; and (5) use of a former employee or independent contractor of a campaign committee or political party. Several commenters offered general observations regarding the Commission's approach to a conduct standard in the NPRM. One commenter applauded the Commission's decision to focus on specific transactions leading to a coordinated communication, rather than general contacts between an organization and a campaign. That same commenter, however, complained along with three other commenters that the standards still operated to establish a presumption of coordination and should be further narrowed to require a direct causal link between the sharing of information and its use in a particular communication. One other commenter expressed a concern that the proposed rules would operate to unduly restrict corporations or labor organizations from preparing voter guides or "scorecards" to reflect the positions of candidates on specific legislation or issues.

BCRA's principal sponsors urged the Commission to ensure that lobbying activities would not result in a finding of coordination under the final rules. Similarly, a different commenter suggested that the conduct standards be limited to contacts with a candidate in his or her role as a candidate, rather than simply in the capacity of a legislator. That commenter indicated that without such a restriction the conduct rules would improperly restrict the ability of organizations to coordinate issue advocacy with elected officials. "An action alert from a nonprofit asking the public to call their Senators and urge them to pass McCain-Feingold," the commenter argued, "is more effective if the timing and content can be coordinated with Senator McCain."

A. 11 CFR 109.21(d)(1) Request or Suggestion

Under the Act, as amended by BCRA, an expenditure made by any person at the "request or suggestion" of a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing is a contribution to the candidate or political party committee. 2 U.S.C. 441a(a)(7)(B)(i), (ii). The first conduct standard, in 11 CFR 109.21(d)(1), implements this "request or suggestion" statutory provision. This standard has two prongs and satisfying either prong satisfies the conduct standard.

Three commenters requested in a joint comment that the term "suggest" be given additional definition or explanation, proposing that the definition should reflect a suggestion as a "a palpable communication intended to, and reasonably understood to, convey a request for some action." The Commission notes that the "request or suggest" standard is derived from the Supreme Court's Buckley decision and has existed in the Commission's regulations without further definition for over two decades. See *Buckley* v. *Valeo*, 424 U.S. at 47 (finding that "the 'authorized or requested' standard of the Act operates to treat all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate as contributions"); see also H.R. Doc. No. 95–44, at 55 (Jan. 12, 1977) (Explanation and Justification for 11 CFR 109.1, defining independent expenditure as an "expenditure . . . which is not made * * * at the request or suggestion of" a candidate, authorized committee, or their agents). A determination of whether a request or suggestion has occurred requires a fact-based inquiry that, even under the commenters' proffered explanation, can not be easily avoided through further definition.

A different commenter expressed concern that the proposed rule would have broadly affected communications made with respect to all candidates after the person paying for such communications has received a request or suggestion from any candidate. In this final rule, the Commission does not intend such an application. Neither of the two prongs of this conduct standard can be satisfied without some link between the request or suggestion and the candidate or political party who is, or that is, clearly identified in the communication. Where Candidate A requests or suggests that a third party pay for an ad expressly advocating the election of Candidate B, and that third party publishes such a communication with no reference to Candidate A, no coordination will result between Candidate B and the third party payor. However, a candidate is not removed from the provisions of the conduct standards merely by virtue of being a candidate. If Candidate A is an "agent"

for Candidate B in the example above, then the communication would be coordinated. Similarly, if Candidate A requests that Candidate B pay for a communication that expressly advocates the election of Candidate A, and Candidate B pays for such a communication, that communication is a coordinated communication and Candidate B makes an in-kind contribution to Candidate A.

The first type of conduct, in paragraph (d)(1)(i), is satisfied if the person creating, producing, or distributing the communication does so at the request or suggestion of a candidate, authorized committee, political party committee, or agent of any of the foregoing. The *Buckley* court originally drew on the 1974 House and Senate Reports accompanying the 1974 amendments to the Act when it upheld the section in FECA that distinguished a communication made "at the request or suggestion" of the candidate or political party committee from those that are made "totally independently from the candidate and his campaign." *Buckley*, 424 U.S. at 47 (citing H.R. Rep. No. 93–1239, at 6 (1974) and S. Rep. No. 93–689, at 18 (1974)). A "request or suggestion" is therefore a form of coordination under the Act, as approved by *Buckley*. A request or suggestion encompasses the most direct form of coordination, given that the candidate or political party committee communicates desires to another person who effectuates them.

In the NPRM, the Commission noted that this provision, for example, would not apply to a speech at a campaign rally, but, in appropriate cases, would apply to requests or suggestions directed to specific individuals or small groups for the creation, production, or distribution of communications. One commenter agreed with this approach, requesting that the rule itself more clearly reflect this explanation. However, the Commission is not amending its rules because it could be potentially confusing to delineate in a rule every conceivable situation that could arise. Instead, the Commission offers the following explanation of the new rule. The "request or suggestion" conduct standard in paragraph (d)(1) is intended to cover requests or suggestions made to a select audience, but not those offered to the public generally. For example, a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard in paragraph (d)(1), but a request posted through an intranet service or sent via electronic mail directly to a discrete group of recipients constitutes a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1). Similarly, a request in a public campaign speech or a newspaper advertisement is a request to the general public and is not covered, but a request during a speech to an audience at an invitation-only dinner or during a membership organization function is a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1).

The second way to satisfy the "request or suggestion" conduct standard (paragraph (d)(1)(ii)) is for a person paying for a communication to suggest the creation, production, or distribution of the communication to the candidate, authorized committee, political party committee, or agent of any of the foregoing, and for the candidate, authorized committee, political party committee, or agent to assent to the suggestion. The NPRM explained that this second way of satisfying the conduct standard is intended to prevent circumvention of the statutory "request or suggestion" test (2 U.S.C. 441a(a)(7)(B)(i), (ii)) by, for example, the expedient of implicit understandings without a formal request or suggestion. Two commenters supported the addition of this new prong in order to prevent such circumvention of the Act. Two different commenters suggested that only affirmative assent should satisfy the conduct standard, although one of these commenters proposed that the rule should also cover situations where the parties have a prior agreement that a certain response be taken as an affirmative answer. Three other commenters opposed an assent standard entirely as overly complex and dependent on subjective criteria. One of these commenters argued that such an approach would undermine the Commission's efforts to create bright lines with respect to conduct resulting in coordination, and joined with another of these commenters in expressing concern that such a standard would be too easily triggered in the context of lobbying or other discussions with elected representatives. Another of these commenters also questioned whether certain responses, such as silence or "when a Congressman's eyes light up at the mention of a certain communication," constitute assent. One commenter also questioned whether evidence of circumvention exists to justify this approach. This commenter warned that the assent standard could run afoul of the district court's decision in *Christian Coalition*, which, in the commenter's words, determined that "coordination does not exist where a union or corporation merely informs a candidate about its own political plans."

The Commission recognizes that the assent of a candidate may take many different forms, but it disagrees that a standard encompassing assent to a suggestion is overly complex. Assent to a suggestion is merely one form of a request; it is "an expression of a desire to some person for something to be granted or done." *See Black's Law Dict.* (6th ed. 1990) p. 1304 (definition of "request"). A determination of whether assent to a suggestion occurs is necessarily a fact-based determination, but no more so than a determination of whether other forms of a request or suggestion occur. The Commission therefore also disagrees with the commenter who suggested that the approach in the NPRM might not be permissible in light of the *Christian Coalition* decision. The Commission did not, as that commenter suggested, propose that coordination could result where a payor "merely informs" a candidate or political party committee of its plans. Rather, under the proposed rule, a candidate or a political party committee will have accepted an in-kind contribution only if there is assent to the suggestion; by rejecting the suggestion, the candidate or political party committee may unilaterally avoid any coordination.

It is the Commission's judgment that the assent to a suggestion must be encompassed by this conduct standard to prevent the circumvention of the requirements of the Act in this area. Therefore, and in light of the reasons set forth in the NPRM and above, the Commission is promulgating the request or suggestion standard without change from its form in the NPRM.

One commenter suggested that the Commission should permit a person to rebut the "presumption" of coordination after a request or suggestion "by demonstrating that the organization had decided to make that communication prior to the contact with the candidate, campaign, or party." The Commission does not agree with the creation of such a "presumption." Instead, a request or suggestion must be based on specific facts, rather than presumed, to satisfy this conduct standard. Thus, the absence of a presumption obviates the need to establish a mechanism for rebuttal.

As discussed above, the *Buckley* Court expressly recognized a request or suggestion by a candidate as a direct form of coordination resulting in a contribution. *Buckley*, 424 U.S. at 47. In the NPRM, the Commission sought

comment on whether the unique nature of requests or suggestions by candidates or political party committees indicates that such conduct should be handled differently under the coordination regulations. Specifically, the Commission asked whether a request or suggestion for a communication by a candidate or political party committee should be viewed as a special case, and as sufficient, in and of itself, regardless of the contents of the communication, to establish coordination. Three commenters opposed any rule in which a request or suggestion, without any content standard, could constitute a coordinated communication. One of these commenters argued that such an approach would permit a "false positive," such as when a group that has long planned a lobby effort meets with a legislator, and the legislator "expresses her hope" that the group will publicize a particular piece of legislation bearing her name. Similarly, another of these commenters asserted that there are "numerous communications that may be made at the request or suggestion of a candidate that have no relationship to any election." The Commission agrees with these commenters' concerns. Even supporters of this approach appeared to acknowledge in their testimony that a request to run an advertisement well before the next election might not be in an "electoral context" and therefore should not necessarily be treated as a coordinated communication under the Commission's regulations. Therefore, the final rules do not create any exception from the content standard for the "request or suggestion" conduct standard.

B. 11 CFR 109.21(d)(2) Material Involvement

The second conduct standard, 11 CFR 109.21(d)(2), addresses situations in which a candidate, authorized committee, or a political party committee is "materially involved in decisions" regarding specific aspects of a public communication paid for by someone else. Those specific aspects are listed in paragraphs (i) through (vi) of paragraph (d)(2): (i) The content of the communication; (ii) the intended audience; (iii) the means or mode of the communication; (iv) the specific media outlet used; (v) the timing or frequency of the communication; or (vi) the size or prominence of a printed communication or duration of a communication by means of broadcast, cable, or satellite. Please note that "the specific media outlet used" includes those listed in the definition of "public communication" in 11 CFR 100.26, including the broadcast and print media, mass mailings, and telephone banks. The "content of the communication" would include the script of telephone calls.

One commenter argued that this conduct standard should be limited to situations in which a candidate or political party has "significant control or influence over decisions" regarding the communication. The Commission disagrees, as such a standard would do little to clarify the rule or its application. The same commenter expressed concern about the scope of the "material involvement" standard, arguing that one candidate's actions with respect to a third-party spender might "taint" all of that third-party's communications with respect to different candidates. For the same reasons discussed above in the context of the "request or suggestion" standard, the Commission is not tailoring its rules to address that perceived potential outcome.

Two other commenters characterized the material involvement standard as redundant in light of the "substantial discussion" conduct standard, and one also opposed its inclusion because of vagueness and because Congress did not mandate this specific approach in BCRA, nor was it mandated by *Christian Coalition*. In contrast, four commenters indicated general support for the inclusion of this standard in the final rules and urged the Commission to expand it to cover material involvement in "discussions," in addition to decisions, regarding a communication. The Commission recognizes that there is a potential overlap between the "material involvement" standard and the "substantial discussion" standard explained below. Many activities that satisfy the "substantial discussion" conduct standard will also satisfy the "material involvement" standard, but the "material involvement" standard encompasses some activities that would not be encompassed by the "substantial discussion" standard or any of the other conduct standards. For example, a candidate is materially involved in a decision regarding the content of a communication paid for by another person if he or she has a staffer deliver to that person the results of a polling project recently commissioned by that candidate, and the polling results are material to the payor's decision regarding the intended audience for the communication. However, as explained below, the "substantial discussion" standard would not be satisfied by such delivery without some "discussion" or some form of interactive exchange between the candidate and the person paying for the communication. The Commission thus believes that the "material involvement" standard is necessary to address forms of "real world" coordination that would not be addressed in any of the other conduct standards.

One commenter advised against any interpretation of the rule that would define "material" to require a showing of direct causation. For the purposes of 11 CFR part 109, "material" has its ordinary legal meaning, which is "important; more or less necessary; having influence or effect; going to the merits." *Black's Law Dict.* (6th ed. 1990) p. 976. Thus, the term "materially involved in decisions" does not encompass all interactions, only those that are important to the communication. The term "material" is included to safeguard against the inclusion of incidental participation that is not important to, or does not influence, decisions regarding a communication. The factual determination of whether a candidate's or authorized committee's involvement is "material" must be made on a case-by-case basis.

The "material involvement" standard does not provide a "bright-line" because its operation is necessarily fact-based. Nevertheless the inclusion of a "materiality" requirement serves to protect against overbreadth, consistent with Supreme Court jurisprudence. In construing the meaning of "material" in the context of Securities Exchange Commission regulations, the Supreme Court specifically rejected a "bright-line rule" for materiality:

> A bright-line rule indeed is easier to follow than a standard that requires the exercise of judgment in the light of all the circumstances. But ease of application alone is not an excuse for ignoring the purposes of the Securities Acts and Congress' policy decisions. Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive.

Basic v. Levinson, 485 U.S. 224, 236 (1988). Therefore, the "material involvement" standard does not impose a requirement of direct causation, but focuses instead on the nature of the information conveyed and its importance, degree of necessity, influence or the effect of involvement by the candidate, authorized committee, political party committee, or their agents in any of the communication decisions enumerated in 11 CFR 109.21(d)(2)(i) through (vi).

The Commission has considered and rejected the suggestion of the commenter who recommended that "material involvement" be narrowed to

a "but-for" test, which would require proof that the communication would not have occurred *but for* the material involvement of a candidate, authorized committee, political party committee, or agent. The Commission is not adopting this approach or any similar requirement of direct causation in its final rules. Under such an analysis, information would only be "material" if all other potential influences on the content of the communication, its intended audience, its means or mode, the specific media outlet used, the timing or frequency of the communication, or the size, prominence, or duration of the communication could be eliminated. This would result in an extremely intrusive factual determination. For example, under the commenter's suggested approach, a candidate might propose a specific date for publication of a communication, but that candidate would not be materially involved in the decision regarding the timing of the communication unless the Commission could prove that no alternate factor could have led to the same timing decision. Such an approach is also unworkable because foreclosing all potential alternatives imposes an unnecessarily high burden of proof. The Commission also believes that such an approach would be unwarranted because the plain meaning of "material," as explained above, provides sufficient guidance for an inherently fact-based determination. For the same reasons, the Commission rejects any interpretation of "material involvement" that would require a showing that the communication is made "as a result of" the involvement of a candidate, an authorized committee, a political party committee, or an agent.

Instead, a candidate, authorized committee, or political party committee is considered "materially involved" in the decisions enumerated in paragraph (d)(2) after sharing information about plans, projects, activities, or needs with the person making the communication, but only if this information is found to be material to any of the above-enumerated decisions related to the communication. Similarly, a candidate or political party committee is "materially involved in decisions" if the candidate, political party committee, or agent conveys approval or disapproval of the other person's plans. The candidate or representatives of an authorized committee or political party committee need not be present or included during formal decisionmaking process but need only participate to the extent that he or she assists the ultimate decisionmaker, much like a lawyer who provides legal advice to a client is materially involved in a client's decision even when the client ultimately makes the decision.

The Commission notes that as with the "request or suggest" standard, the "material involvement" standard would not be satisfied, for example, by a speech to the general public, but is satisfied by remarks addressed specifically to a select audience, some of whom subsequently create, produce, or distribute public communications. However, it is not necessary that the involvement of the candidate or political party committee be traced directly to one specific communication. Rather, a candidate's or political party committee's involvement is material to a decision regarding a particular communication if that communication is one of a number of communications and the candidate or political party committee was materially involved in decisions regarding the strategy for those communications. For example, if a candidate is materially involved in a decision about the content or timing of a 10-part advertising campaign, then each of the 10 communications is coordinated without the need for further inquiry into the decisions regarding each individual ad on its own.

In order to respond to requests by several commenters for additional clarification about how the standard would operate, the Commission is providing the following hypothetical: Candidate A reads in the newspaper that the Payor Group is planning an advertising campaign urging voters to support Candidate A. Candidate A faxes over her own ad buying schedule to Payor Group, hoping that Payor Group will plan its own ad buying schedule around Candidate A's schedule to maximize the effect of both ad campaigns. The Payor Group subsequently runs ads that are all on NBC and ABC during the 6:00 news hour and during the most expensive weekday timeslot on NBC, whereas Candidate A's ads are run on CBS during the 6:00 news hour and during the most expensive time slot on CBS. When asked, Payor Group acknowledges that it received the fax from Candidate A, but says only that its plans for the timing of the campaign were in flux at the time they received the fax. The analysis under the "materially involved" conduct standard focuses on whether the fax constituted material involvement by the candidate in a decision regarding the timing of the Payor Group communications. Significant facts might include that the Payor Group changed its previously planned schedule, or that Payor Group had not yet made plans and had factored in the fax in its decision to choose CBS and the same time slot, or show in some other way that the fax was "important; more or less necessary, having influence or effect, [or] going to the merits" with respect to the Payor Group's decisions about the timing of its ads. The transmission and receipt of the fax in combination with the correlation of the two ad campaigns gives rise to a reasonable inference that Candidate A's involvement was material to the Payor Group's decision regarding the timing of its ad campaign. If, on the other hand, the example is changed so that the Payor Group's ads run on the same channel right after the candidate's ads in a way that lessens the effect of both ad campaigns, it may be appropriate to conclude that Candidate A's involvement was *not* material to the Payor Group's decision regarding the timing of its ad campaign. In other words, the degree to which the communications overlapped or did not overlap is one indication of whether Candidate A's involvement was material to the timing of the Payor Group communications.

C. 11 CFR 109.21(d)(3) Substantial Discussion

In BCRA, Congress also directed the Commission to address "payments for communications made by a person after substantial discussion about the communication with a candidate or political party." Public Law 107–155, sec. 214(c)(4) (March 27, 2002). In the NPRM, the Commission proposed a third conduct standard that would apply when a communication satisfying one or more of the content standards "is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication" and a candidate, authorized committee, political party committee, or an agent of any of the foregoing. 67 FR at 60,065 (September 24, 2002). The proposed rule also specified that a discussion is substantial "if information about the plans, projects, or needs of the candidate or political party committee is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication." 67 FR at 60,066 (September 24, 2002).

Three commenters supported the inclusion of this standard exactly as proposed in the NPRM. Two different commenters, however, characterized this standard as redundant in light of the "material involvement" standard

and suggested that they be combined into a single standard. One other commenter asserted that there was "insufficient quantification" as to the meaning of a "substantial" discussion and recommended that "substantial discussion" join "material involvement" as subjects for future rulemaking consideration. A different commenter advised that "material" should be further defined in the context of this standard. Two commenters advocated a return to the *Christian Coalition* test of whether or not the candidate and the spender emerge as "partners or joint venturers," while one of these commenters urged the Commission to specifically exclude discussions about policy and legislation in this context.

The Commission is including the "substantial discussion" standard in the final rules on coordinated communications because, as stated above, Congress required it to address this issue. Public Law 107–155, sec. 214(c)(4) (March 27, 2002). Under paragraph (d)(3) of 11 CFR 109.21, a communication meets the conduct standard if it is created, produced, or distributed after one or more substantial discussions between the person paying for the communication, or the person's agents, and the candidate clearly identified in the communication, his or her authorized committee, his or her opponent, or the opponent's authorized committee, a political party committee, or their agents. While the Commission recognizes the commenter's concerns that "substantial" and "material" are not set forth as bright-line tests, the Commission views an analysis of a "substantial discussion" as necessarily fact-specific and not naturally conducive to a meaningful bright-line analysis. Nevertheless, the Commission is providing an analytical framework in which a finder of fact determines whether a discussion occurred, whether certain information was conveyed, and whether that information is material to the creation, production, or distribution of the communication. The *Christian Coalition* suggestion that a candidate and spender emerge as "joint venturers" would only serve to confuse readers. The "substantial discussion" conduct standard in this final rule addresses a direct form of coordination between a candidate, authorized committee, political party committee, or their agents and a third-party spender, and the Commission is narrowing the scope of this standard through the additional requirements that the discussion be "substantial" and the information conveyed be "material." Paragraph (d)(3) explains that a "discussion" is "substantial" if information about the plans, projects, activities, or needs of the candidate, authorized committee, or political party committee that is material to the creation, production or distribution of the communication is conveyed to a person paying for the communication. "Discuss" has its plain and ordinary meaning, which the Commission understands to mean an interactive exchange of views or information. "Material" has the meaning explained above in the context of the "materially involved" standard. In other words, the substantiality of the discussion is measured by the materiality of the information conveyed in the discussion.

D. 11 CFR 109.21(d)(4) Common Vendor

In BCRA, Congress required the Commission to address "the use of a common vendor" in the context of coordination. Public Law 107–155, sec. 214(c)(2) (March 27, 2002). In the NPRM, the Commission proposed the conduct standard in paragraph (d)(4) of section 109.21 to implement this Congressional mandate. Proposed paragraphs (d)(4)(i) and (ii) provide that a common vendor is a commercial vendor who is contracted to create, produce, or distribute a communication by the person paying for that communication after that vendor has, during the same election cycle, provided any one of a number of listed services to a candidate who is clearly identified in that communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing. Under proposed paragraph (d)(4)(iii), the conduct standard would be satisfied if the common vendor conveys material information about the plans, projects, or needs of a candidate, authorized committee, or political party committee to the person paying for the communication, or if the vendor uses that material information in the creation, production, or distribution of a covered communication.

Many commenters addressed the "common vendor" standard proposed in the NPRM. One commenter asserted that this rule would not be enforceable because the term "common vendor" was "inadequately defined" to cover most vendors. This commenter warned that proposed standard would not reach many vendors who continuously re-organize personnel, merge, or dissolve and reorganize as different entities during or between election cycles. The same commenter believed it was important to include in the list of covered services media production vendors, pollsters, and media buying firms (for purchasing time slots) because they work closely together.

The Commission recognizes the possibility that commercial vendors may attempt to circumvent the new rules by re-organizing as different entities or replacing personnel. However, the Commission notes that the final rules focus on the use or conveyance of information used by a vendor, including its owner, officers, and employees, in providing services to a candidate, authorized committee, or political party committee, rather than the particular structure of the vendor. The specific reference to a vendor's owners and officers was not included in the proposed rule, but is being added to the final rule to address the commenter's concern. Therefore, if an individual or entity qualifies as a commercial vendor at the time that individual or entity contracts with the person paying for a communication to provide any of the specified services, then the individual or entity qualifies as a common vendor to the extent that the same individual or entity, "or any owner, officer, or employee" of the commercial vendor, has provided any of the enumerated services to the candidate during the specified time period. Thus, a commercial vendor may qualify as a common vendor under 11 CFR 109.21(d)(4) even after reorganizing or shifting personnel.

Five commenters argued that the Commission should presume that the conduct standard is satisfied whenever a candidate and an outside spender use the same common vendor. According to these commenters, the rule proposed by the Commission in the NPRM would create an "impossibly high standard to meet" if it required a showing that the common vendor actually "uses" particular information.

In contrast, five different commenters asserted that any such presumption would be overly broad and "taint" the vendor, or submit the candidate, political party committee, vendor, or spender to unwarranted "liability" for communications presumed to be coordinated merely because of the use of the vendor. Several commenters in this latter group were concerned that an overly broad rule would chill speech and discourage vendors from providing services to candidates or political party committees, which the commenters warned would be particularly troublesome in areas where only a limited number of vendors provide specific services. One commenter

argued that the proposed standard could lead to extensive and burdensome investigations that would place spenders at a disadvantage because it would be difficult for them to show that the vendor had not used certain information from a candidate's campaign committee or political party committee to create a communication. One commenter, who described himself as being in the business of "buying media spot time on behalf of various political clients," stated that he had spent a substantial sum of money responding to investigations, and opposed any rule in which "merely associating" with a common vendor might expose the person paying for a communication to the risk of enforcement proceedings. Four of these commenters, however, were generally supportive of the Commission's proposal to require that the common vendor "use or convey" material information to the person making the communication at issue, as opposed to simply providing services to both a candidate or party and the spender.

Similarly, three other commenters expressed concern about the "*per se* inclusion of vendors by class" and suggested that the inclusion of specific types of vendors should merely raise a "rebuttable presumption." These three commenters further noted that the proposed reference to "material information" would include information "used previously" in providing services to the candidate or party. These commenters questioned how a vendor might account for the "use" of material information.

After considering the wide range of comments, the Commission has decided to promulgate a final rule that is similar in many respects to the proposed rule, with certain modifications discussed below. It disagrees with those commenters who contended the proposed standard created any "prohibition" on the use of common vendors, and likewise disagrees with the commenters who suggested it established a presumption of coordination. Instead, the Commission notes that a different group of commenters urged the Commission to adopt such a presumption precisely because they believed the proposed standard did not already contain a presumption and would therefore be difficult to meet. The final rules in 11 CFR 109.21(d)(4) restrict the potential scope of the "common vendor" standard by limiting its application to vendors who provide specific services that, in the Commission's judgment, are conducive to coordination between a candidate or political party committee and a third party spender. But under this final rule, even those vendors who provide one or more of the specified services are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders. This regulation focuses on the sharing of information about plans, projects, activities, or needs of a candidate or political party through a common vendor to the spender who pays for a communication that could not then be considered to be made "totally independently" from the candidate or political party committee.

The only commenter who identified himself as providing vendor services indicated that it is not the common practice for vendors to make use of one client's media plans in executing the instructions of a different client, and sharing "any client information given by another" would "compromise the professional relationship" that is at the "core of any service business." That commenter observed that "[c]ommon vendors, at whatever tier, who avoid such conduct should never be at risk of being deemed an instrument of coordination." No other commenters offered conflicting information on these points. Thus, because the Commission addresses only the use or conveyance of information material to the communication, the final rules narrowly target the coordination activity without unduly intruding into existing business practices.

The common vendor rule is carefully tailored to ensure that all four of the following conditions must be met. First, under 11 CFR 109.21(d)(4)(i), the person paying for the communication, or the agent of such a person, must contract with, or employ, a "commercial vendor" to create, produce, or distribute the communication. The term "commercial vendor" is defined in the Commission's pre-BCRA regulations at 11 CFR 116.1(c) as "any person[] providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods or services." Thus, this standard only applies to a vendor whose usual and normal business includes the creation, production, or distribution of communications, and does not apply to the activities of persons who do not create, produce, or distribute communications as a commercial venture.

The second condition, in paragraph (d)(4)(ii), is that the commercial vendor must have provided certain services to the candidate or political party committee that puts the commercial vendor in a position to acquire information about the campaign plans, projects, activities, or needs of the candidate or political party committee that is material to the creation, production or distribution of the communication. Nine specific services are enumerated in paragraphs (d)(4)(ii)(A) through (I). Providing these services places the "common vendor" in a position to convey information about the candidate's or party committee's campaign plans, projects, activities, or needs to the person paying for the communication where that information is material to the communication.

The third condition is that the new rule only applies to common vendors who provide the specified services during the current election cycle. "Election cycle" is defined in 11 CFR 100.3. The Commission sought comment on whether a different time period, such as a fixed two-year period, would more accurately align the rule with existing campaign practices. One commenter responded that a two-year period would be too long and suggested that the standard should pertain "only to vendors who were common during the election year," or possibly further limited to vendors who provide services during the 30-day period before a primary election or the 60-day period before an election. That commenter also suggested that a time limit be placed on the use or conveyance of information received from a candidate or political party in recognition that such information would eventually become stale and unworthy of restriction. A different commenter, however, suggested that a two-year time limit would be too short because it would not appropriately encompass election activity that takes place throughout the six-year Senate election cycle. Another commenter advised that the time limit for common vendor activities should be limited to the period "during the calendar year in which the candidate's name is on the ballot for election to Federal office." One commenter proposed an alternative in which a vendor's services would not be covered by the rule outside of the 30 days following the time the vendor ceased working for the candidate or political party committee.

The Commission is retaining "election cycle" as the temporal limit in the final rules. The election cycle provides a clearly defined period of time that is reasonably related to an election: The mixture of an election cycle with a calendar year cutoff would likely cause confusion.

The fourth condition, in paragraph (d)(4)(iii), requires that the commercial

vendor "uses or conveys information about the candidate's campaign plans, projects, activities, or needs" or the political party committee's campaign plans, projects, activities, or needs where that information is material to the creation, production, or distribution of the communication. This requirement encompasses situations in which the vendor assumes the role of a conduit of information between a candidate or political party committee and the person making or paying for the communication, as well as situations in which the vendor makes use of the information received from the candidate or political party committee without actually transferring that information to another person. By referring in the final rule to the candidate's "campaign" plans, projects, activities, or needs, the Commission clarifies that this conduct standard is not intended to encompass lobbying activities or information that is not related to a campaign. The Commission notes, however, that to the extent information relates to campaign plans, projects, activities, or needs, that information would be covered by this provision even if that information also related to non-campaign plans, projects, activities, or needs of the candidate.

Several commenters opposed the inclusion of the "use or convey" requirement as being exceedingly difficult to prove, while other commenters viewed it as necessary protection against an unduly burdensome rule. Two of the commenters who supported a general presumption of coordination suggested that a confidentiality agreement might be used to rebut the presumption, while three others opposed a general presumption suggested that the Commission establish a safe harbor for spenders who enter into a confidentiality agreement filed under seal with the Commission. A different commenter suggested that the "use or convey" provision would be "unworkable" unless it provided for some form of exception for the use of an "ethical screen." Otherwise, according to that commenter, a single employee might "disqualify" an entire firm from providing services to both a candidate and a third-party spender.

The final rule does not require the use of any confidentiality agreement or ethical screen because it does not presume coordination from the mere presence of a common vendor. The final rule also does not dictate any specific changes to the business relationship between a vendor and its clients. The Commission does not anticipate that a person who hires a vendor and who, irrespective of BCRA's requirements, follows prudent business practices, will be inconvenienced by the final rule. Nevertheless, the Commission does not agree that the mere existence of a confidentiality agreement or ethical screen should provide a *de facto* bar to the enforcement of the limits on coordinated communication imposed by Congress. Without some mechanism to ensure enforcement, these private arrangements are unlikely to prevent the circumvention of the rules.

The Commission also sought comment on the list of common vendor services covered in paragraph (d)(4)(ii), and specifically whether purchasing advertising time slots for television, radio, or other media should be added to that list. Several commenters recommend excluding the following groups of vendor classes from those listed in the proposed rules on the principle that they lack adequate control as decisionmakers or they have little knowledge of communications: (1) "Media time buyers and others where the technical nature of their services diminishes their role in controlling the content of strategically sensitive communications;" (2) fundraisers; (3) vendors involved in selecting personnel, contractors, or subcontractors; (4) vendors involved in consulting; and (5) vendors involved in identifying or developing voter lists, mailing lists, or donor lists. A media buyer urged the Commission not to include media buyers in the list of covered activities because they have little decisionmaking authority and act within "predetermined strategic parameters including timing, geographic and demographic target audiences, and budget," but do not "create, produce, or distribute" a communication by themselves.

The Commission is incorporating the list of covered common vendor services into the final rules without change from its form in proposed section 109.21(d)(4)(ii) of the NPRM. The Commission recognizes that media buyers might potentially serve a number of different roles at the direction of various clients. Therefore, the Commission is not including "purchasing advertising time slots for television, radio, or other media" as a distinct category in the list of common vendor services covered in paragraph (d)(4)(ii). However, media buyers and other similar service providers are included to the extent that their services fit within one of the other categories already listed in paragraph (d)(4)(ii).

E. 11 CFR 109.21(d)(5) Former Employee/Independent Contractor

In BCRA, Congress required the Commission to address in its revised coordination rules "persons who previously served as an employee of" a candidate or political party committee." Public Law 107–155, sec. 214(c)(3) (March 27, 2002). In the NPRM, the Commission proposed 11 CFR 109.21 (d)(5) to implement this Congressional requirement. Proposed paragraph (d)(5) would have applied to communications paid for by a person who was previously an employee or an independent contractor of a candidate, authorized committee, or political party committee, or by the employer of such a person. Under the rule proposed in the NPRM, the "former employee" conduct standard would be satisfied if the former employee or independent contractor "makes use of or conveys" "material information" about the candidate's or political party committee's plans, projects, or needs to the person paying for the communication.

Commenters responding to the proposed rules made many of the same points about the "former employee" standard as they made with respect to the "common vendor" standard. One commenter opposed the proposal in the NPRM that covered the "use" of material information provided by a former employee. Such a standard, that commenter asserted, would be too broad and would amount to a "*per se*" rule that would lead to overly intrusive investigations. In contrast, four commenters argued that the proposed standard was not broad enough and suggested that the Commission establish a presumption of coordination when a former employee or an independent contractor of a campaign committee or political party committee pays for, or his or her current employer pays for, a communication that satisfies the content requirements of this section. These commenters argued that without such a presumption, it would be far too difficult to prove that an employee used material information or conveyed information to the new employer. In addition, however, three of these commenters suggested that the Commission limit the application of this presumption of coordination to a specified class of employees who are likely to "possess material political information." A different commenter indicated that it would be difficult to enforce this conduct standard because the definition of "independent contractor" in the NPRM was underinclusive in that it failed to account for the fact that an independent

contractor might reorganize or change names, making it difficult to verify the identity of the independent contractor or former employee. As with the potential reorganization of common vendors discussed above, the Commission does not believe that new requirements are necessary at this time to address the commenter's concerns. Employees and independent contractors are natural persons, rather than corporations or other entities or legal constructs, so the Commission anticipates that reorganization for the purpose of circumventing the new rules is even less likely than in the context of common vendors.

Three other commenters asserted that Congress had not mandated the proposed rule and expressed concern about the "increased risk of legal liability" for both party committees and former employees" that they believed would "stigmatize" the former employee and make it difficult for that person to find subsequent employment.

This proposed rule would have required that the employment or independent contractor relationship exist during the current election cycle. As discussed above with regard to paragraph (d)(4) on common vendors, the Commission requested comments on whether this time period should be a fixed two-year period, or the same election cycle, but not more than two years. Most comments on this provision were identical to the comments on the temporal requirements in paragraph (d)(4). One commenter believed the two-year time frame was "inappropriate and overly injurious both to corporations trying to communicate about legislative topics and to those former employees of candidates seeking employment with such corporations." In contrast, a different commenter suggested a six-year time period and asserted that the two-year period was too short to fully address the real-world practices in this area. Another commenter offered the same proposal the commenter had offered with respect to common vendors: the former employee should be covered during the calendar year in which the candidate's name is on the ballot for election to Federal office. A fourth commenter suggested that the time frame be limited to the previous two years of the current election cycle.

The final rule in paragraph (d)(5) incorporates the temporal limit of the "election cycle," which is defined in 11 CFR 100.3. This time limit establishes a clear boundary based on an existing definition and ensures that there is a clear link between the conveyance or use of the material information and the time period in which that material might be relevant. In addition, the Commission disagrees with the single commenter who claimed that the two-year limit would harm the job prospects of former employees or inhibit discussions between corporations and candidates or political party committees. The Commission notes that the final rule focuses only on the use or conveyance of information that is material to a subsequent communication and does not in any way prohibit or discourage the subsequent employment of those who have previously worked for a candidate's campaign or a political party committee.

One commenter proposed a "cooling off period" for a former employee instead of a temporal limit based on a calendar year or an election cycle. Under that proposed approach, the former employee or independent contractor of a candidate or political party would have to wait for a certain time period, which the commenter proposed as 30–60 days, before providing services to a person paying for a communication covered by section 109.21(c). After that period, the former employee or independent contractor would not trigger the proposed conduct standard. The Commission is unwilling to impose a complete ban on an individual's employment opportunities, as a "cooling off period" requirement would function. Instead, the Commission views the narrowly tailored approach proposed in the NPRM as preferable and is therefore not incorporating a "cooling off period" into the final rules.

This conduct standard expressly extends to an individual who had previously served as an "independent contractor" of a candidate's campaign committee or a political party committee. One commenter opposed the inclusion of independent contractors, arguing that an "independent contractor" is legally distinct from an "employee" and Congress, recognizing this distinction in other statutes, must have made an intentional decision to exclude independent contractors by using the term "employee" in section 214(c)(3). The Commission disagrees with this assumption and instead notes that the inclusion of independent contractors is entirely consistent with the use of "employee" because both groups receive some form of payment for services provided to the candidate, authorized committee or political party committee. Therefore, the Commission includes the term "independent contractor" in the final rule to preclude circumvention by the expedient of characterizing an "employee" as an "independent contractor" where the characterization makes no difference in the individual's relationship with the candidate or political party committee. This coordination standard also applies to the employer of an individual who was an employee or independent contractor of a candidate, authorized committee, or political party committee. The Commission interprets the Congressional intent behind section 214(c)(3) of BCRA to encompass situations in which former employees, who by virtue of their former employment have been in a position to acquire information about the plans, projects, activities, or needs of the candidate's campaign or the political party committee, may subsequently use that information or convey it to a person paying for a communication. The Commission has added the requirement that the information must be material to the subsequent communication in order to ensure that the conduct standard is not overly broad.

One commenter argued that the proposed rule's incorporation of the phrase "material information used * * * in providing services to the candidate" was vague and overly broad, and should be limited to material information about "campaign strategy and tactics," excluding policy views. This commenter also questioned whether the information must be material to the communication itself, or whether the information used to serve the candidate was material to those services. The Commission notes that in many cases the information may be material to both, but for the purposes of this final rule the Commission is only concerned with whether the information is material to the communication, not to the services previously provided to the candidate. As with the common vendor standard, this requirement encompasses both situations in which the former employee assumes the role of a conduit of information and situations in which the former employee makes use of the information but does not share it with the person who is paying for the communication.

The Commission is including this conduct standard to address what it understands to be Congress' primary concern, which is a situation in which a former employee of a candidate goes to work for a third party that pays for a communication that promotes or supports the former employer/candidate or attacks or opposes the former employer/candidate's opponent. One commenter proposed that the former employer (*i.e.*, the candidate's campaign or a political party committee) must be shown to exercise ongoing control over its former employee. A different

commenter, however, recognized that the Commission's proposed rules would address such a concern by removing the reporting duties that might otherwise be triggered by the actions of the former employee who acted without the knowledge of his or her former employer. This reporting rule is included in the final rules in 11 CFR 109.21(b)(2). This commenter, however, raised a similar concern by suggesting that the final rule should be limited to cover only former employees when they are acting under the direction or control of their new employer, the third-party spender, to ensure that the former employee does not use or convey material information without the spender's knowledge. The Commission notes, however, that such a limitation is unnecessary and confusing in cases where the former employee or independent contractor pays for the communication by himself or herself.

The conduct standard in the final rule in 11 CFR 109.21(d)(5) does not require that the former employee act under the continuing direction or control of, at the behest of, or on behalf of, his or her former employer. This is because a former employee who acts under such circumstances is a present agent, and the revised rules covering agents apply to this individual. See 11 CFR 109.3. To give effect to the statutory language requiring that the Commission's coordination regulations address "former employees" (*see* Pub. L. 107–155, sec. 214(c)(3)) the Commission concluded that a "former employee," as that term is used in the statute, must be different from "agent." Furthermore, the Commission does not find in BCRA, the FECA, or the general legal principles of employer-employee law, a need or justification for such an exception that would, in essence, categorically free employers from responsibility for the actions of their employees. Instead, the Commission reiterates its observation offered above with respect to the "common vendor" standard. Irrespective of the Congressional requirements in BCRA, employers may elect to clearly define the scope of employee responsibilities and to institute prudent policies or practices to ensure that the employee adheres to the scope of those expectations.

One commenter supported an exception to the "common vendor" and "former employee" conduct standards to permit persons in either of those classes to use or convey information if that vendor or former employee "makes use of information in a manner that is adverse to the candidate or political party committee without any coordination with the candidate benefiting from the communication." In the Commission's judgment, such an exception would obfuscate otherwise bright lines and provide a clear path for the circumvention of the Act and the Commission's regulations without offering a discernible benefit. Under the proposed exception, "use of information in a manner that is adverse to the candidate or political party committee" requires a subjective determination of both the interests of the candidate or political party and the effect that the "information" has on those interests.

The Commission also sought comment as to whether this conduct standard should be extended to volunteers, such as "fundraising partners," who by virtue of their relationship with a candidate or a political party committee, have been in a position to acquire material information about the plans, projects, activities, or needs of the candidate or political party committee. Three commenters opposed the inclusion of volunteers. One of these commenters argued that volunteers traditionally participate in more than one campaign at a time and "as a matter of practice, campaigns attempt to make volunteers feel more involved in the campaign by the intentional communication of 'insider' information." While the FECA exempts campaign volunteers from certain requirements, this "practice" of sharing "insider" information is not adequate justification to exclude volunteers. Rather, the Commission recognizes that some, but not all, "volunteers" operate as highly placed consultants who might be given information about the plans, projects, activities, or needs of the candidate or political party committee with the expectation that the "volunteer" will use or convey that information to effectively coordinate a communication paid for by that "volunteer" or by a third-party spender. Nevertheless, the Commission is not extending the scope of the "former employee" standard in its final rules to encompass volunteers for a different reason. The Commission views the choice of the word "employee" in section 214(c)(3) as a significant indication of Congressional intent that the regulations be limited to individuals who were in some way employed by the candidate's campaign or political party committee, either directly or as an independent contractor. The Commission also notes that even though volunteers are not subject to the "former employee" conduct standard, their actions could nonetheless come within a different conduct standard in new 11 CFR 109.21(d). For example, if a candidate requests that a volunteer pay for a communication, and the volunteer does so, the communication is coordinated if the content of the communication satisfies one or more of the content standards in new 11 CFR 109.21(c). Also, in some cases a volunteer may qualify as an agent of a candidate or a political party under the definition in new 11 CFR 109.3.

F. 11 CFR 109.21(d)(6) Dissemination, Distribution, or Republication of Campaign Materials

Paragraph (d)(6) clarifies the application of the conduct standards to a candidate or authorized committee after the initial preparation of campaign materials when those materials are subsequently disseminated, distributed, or republished, in whole or in part, by another person. In light of the candidate's initial role in preparing the campaign material that is subsequently incorporated into a republished communication, it is possible that the candidate's involvement in the original preparation of part or all of that content might be construed as triggering *per se* one or more of the conduct standards in paragraph (d) of 11 CFR 109.21. To avoid this result, the Commission is including 11 CFR 109.21(d)(6) in the final rules to clarify that the candidate's actions in preparing the original campaign materials are not to be considered in the conduct analysis of paragraph (d)(1) through (d)(3) of section 109.21. (See above). Instead, 11 CFR 109.21(d)(6) explains that the focus is on the conduct of the candidate that occurs after the initial preparation the campaign materials. For example, if a candidate requests or suggests that a supporter pay for the republication of a campaign ad, the resulting communication paid for by the supporter satisfies both a content standard (republication) and conduct standard (request or suggestion), and is therefore a coordinated communication. However, without that request or suggestion, and assuming no other contacts with the candidate, the candidate's authorized committee, or their agents, the communication does not satisfy the "request or suggestion" conduct standard and is not a coordinated communication even though it contains campaign material prepared by the candidate.

The final rules are being changed from the proposed rules to explain more clearly the application of the conduct standards in paragraphs (d)(4) and (d)(5) to republished campaign materials, as well as to clarify the relationship between paragraph (c)(2) and (d)(6) of

section 109.21 as well as between 11 CFR 109.37(a)(2)(i) and paragraph (d)(6) of section 109.21. The conduct standards in paragraph (d)(4) and (d)(5) would not be affected by (d)(6). Whereas a candidate's or authorized committee's original preparation of campaign materials might have possibly been misconstrued as satisfying the conduct standards in (d)(1) through (d)(3) without the addition of (d)(6), there is no such danger that the (d)(4) "common vendor" standard or the (d)(5) "former employee" standard would be satisfied by the candidate's or authorized committee's original preparation of campaign materials. However, to avoid any potential confusion, the second sentence in paragraph (d)(6) clarifies that a communication that satisfies the conduct standards in (d)(4) or (d)(5) is still a coordinated communication even if the communication only satisfies the content standard in paragraph (c)(2).

5. 11 CFR 109.21(e) No Requirement of Agreement or Formal Collaboration

When Congress, in BCRA, required the Commission to promulgate new regulations on coordinated communications, it specifically barred any regulatory requirement of "agreement or formal collaboration" to establish coordination. Public Law 107–155, sec. 214(c) (March 27, 2002). In the NPRM, the Commission noted that although Congress did not define this phrase, earlier versions of BCRA stated that "collaboration or agreement" was not required to show coordination. See S. 27, 107th Cong., 1st Sess. (as passed by the Senate and transferred to the House, 478 Cong. Rec. H2547 (May 22, 2001)). The phrase "agreement or formal collaboration" reached its final form through a substitute amendment to H.R. 2356 offered by Representative Shays. See H. Amdt. 417, 478 Cong. Rec. H393 through H492 (February 13, 2002). New 11 CFR 109.21(d) provides that each of the five conduct standards can be satisfied "whether or not there is agreement or formal collaboration, which is defined in paragraph (e)," thereby implementing the Congressional prohibition against any requirement of agreement or formal collaboration in the coordination analysis. The final rule follows the proposed rule, with only a small grammatical change.

One commenter supported a distinction between "formal collaboration" and "collaboration." Two other commenters strongly supported this paragraph as proposed in the NPRM. Another commenter recognized the Congressional prohibition on a requirement of agreement or formal collaboration, but urged the Commission to establish clear guidelines as to what is and is not permissible activity. The Commission attaches significance to the addition of the term "formal" as it modifies the term "collaboration." Thus, paragraph (e) states that the conduct standards in paragraph (d) of section 109.21 require some degree of collaboration, but not "formal" collaboration in the sense of being planned or systematically approved or executed.

New paragraph (e) also explains the term "agreement." Coordination under section 109.21 does not require a mutual understanding or meeting of the minds as to all, or even most, of the material aspects of a communication. Any agreement means the communication is not made "totally independently" from the candidate or party. See *Buckley*, 424 U.S. at 47. In the case of a request or suggestion under paragraph (d)(1) of section 109.21, agreement is not required at all.

A fourth commenter suggested that there should be no finding of coordination where "the organization was not seeking the candidate's agreement and would have run the ad anyway." This commenter recommended that the Commission further refine the requirement so that a communication is considered coordinated only if the request, agreement or collaboration of the candidate or political party is shown to lead the organization to change some aspect of the communication.

The Commission is not adopting either of these suggestions as they require a subjective determination of the intent of the spender and are therefore inconsistent with the Commission's approach of establishing clear guidance through objective determinations where possible. Paragraph (e) therefore does not require any particular form of investigation or finding, but simply implements the judgment of Congress by clarifying the two criteria that are not required.

6. 11 CFR 109.21(f) Safe Harbor for Responses to Inquiries About Legislative or Policy Issues

In the NPRM, the Commission requested comment on whether any specific "safe harbor" provisions or exceptions to the conduct or content standards should be included in the final rules. Commenters recommended a number of possible exceptions and safe harbors. As explained below, the Commission is including one of the proposed exceptions in its final rules in 11 CFR 109.21(f).

Several commenters urged the Commission to adopt an exception to the conduct standards for a candidate's response to an inquiry, whether in writing or other form, regarding his or her position on legislative or policy issues. These responses are helpful in preparing voter guides, voting records, in debates or other communications. One commenter cited constitutional considerations and argued that such an exception is required by *Clifton* v. *FEC*, 114 F.3d 1309 (1st Cir. 1997). Another advised that this exception would provide notice that the regulation is not intended to deter certain activities that groups or individuals "might otherwise avoid out of an abundance of caution." A different commenter advocated an exemption for any public communications, including republication of materials from candidates, their committees or political parties, that meet the criteria of 11 CFR 110.13 regarding candidate debates and forums, and 11 CFR 114.4(c) regarding voter registration drives and voter education.

In new section 109.21(f) the Commission is providing a "safe harbor" to address the commenters' concerns that the preparation of a voter guide or other inquiries about the views of a candidate or political party committee might satisfy one of the conduct standards in section 109.21(d). This safe harbor applies to inquiries regarding views on legislation or other policy issues, but does not include a response that conveys information about the candidate's or political party's campaign plans, projects, activities, or needs that is material to the creation, production, or distribution of a subsequent communication.

This exception satisfies the requirements of *Clifton* v. *FEC*, 114 F.3d 1309. See also new 11 CFR 114.4(c)(5), explained below. In *Clifton*, the Court examined the Commission's then-new regulations at 11 CFR 114.4(c)(4) and (5). The Commission's old regulations permitted corporations and labor organizations to prepare and produce "voter guides" to the general public, subject to the following prohibition:

> [T]he corporation or labor organization shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide, except that questions may be directed in writing to the candidates included in the voter guide and the candidates may respond in writing;

11 CFR 114.4(c)(5)(ii)(A) (1996). While *Clifton* invalidated that regulation as unauthorized by the Act, 927 F. Supp. at 500, the Court nevertheless suggested that a safe harbor might have survived.

The safe harbor in new 11 CFR 109.21(f) is more permissive than the regulations at issue in *Clifton* in several respects. First, the regulations in section 109.21 do not institute a general prohibition on *any* contact with the candidate or political party committee, so paragraph (f) functions as a safe harbor from less-restrictive regulations. For example, organizations whose activities are confined to producing voter guides may contact a candidate and discuss aspects of that candidate's campaign plans, projects, activities, or needs without making a coordinated communication so long as the voter guide does not contain express advocacy and it is not directed to voters in a specific jurisdiction and made available within the designated time period directly before an election, as provided in paragraphs 109.21(c)(1) and (4). In addition, whereas the regulations at issue in *Clifton* specifically required that both the inquiry and the response be written, paragraph (f) does not.

Three commenters urged the Commission to adapt its rules to exclude lobbying contacts with a candidate. Similarly, a different commenter proposed an exception for any legislative communication made prior to a vote, hearing, or other legislative consideration of the issue, and that "coincidentally" occurs prior to an election. Another commenter also urged the Commission to exempt grassroots communications that urge the people to contact state, local or national officials urging them to take action in their official capacity so long as they do not refer to the election or an official's status or qualifications as a federal candidate.

The Commission has considered these possible exceptions as well as the statements of BCRA's principal sponsors that the Commission's regulations should not interfere with lobbying activities. Therefore, these final rules are not intended to restrict communications or discussions regarding pending legislation or other issues of public policy. The Commission has determined, however, that sufficient safeguards exist in the final rules to ensure that lobbying and other activities that are not reasonably related to elections will not be unduly restricted. Additional exceptions are unnecessary and inappropriate because they could be exploited to circumvent the requirements of 11 CFR part 109.

One commenter proposed an exemption for a "legislative communication" made during legislative consideration of an issue when the communication "coincidentally" occurs just before an election. This exemption is neither necessary nor workable, as it hinges on a complex analysis of several separate factors, as well as a determination of what qualifies as a "legislative communication." The potential number of communications that might satisfy the content standard, satisfy the conduct standard, and "coincidentally" occur just before an election is likely to be quite small in comparison to the potential number of communications that would actually be made for the purpose of influencing an election but carefully tailored to fit within the proposed exemption.

In addition, one commenter cautioned that exceptions are not appropriate to the extent that they apply to communications that meet the "electioneering communication" content standard. This commenter asserted that the plain language of the BCRA provides the Commission with little to no room to craft exceptions with respect to electioneering communications. The Commission disagrees that any such Congressional directive can be derived from plain language of BCRA in the context of coordinated electioneering communications.

11 CFR 109.22 Who Is Prohibited From Making Coordinated Communications?

The Commission requested comment on whether to include a separate section to clarify that any person who is otherwise prohibited under the Act from making a contribution or expenditure is also prohibited from making a coordinated communication. No comments addressed this provision. Section 109.22 is included in the final rules to avoid any potential misconception that 11 CFR 100.16, 11 CFR 109.23, or any portion of 11 CFR part 109 in any way permit a corporation, labor organization, foreign national, or other person to make a contribution or expenditure when that person is otherwise prohibited by any provision of the Act or the Commission's regulations from doing so.

11 CFR 109.23 How Are Payments for the Dissemination, Distribution, or Republication of Candidate Campaign Materials Treated and Reported?

The Commission has decided to implement only those regulatory changes that are necessary to implement section 214 of BCRA at this time. In the NPRM, the Commission proposed moving former 11 CFR 109.1(d) to proposed new section 11 CFR 100.57, along with several substantive changes. To whatever extent that proposed 11 CFR 100.57 would have elaborated on former 11 CFR 109.1(d), the Commission has reconsidered and instead is addressing the payments for the republication of campaign materials in new 11 CFR 109.23, which more closely follows former section 109.1(d). New section 109.23 implements post-BCRA 2 U.S.C. 441a(a)(7)(B)(iii), with several changes made to reflect new requirements in BCRA. Paragraph (a) of section 109.23 corresponds to former 11 CFR 109.1(d)(1), and paragraph (b) of section 109.23 addresses the exceptions in former 11 CFR 109.1(d)(2), in addition to several new exceptions.

1. 11 CFR 109.23(a) Financing of the Dissemination, Distribution, or Republication of Campaign Materials Prepared by a Candidate

Paragraph (a) of 11 CFR 109.23 addresses the financing of the dissemination, distribution, or republication of campaign materials prepared by the candidate, the candidate's authorized committee, or their agents and is the successor to former 11 CFR 109.1(d)(1). The only changes from the former rule are the replacement of one cross-reference to former 11 CFR 100.23 (repealed by Congress in BCRA), a clarification that a candidate does not receive or accept an in-kind contribution unless there is coordination, and minor grammatical changes. Paragraph (a) provides that the financing of the distribution, or republication of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either is considered a contribution for the purposes of the contribution limitations and reporting responsibilities by the person making the expenditure but is not considered an in-kind contribution received or an expenditure made by the candidate or the candidate's authorized committee unless the dissemination, distribution, or republication of campaign materials is coordinated.

Under former 11 CFR 109.1(d)(1), coordination was determined by whether the dissemination, distribution, or republication of the campaign material qualified as a "coordinated general public political communication" under former 11 CFR 100.23, which was repealed by Congress in BCRA. Therefore, under new 11 CFR 109.23, whether the dissemination, distribution, or republication is coordinated is determined by reference to the new coordinated communication rules in 11 CFR 109.21 and 109.37.

As discussed above in the Explanation and Justification for 11 CFR 109.21(c)(2) and 109.21(d)(6), a

communication that disseminates, distributes, or republishes campaign material prepared by a candidate, the candidate's authorized committee, or an agent of either, and that satisfies one of the conduct standards in section 109.21(d), is a coordinated communication. Under 11 CFR 109.21(b), and by implication from paragraph (a) of section 109.23, the financing of such a "coordinated communication" is an in-kind contribution received by the candidate, authorized committee, or political party committee with whom or with which it was coordinated. In other words, the person financing the dissemination, distribution, or republication of candidate campaign material has provided something of value to the candidate, authorized committee, or political party committee. See 2 U.S.C. 431(8)(A)(i). Note that this is the same result under former section 109.1(d)(1). Even though the candidate, authorized committee, or political party committee does not receive cash-in-hand, the practical effect of this constructive receipt is that the candidate, authorized committee, or political party committee must report the in-kind contribution in accordance with 11 CFR 104.13, meaning that it must report the amount of the payment as a receipt under 11 CFR 104.3(a) and also as an expenditure under 11 CFR 104.3(b).

To the extent that the financing of the dissemination, distribution, or republication of campaign materials finances does not qualify as a coordinated communication, the candidate or authorized committee that originally prepared the campaign materials has no reporting responsibilities and has not received or accepted an in-kind contribution. However, whether or not the dissemination, distribution, or republication qualifies as a coordinated communication under 11 CFR 109.21, paragraph (a) of section 109.23, like former section 109.1(d)(1), requires the person financing such dissemination, distribution, or republication always to treat that financing, for the purposes of that person's contribution limits and reporting requirements, as an in-kind contribution made to the candidate who initially prepared the campaign material. In other words, the person financing the communication must report the payment for that communication if that person is a political committee or is otherwise required to report contributions. Furthermore, that person must count the amount of the payment towards that person's contribution limits with respect to that candidate under 11 CFR 110.1 (persons other than political committees) or 11 CFR 110.2 (multicandidate political committees), and with respect to the aggregate bi-annual contribution limitations for individuals set forth in 11 CFR 110.5.

Although paragraph (a) of 11 CFR 109.23 is nearly otherwise unchanged from former 11 CFR 109.1(d)(1), the new reference to 11 CFR 109.21 has an important impact because new section 109.21 reflects Congress's decision in post-BCRA 2 U.S.C. 441a(a)(7)(B)(ii) that expenditures may be coordinated with a political party committee. Therefore, the republication of campaign material may be coordinated with a political party committee. As explained above, the financing "*by any person* of the dissemination, distribution, or republication of campaign material prepared by a candidate *qualifies as an expenditure for the purposes of 2 U.S.C. 441a(a)(7)(B)(ii).*" *See* 2 U.S.C. 441a(a)(7)(B)(iii) (emphasis added.) Under 2 U.S.C. 441a(a)(7)(B)(ii), "expenditures" that are coordinated with a political party committee "shall be considered to be contributions made to such party committee." Thus, reading 2 U.S.C. 441a(a)(7)(B)(ii) and (iii) together, the Commission concludes that when a person coordinates with a political party committee to finance the dissemination, distribution, or republication of a candidate's campaign material, that financing constitutes a contribution to the political party committee. Therefore, under paragraph (a) of section 109.23, the financing of the dissemination, distribution, or republication of campaign material prepared by a candidate constitutes an in-kind contribution to a political party committee with which it was coordinated, and the amount of that financing must be reported by that political party committee as both an in-kind contribution received and an expenditure made. See 11 CFR 104.13. The Commission notes that section 109.23 does not encompass in this respect the dissemination, distribution, or republication of campaign material prepared by the political party committee, but only campaign material prepared by a candidate.

2. 11 CFR 109.23(b) Exceptions

In the NPRM, the Commission proposed several exceptions to the general "republication" rule proposed 11 CFR 100.57. Proposed 11 CFR 100.57(b) would have clarified that five listed uses of campaign material prepared by a candidate would not qualify as a contribution under proposed 11 CFR 100.57(a). The exceptions were largely drawn from uses already permitted by other rules.

Several commenters focused on the proposed exceptions or proposed additional exemptions. One commenter proposed that republication should not be considered a contribution unless there is coordination. The Commission does not discern any instruction from Congress, nor any other basis, that justifies such a departure from the Commission's longstanding interpretation of the underlying republication provision in the Act, now set forth at 2 U.S.C. 441a(a)(7)(B)(iii). The same commenter also inquired as to whether a corporation or labor organization may pay for the republication of campaign materials for use outside its restricted class, so long as that republication is not coordinated with a candidate under the applicable conduct standards set forth in 11 CFR 109.21(d) (see below). The Commission normally addresses specific inquiries about the application of particular provisions through its Advisory Opinion process, rather than in the rulemaking context, but the Commission takes this opportunity to emphasize that this rulemaking is not intended to change existing law with respect to the practices of corporations or labor organizations. See 11 CFR 109.22. Both the pre- and post-BCRA regulations provide that the financing of the dissemination, distribution, or republication of a candidate's campaign material constitutes a contribution to that candidate. Furthermore, such financing for activities outside the restricted class of a corporation or labor organization would also constitute an expenditure by the labor organization or corporation made in connection with an election for Federal office that would therefore be prohibited by 2 U.S.C. 441b(a). Therefore, a corporation or labor organization may not disseminate, distribute, or republish campaign materials except as provided in 11 CFR 114.3(c)(1).

The same commenter also proposed additional exceptions for paragraph (b) to cover republication and distribution of original campaign material that already exists in the public domain, such as presentations made by candidates, biographies, positions on issues or voting records. The Commission declines to promulgate a "public domain" exception because such an exception could "swallow the rule," given that virtually all campaign material that could be republished could be considered to be "in the public domain." In the event that a campaign retains the copyright to its campaign materials, and the campaign materials

are thus not in the public domain as a matter of law, this means that the republisher would presumably have to obtain permission from the campaign to republish the campaign materials, raising issues of authorization or coordination. See 11 CFR 110.11.

Similarly, a commenter suggested an exception to permit the "fair use" of campaign materials, which would presumably permit the republication of campaign slogans and other limited portions of campaign materials for analysis and other uses provided under the legal tests developed with respect to intellectual property law. This commenter also argued that the "fair use" exception should be available to supporters of the candidate who originally produced the materials, as well as that candidate's opponents.

The Commission, however, believes that a "fair use" exception could swallow the rule. Furthermore, the Commission notes that "fair use" is an exception in the intellectual property arena intended to protect literary, scholastic, and journalistic uses of material without infringing upon the intellectual property rights of those who created the material. The Commission declines to import this concept into the political arena where it would not serve to promote the same important purposes, and where the exceptions to the definitions of "contribution" and "expenditure" already address these concerns. See, *e.g.*, 11 CFR 100.73 and 100.132 (exceptions to the definition of "contribution" and "expenditure," respectively, for news stories, commentary, and editorials.) In the context of intellectual property law, the republication of another person's work is generally viewed as undesirable by the original author, thus the "fair use" exception provides a limited exception to the general limitations on such republication. In contrast, Congress has addressed republication of campaign materials through 2 U.S.C. 441a(a)(7)(B)(iii) in a context where the candidate/author generally views the republication of his or her campaign materials, even in part, as a benefit. Given the different purpose served by intellectual property law and campaign finance law, a "fair use" exception would be inappropriate and unworkable in the campaign arena. Additionally, the Commission believes that such legitimate benefits as would flow from a fair use exception are met through application of 11 CFR 109.23(b)(4).

The Commission is including the exceptions proposed in 100.57(b) in its final rules at CFR 109.23(b). Under 11 CFR 109.23(b)(1), a candidate or political party committee is permitted to disseminate, distribute, or republish its own materials without making a contribution. Paragraph (b)(2) exempts the use of material in a communication advocating the defeat of the candidate or party who prepared the material. For example, Person A does not make a contribution to Candidate B if Person A incorporates part of Candidate B's campaign material into its own public communication that advocates the defeat of Candidate B. However, if the same public communication also urged the election of Candidate B's opponent, Candidate C, and incorporated a picture or quote that had been prepared by Candidate C's campaign, then the result does constitute a contribution to Candidate C.

A third exception, in paragraph (b)(3), makes it clear that campaign material may be republished as part of a *bona fide* news story as provided in 11 CFR 100.73 or 11 CFR 100.132. In paragraph (b)(4), the Commission allows limited use of candidate materials in communications to illustrate a candidate's position on an issue.

Finally, in paragraph (b)(5), the Commission recognizes that a national, State, or subordinate committee of a political party makes a coordinated party expenditure rather than an in-kind contribution when it uses its coordinated party expenditure authority under 11 CFR 109.32 to pay for the dissemination, distribution, or republication of campaign material. This rule is based on former 11 CFR 109.1(d)(2), which provided that a State or subordinate party committee could engage in such dissemination, distribution, or republication as an agent designated by a national committee pursuant to former 11 CFR 110.7(a)(4), but is somewhat broader than former 11 CFR 109.1(d)(2).

11 CFR Part 109, Subpart D—Special Provisions for Political Party Committees

11 CFR 109.30 How Are Political Party Committees Treated for Purposes of Coordinated and Independent Expenditures?

A national, State, or subordinate committee of a political party may make expenditures up to prescribed limits in connection with the general election campaign of a Federal candidate that do not count against the committees' contribution limits. See 2 U.S.C. 441a(d). These expenditures are commonly referred to as "coordinated party expenditures." Political party committees, however, need not demonstrate actual coordination with their candidates to avail themselves of this additional spending authority. Nor are political party committees restricted as to the nature of the expenditures they may make on behalf of a candidate that are treated as coordinated party expenditures. Political party committees may also make independent expenditures. See *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission*, 518 U.S. 604 (1996) ("Colorado I").

In BCRA, Congress set certain new restrictions on these "coordinated party expenditures" and related restrictions on political party committee independent expenditures. There are also certain new restrictions on transfers and assignments of coordinated party expenditure authorizations between party committees. 2 U.S.C. 441a(d)(4)(A) through (C).

Section 109.30 provides an introduction to subpart D of part 109 that states how political party committees are treated for purposes of coordinated and independent expenditures. This new section first clarifies that political party committees may make independent expenditures subject to the provisions of sections 109.35 and 109.36. (See discussion below.) Second, section 109.30 explains that political party committees may support candidates with coordinated party expenditures and states that these coordinated party expenditures are subject to limits that are separate from and in addition to the contribution limits at 11 CFR 110.1 and 110.2.

No comments were received on this section, and the final rule is unchanged from the proposed rule in the NPRM except that the reference to other 11 CFR part 109, subpart D provisions has been revised to exclude section 109.31.

11 CFR 109.31 [Reserved]

The Commission in the NPRM proposed rules at 11 CFR 109.30 to 109.37 regarding political party committees. The Commission is issuing final rules at 11 CFR 109.30 and 109.32 to 109.37, but not at 11 CFR 109.31. The reasons regarding proposed section 109.31 are set forth below.

Under FECA, certain political party committees have long been authorized to make what have come to be known as "coordinated party expenditures." 2 U.S.C. 441a(d). Although this term is used extensively (see, *e.g.*, the Commission's Campaign Guides), it is not formally defined in the Commission's regulations.

The Commission in the NPRM proposed a rule which would have defined "coordinated party expenditure" at 11 CFR 109.31. That proposed definition included payments

made by a national committee of a political party, including a national Congressional campaign committee, or a State committee of a political party, including any subordinate committee of a State committee, under 2 U.S.C. 441a(d) for anything of value in connection with the general election campaign of a candidate, including party coordinated communications defined at 11 CFR 109.37.

The Commission received two comments on section 109.31 in support of the proposed rule. One witness at the hearing criticized this provision, asserting that in conjunction with 11 CFR 109.20 this provision would subject everything political parties do to the coordinated party expenditure limits.

In light of the concern raised, the Commission's recognition that this rule is not required by BCRA, and in order to devote the Commission's resources to the rules that are most directly required by BCRA to be completed this calendar year, the Commission is not issuing a final rule at 11 CFR 109.31. Instead, the Commission is adding and reserving this section and may revisit the "coordinated party expenditures" definition in the future.

The Commission notes, however, that the term "coordinated party expenditures" does appear in the final rules at 11 CFR 109.23(b), 109.20(b), 109.30, 109.32, 109.33, 109.34, and 109.35. To prevent any confusion, the Commission clarifies in the absence of a definition at section 109.31 that the term "coordinated party expenditure" refers to an expenditure made by a political party committee pursuant to 2 U.S.C. 441a(d). The Commission stresses that it is not restricting the traditional flexibility political parties have had in making coordinated expenditures in support of their candidate.

11 CFR 109.32 What Are the Coordinated Party Expenditure Limits?

The Commission's restructuring of 11 CFR part 109 includes moving the coordinated party expenditure limits found at former 11 CFR 110.7(a) and (b) to 11 CFR 109.32. This new section retains the basic organizational structure of paragraphs (a) and (b) of former section 110.7, while making the revisions explained below. The final rule is unchanged from the proposed rule in the NPRM except where noted below.

1. 11 CFR 109.32(a) Coordinated Party Expenditure Limits for Presidential Elections

The Commission sets forth in paragraph (a) of section 109.32, in amended fashion, the coordinated party expenditure limit for the national committee of a political party for Presidential elections that appeared at former section 110.7(a). Because political party committees may also make independent expenditures, *Colorado I*, 518 U.S. at 618, the heading of paragraph (a) clarifies that the "expenditures" referred to in section 109.32 are "coordinated party expenditures." See 2 U.S.C. 441a(d). This clarification also appears in paragraphs (a)(1), (2), (3), and (4) of section 109.32.

Paragraph (a)(1) authorizes the national committee of a political party to make coordinated party expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party. The final rule deletes the words "the party's" as surplusage that was inadvertently added into the proposed rule. Paragraph (a)(1) is the successor to former 11 CFR 110.7(a)(1) and is unchanged from that rule except for the clarification noted above.

Paragraph (a)(2) sets out the coordinated party expenditure limit, which is two cents multiplied by the voting age population of the United States, following former 11 CFR 110.7(a)(2). Paragraph (a)(2) of section 109.32 also states that this spending limit shall be increased in accordance with 11 CFR 110.17, which the Commission is adding to clarify that this spending limit is subject to increase. Section 110.17 is the successor to former 11 CFR 110.9(c). See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002). Paragraph (a)(2) of section 109.32 also refers to 11 CFR 110.18, the definition of the term "voting age population," which is discussed below.

Paragraph (a)(3) provides that any coordinated party expenditure under paragraph (a) of this section is in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for President of the United States, as well as any contribution by the national committee to the candidate permissible under 11 CFR 110.1 or 110.2. Paragraph (a)(3) is the successor to former 11 CFR 110.7(a)(3) and is substantively unchanged from that rule.

Paragraph (a)(4) provides that any coordinated party expenditures made by the national committee of a political party pursuant to paragraph (a) of this section, or made by any other party committee under authority assigned by a national committee of a political party under 11 CFR 109.33, on behalf of that party's Presidential candidate shall not count against the candidate's expenditure limitations under 11 CFR 110.8. The only change to paragraph (a)(4) from the proposed rule is that the term "designated" has been changed to "assigned" in order to be consistent with the terminology applied in section 109.33.

Paragraph (a)(4) is the successor to former 11 CFR 110.7(a)(6), and is revised to clarify that only the national party committee has coordinated party expenditure authority for Presidential general elections and that any other political party committee making a coordinated party expenditure in such an election must be so assigned by the national committee.

2. 11 CFR 109.32(b) Coordinated Party Expenditure Limits for Other Federal Elections

Paragraph (b) of section 109.32 addresses coordinated party expenditures in other Federal elections, and is the successor to former 11 CFR 110.7(b). Paragraph (b) applies to the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, for Federal elections other than Presidential elections. As in paragraph (a) above, paragraph (b) clarifies that the "expenditures" referred to in paragraphs (b)(1), (2), and (4) are coordinated party expenditures.

Paragraph (b)(1) authorizes the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, to make coordinated party expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party. The phrase "a candidate for Federal office in that State who is affiliated with the party" is changed from the phrase "the party's candidate for Federal office in that State" that was inadvertently included in the proposed rule. Paragraph (b)(1) is the successor to former 11 CFR 110.7(b)(1) and is unchanged from the previous rule except for the clarification noted above.

Paragraph (b)(2)(i) sets out the coordinated party expenditure limit for Senate candidates and for House candidates from a State that is entitled to only one Representative at the greater of two cents multiplied by the voting age population of the State or $20,000. Paragraph (b)(2)(ii) sets out the coordinated party expenditure limit for House candidates from any other State at $10,000. Paragraph (b)(2) follows

former 11 CFR 110.7(a)(2). Paragraph (b)(2) of section 109.32 also refers to 11 CFR 110.18, the definition of the term "voting age population," which is discussed below.

Paragraph (b)(3) provides that the spending limitations in paragraph (b)(2) shall be increased in accordance with 11 CFR 110.17, which is the successor to former 11 CFR 110.9(c). See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002). The Commission is adding paragraph (b)(3) to the rule in order to clarify that this limit is subject to increase. The Commission is changing the citation to 11 CFR 110.17(c), as proposed in the NPRM, to a citation to 11 CFR 110.17, to make it consistent with the reference to section 110.17 in paragraph (a)(2) described above.

Paragraph (b)(4) provides that any coordinated party expenditure under paragraph (b) of this section shall be in addition to any contribution by a political party committee to the candidate permissible under 11 CFR 110.1 or 110.2. Paragraph (b)(4) of 11 CFR 109.32 is the successor to former 11 CFR 110.7(b)(3), and is unchanged apart from the clarification noted above and a clarification that the contributions referenced are those made by a political party committee.

The Commission received two comments on this section, one which supported the rule proposed in the NPRM and another which stated the commenter's agreement with the statement of the coordinated party expenditure limits set forth in 2 U.S.C. 441a(d).

11 CFR 109.33 May a Political Party Committee Assign Its.Coordinated Party Expenditure Authority to Another Political Party Committee?

Section 109.33 restates and clarifies the pre-BCRA rule permitting assignment of coordinated party expenditure authority between political party committees. Section 109.33 replaces the authorizing provisions found in the pre-BCRA regulations at 11 CFR 110.7(a)(4) and (c); further changes to section 110.7 are addressed below.

In light of the new statutory restrictions on coordination and independent expenditures in BCRA, such assignments of coordinated party expenditure authority are prohibited under certain circumstances in which the assigning political party committee has made coordinated party expenditures (using part of the spending authority) and the intended assignee political party committee has made or intends to make independent expenditures with respect to the same candidate during an election cycle. See 2 U.S.C. 441a(d)(4)(C) and 11 CFR 109.35(c). Therefore, paragraph (a) of section 109.33 begins with a cross-reference to 11 CFR 109.35(c), which implements the statutory restrictions on assignments and transfers.

Paragraph (a) of section 109.33 restates the Commission's longstanding policy that a political party committee with authority to make coordinated party expenditures may assign all or part of that authority to other political party committees, and that this interpretation extends to both national and State committees of political parties. See Campaign Guide for Political Party Committees at p.16 (1996). Paragraph (a) of section 109.33 provides that coordinated party expenditure authority may be assigned only to other political party committees. See 2 U.S.C. 441a(d). Pre-BCRA 11 CFR 110.7(a)(4) indicated that coordinated expenditures may be made "through any *designated agent,* including State and subordinate party committees." [Emphasis added.] This limitation of assignment to other political party committees precludes possible circumvention of the new restrictions on transfers and assignments between political party committees found in BCRA. 2 U.S.C. 441a(d)(4)(B), (C). It is the Commission's understanding that, historically, political party committees have not assigned coordinated spending authority to entities that are not party committees, and thus this prophylactic measure should not adversely affect party committees.

Paragraph (a) provides that whenever a political party committee authorized to make coordinated party expenditures assigns another political party committee to use part or all of its spending authority, the assignment must be in writing, must specify a dollar amount, and must be made before the party committee receiving the assignment actually makes the coordinated party expenditure. In this respect, the rule codifies longstanding Commission interpretation. See Campaign Guide for Political Party Committees at p.16 (1996). This provision applies to both national and State party committees wishing to assign their 2 U.S.C. 441a(d) authority.

Paragraph (b) of section 109.33 is the successor to pre-BCRA 11 CFR 110.7(c). It provides that, for purposes of the coordinated spending limits, a State committee includes subordinate committees of the State committee. Unlike its predecessor, pre-BCRA section 110.7(c), paragraph (b) of section 109.33 covers district and local political party committees (see 11 CFR 100.14(b)) to the extent that a State committee assigns to them its coordinated spending authority, given that these district or local committees may not qualify as "subordinate State committees."

Paragraphs (b)(1) and (2) of section 109.33 restate with only minor non-substantive revision the pre-BCRA rule in 11 CFR 110.7(c)(1) and (2) setting out the State committees' methods of administering the coordinated party expenditure authority.

Paragraph (c) of section 109.33 sets forth recordkeeping requirements. This new paragraph (c) provides that a political party committee that assigns its authority to make coordinated party expenditures under this section, or that receives an assignment of coordinated expenditure authority, must maintain the written assignment for at least three years in accordance with 11 CFR 104.14. This three-year requirement is consistent with other recordkeeping requirements in the Act and in the Commission's regulations. See 2 U.S.C. 432(d); 11 CFR 102.9(c).

Although the Commission did not include this precise recordkeeping requirement in proposed section 109.33 in the NPRM, it sought comment more generally on whether to require political party committees to attach copies of written assignments to reports they file with the Commission, or to fax or e-mail them if they are electronic filers. The comments received regarding section 109.33, as described below, did not address the reporting issue.

The Commission has decided to require recordkeeping rather than reporting in section 109.33. Recordkeeping is less burdensome for political party committees and should provide sufficient documentation of assignments of coordinated party expenditure authority should questions subsequently arise. Indeed, the required maintenance of such documentation may serve a political party committee's own interest. See MUR 5246.

The Commission received two comments on this section as proposed in the NPRM. The commenters, while supporting the rule proposed in the NPRM, asserted that it should be made clear that nothing in the rule supersedes the prohibition on political party committees making both coordinated and independent expenditures with respect to a candidate after nomination. See 2 U.S.C. 441a(d)(4)(A); 11 CFR 109.35(b). The Commission does not intend for section 109.33 to supersede that prohibition, which is in the final rules at section 109.35(b). The Commission believes that section

109.35(b), in its final rule formulation, and section 109.35(c) referenced within section 109.33, serve to maintain the prohibition against circumvention through assignments of coordination party expenditure authority under section 109.33.

Finally, the Commission is making a non-substantive change from the NPRM in the title of section 109.33 in the final rule. The Commission is changing the word "limit" to "authority" in order to match the text of the rule. The only other changes to the NPRM aside from the addition of paragraph (c) are non-substantive changes to paragraphs (a) and (b).

11 CFR 109.34 When May a Political Party Committee Make Coordinated Party Expenditures?

Section 109.34 restates without substantive revision the pre-BCRA rule in 11 CFR 110.7(d) permitting a political party committee to make coordinated party expenditures in connection with the general election campaign before or after its candidate has been nominated. All pre-nomination coordinated expenditures continue to be subject to the coordinated party expenditure limitations, whether or not the candidate on whose behalf they are made receives the party's nomination. The Commission received one comment on this section, which supported the proposed rule.

11 CFR 109.35 What Are the Restrictions on a Political Party Committee Making Both Independent Expenditures and Coordinated Party Expenditures in Connection With the General Election of a Candidate?

In BCRA, Congress prohibits political party committees, under certain conditions, from making both coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers and assignments to other political party committees. 2 U.S.C. 441a(d)(4). A critical threshold issue is identifying the political party committees to which these prohibitions apply. Congress provided that for the purposes of these new prohibitions, "all political committees established and maintained by a national political party (including all Congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee." 2 U.S.C. 441a(d)(4)(B). Congress plainly intended to combine certain political party committees into a collective entity or entities for purposes of these prohibitions. 2 U.S.C. 441a(d)(4)(B).

1. 11 CFR 109.35(a) Applicability

In the NPRM, the Commission proposed a rule that divided a political party into a national group of political committees and various State and local groups of political committees for the purposes of implementing the BCRA provisions governing independent and coordinated expenditures by a political party. See 2 U.S.C. 441a(d)(4). The NPRM acknowledged the legislative history supporting a "single committee" interpretation that combined the national, State and local party committees, but proposed the "dual groups" interpretation in order to give the fullest possible effect to the transfer and assignment provision of the same statute. 67 FR at 60,054 (September 24, 2002). Under the transfer and assignment provision, a "committee of a political party" that makes coordinated party expenditures under 2 U.S.C. 441a(d) in connection with the general election campaign of a candidate must not, during that election cycle, transfer any funds to, assign authority to make coordinated party expenditures to, or receive a transfer from, "a committee of the political party" that has made or intends to make an independent expenditure with respect to that candidate. 2 U.S.C. 441a(d)(4)(C). The NPRM questioned whether, without more than one group or aggregation of political party committees, transfers or assignments between political party committees could occur as contemplated in section 441a(d)(4)(C).

Several commenters, including BCRA's principal sponsors, urged that the Commission adopt the "single committee" approach, asserting that it followed from the statutory language as well as the legislative history.

One commenter criticized the "single committee" approach as contrary to *Colorado I*, asserting that this Supreme Court decision permitted political party committees to make both coordinated and independent expenditures.

Several witnesses testifying at the hearing argued that treating all party committees as a single entity is impractical because party committees at the national or State level do not control party committees at lower levels in their organizations. These commenters complained that a local party committee under the "single committee" approach, by making an independent expenditure with respect to a candidate, could preclude the State or national party committee from making coordinated party expenditures with respect to that candidate.

No comments were received that supported the NPRM's "dual groups" approach, although two witnesses testified at the hearing that the dual approach would be preferable to the "single committee" approach (one of these commenters, however, also testified that the BCRA sponsors intended the "single committee" approach).

Commenters favoring the "single committee" approach suggested examples of how the transfer and assignment provision could be given meaningful effect. One commenter proposed that the transfer and assignment provision may apply prior to nomination, unlike the prohibition on making both coordinated and independent expenditures with respect to a candidate, which applies only after nomination. Two commenters suggested that the transfer and assignment provision could be read to prohibit a national party from making coordinated party expenditures with respect to a candidate prior to nomination and then transferring funds to a State party committee that would then try to make supposedly independent expenditures with respect to that candidate.

In the final rules, paragraph (a) of 11 CFR 109.35 generally tracks the statutory language in 2 U.S.C. 441a(d)(4)(B).

2. 11 CFR 109.35(b) Restrictions on Certain Coordinated and Independent Expenditures

Congress provided in BCRA that on or after the date on which a political party nominates a candidate, no "committee of the political party" may make: (1) Any coordinated expenditure under 2 U.S.C. 441a(d) with respect to the candidate during the election cycle at any time after it makes any independent expenditure with respect to the candidate during the election cycle; or (2) any independent expenditure with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under 2 U.S.C. 441a(d) with respect to the candidate during the election cycle. 2 U.S.C. 441a(d)(4)(A).

Section 109.35(b) generally tracks the statute.

As noted above, the result that any political party committee within the "single committee" could bind all the political party committees within the "single committee" was criticized by several commenters at the hearing. These commenters asserted that this result would preclude a national or State committee of a political party from making a coordinated party expenditure with respect to a nominee if a local

party committee first made an independent expenditure with respect to that same nominee, even of small size and without the State or national committee's prior knowledge or consent. The Commission notes the commenters' concerns, but points out that just that result is the apparent aim of the statute. 2 U.S.C. 441a(d)(4)(A).

3. 11 CFR 109.35(c) Restrictions on Certain Transfers and Assignments

Congress provided in BCRA that a "committee of a political party" that makes coordinated party expenditures with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated party expenditures under 2 U.S.C. 441a(d) to, or receive a transfer of funds from, a "committee of the political party" that has made or intends to make an independent expenditure with respect to the candidate. 2 U.S.C. 441a(d)(4)(C).

In the final rules, paragraph (c) of 11 CFR 109.35 generally tracks the statutory language in 2 U.S.C. 441a(d)(4)(C).

Finally, the Commission noted in the NPRM that it was not proposing specific rules to implement the statutory language in the transfer and assignment provision that a political party committee "intends to make" an independent expenditure with respect to a candidate. 2 U.S.C. 441a(d)(4)(C). The Commission received no comments on this issue and incorporates no specific language into section 109.35.

4. Impact of Political Party Committee Activity Carried Out Pursuant to Contribution Limits and Coordinated Party Expenditure Authority

2 U.S.C. 441a(d)(4) applies to coordinated party expenditures and to political party committee independent expenditures. Congress did not directly address political party committees' monetary and in-kind contributions to candidates that are subject to the contribution limits under 2 U.S.C. 441a(a) and 441a(h). See 2 U.S.C. 441a(d)(1) (*"Notwithstanding any other provision of law with respect to * * * limitations on contributions,* [political party committees] may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained [in this subsection]" [emphasis added]); 2 U.S.C. 441a(d)(4)(A) (addresses coordinated party expenditures made under section 441a(d) and does not directly address contributions). See also 11 CFR 109.30, 109.32.

Political party committees may make in-kind contributions to a candidate in the form of coordinated activity. See 2 U.S.C. 441a(a)(7)(B)(i) and 11 CFR 109.20, discussed above. The Commission notes that such coordination between a political party committee and a candidate may compromise the actual independence of any simultaneous or subsequent independent expenditures the political party committee may attempt with respect to that candidate. Similarly, coordinated party expenditures made by a political party committee with respect to a candidate prior to nomination, see 11 CFR 109.34, may be considered evidence that could compromise the actual independence of any simultaneous or subsequent independent expenditures the political party committee may attempt with respect to that candidate. See 11 CFR 109.35; *Buckley* v. *Valeo*, 424 U.S. at 47 (in striking down limits on independent expenditures, the Court described such expenditures as made "*totally* independently of the candidate and his campaign" [emphasis added]).

Finally, the title of section 109.35 in this Explanation and Justification has been altered from the NPRM to match the title in the rule.

11 CFR 109.36 Are There Additional Circumstances Under Which a Political Party Committee Is Prohibited From Making Independent Expenditures?

Prior to the enactment of BCRA, the Commission's rules prohibited a national committee of a political party from making independent expenditures in connection with the general election campaign of a candidate for President. See former 11 CFR 110.7(a)(5). In the NPRM, the proposed rule at 11 CFR 109.36 would have largely deleted this prohibition. The NPRM limited the remaining application of the prohibition to certain circumstances in which the national committee of a political party serves as the principal campaign committee or authorized committee of its Presidential candidate, as permitted under 2 U.S.C. 432(e)(3)(A)(i) and 441a(d)(2). See 11 CFR 102.12(c)(1) and 9002.1(c). Such a prohibition is consistent with 11 CFR 100.16(b) (redesignated from former section 109.1(e)) providing that no expenditure by an authorized committee of a candidate on behalf of that candidate shall qualify as an independent expenditure.

The Commission received several comments on this section, each of which urged the Commission to retain the prohibition at former 11 CFR 110.7(a)(5) regarding national party committee independent expenditures with respect to Presidential nominees. One commenter asserted that neither *Colorado I* nor BCRA require the deletion of the prohibition, and that in light of the significance of this issue, Congress would have expressly addressed it if Congress desired a change in the current regulation. The commenter noted that such a change in the rule is based upon a misinterpretation of BCRA, which should not be read as affirmatively authorizing political party committees to engage in any particular activity. Another commenter claimed that to allow in a broad fashion national party committees to make independent expenditures on behalf of their Presidential candidates is to invite abuse. The commenter stated that Presidential candidates and their parties are so inextricably intertwined as to preclude any meaningful possibility that one can operate "independently" of the other, and that the degree of coordination that exists between a national party committee and its Presidential candidate typically far exceeds even the level of coordination between a party committee and its congressional candidates.

The Commission acknowledges the concerns expressed in the comments but for the following reasons is including 11 CFR 109.36 in the final rules. First, the Commission does not believe it appropriate to retain in its rules a conclusive presumption of coordination after *Colorado I*. Even though *Colorado I* expressly involved only Congressional races, and arguably the likelihood of coordination may be greater between a national party committee and its Presidential nominee, the rule at section 109.36 is consistent with the Supreme Court's decision.

Second, the Commission concludes that Congress in BCRA effectively repealed the prohibition at 11 CFR 110.7(a)(5). See 2 U.S.C. 441a(d)(4). Under a new statutory provision, Congress prohibits political party committees from making both post-nomination independent expenditures and post-nomination coordinated expenditures in support of a candidate. See 2 U.S.C. 441a(d)(4)(A). A national party committee could thus make independent expenditures with respect to a candidate after nomination, if not prohibited under section 441a(d)(4)(A). See 11 CFR 109.35(a). Because this provision appears to apply equally to party committee expenditures on behalf of either Presidential or Congressional candidates, a national party committee may be able to make independent expenditures with respect to a

Presidential candidate under certain circumstances. Thus, while Congress did not specifically require the deletion of the prohibition at former 11 CFR 110.7(a)(5), the Commission has concluded that a provision within BCRA is consistent with that result. To the extent that BCRA, and *Colorado I* as discussed above, do not require the Commission to promulgate the rule at section 109.36, the Commission nonetheless exercises its discretion to do so as a permissible interpretation of BCRA and *Colorado I*.

Finally, the Commission notes that if coordination occurs between a national party committee and its Presidential nominee, it would negate the actual independence of independent expenditures the national party committee attempted with respect to that candidate. See *Buckley* v. *Valeo*, 424 U.S. at 47 (in striking down limits on independent expenditures, the Court described such expenditures as made "totally independently of the candidate and his campaign" [emphasis added]). The Commission recognizes that the ability of a national party committee to make such independent expenditures may be unlikely in practice, but the Commission's rules must allow for such a possibility, and as noted above, must reject a conclusive presumption that such expenditures are always coordinated.

Finally, section 109.36 contains one non-substantive change from the NPRM, and the title of section 109.36 in this Explanation and Justification has been slightly altered from the NPRM to match the title in the rule.

11 CFR 109.37 What Is a "Party Coordinated Communication"?

In BCRA, Congress required the Commission to promulgate new regulations on "coordinated communications" that are paid for by persons other than candidates, authorized committees of candidates, and party committees. Public Law 107–155, sec. 214(b), (c); see 11 CFR 109.21 above. Although Congress did not specifically direct the Commission to address coordinated communications paid for by political party committees, the Commission is doing so to give clear guidance to those affected by BCRA.

The Commission in the NPRM proposed a rule which would have been at 11 CFR 109.37, political party coordinated communications, using the same content and conduct standards as proposed in section 109.21 for coordinated communications by other persons.

The Commission received a number of comments on this proposal. The comments fall into two general categories. One group of commenters urged the Commission to defer this party coordinated communication rulemaking, arguing (1) that it is not strictly required by BCRA, (2) that the Commission should be focusing its resources at this time on the rulemaking most directly required by BCRA, and (3) that the comment period was a difficult time for the political parties to focus on the rulemaking because it was shortly before the 2002 general election. These commenters also asserted that party coordinated communications is a complicated subject area, citing the many questions posed in the NPRM in their claim that the Commission should defer this rulemaking.

On the substance of the proposed rule, this group of commenters testified at the hearing that the proposed content and conduct standards were both overbroad. (See the discussion above regarding 11 CFR 109.21). These commenters noted that any coordination standard for political party committees must allow for the regular contacts between a political party committee and its candidates. Another commenter raised an equal protection argument, asserting that a regulation that on its face appears to treat political party committees the same as other persons may as a practical matter have an unequal impact on the political parties.

The other group of commenters relied on the relationship between a political party committee and its candidates for the assertion that the Commission should promulgate a party coordinated communication rule using a rebuttable presumption that the communications are coordinated with candidates. These commenters stated that this presumption could be rebutted by a showing of actual independence. One commenter believed that the Commission's rule should describe ways in which a political party committee could establish its independence from a candidate. Another commenter noted that *Colorado I*, which struck down a conclusive presumption of coordination, does not prevent the use of a rebuttable presumption, and that such a rule is necessary to ensure that political party committee independent expenditures are in fact "totally independent" from candidates as required by the Supreme Court in *Buckley*.

While the Commission recognizes that Congress in BCRA did not specifically direct the Commission to address coordinated communications paid for by political party committees, the Commission is doing so to give clear guidance to those affected by BCRA. Congress determined to regulate political party committees' independent expenditures and coordinated party expenditures, and thus it is appropriate and useful for the Commission to promulgate rules at this time detailing standards for party coordinated communications. See 2 U.S.C. 441a(d)(4) and 11 CFR 109.35, discussed above.

The Commission is promulgating final rules similar to those in proposed section 109.37, generally applying the same regulatory analysis to communications paid for by the political party committees that is applied to communications paid for by other persons. See 11 CFR 109.21(a) through (f). This analysis determines when communications paid for by a political party committee are considered to be coordinated with a candidate, a candidate's authorized committee, or their agents.

Following 11 CFR 109.21(a), section 109.37(a) defines the circumstances in which communications paid for by political party committees are considered to be coordinated with a candidate, a candidate's authorized committee, or agents of any of the foregoing. Under 11 CFR 109.37(a)(1) through (3), such communications are deemed to be "party coordinated communications" when they were paid for by a political party committee or its agent, satisfy at least one of the content standards in section 109.37(a)(2)(i) through (iii), and satisfy at least one of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e) and other conditions.

The party coordinated communication content standards in section 109.37(a)(2)(i) through (iii) are adopted from 11 CFR 109.21(c)(2) through (c)(4). The first content standard, at paragraph (a)(2)(i) of section 109.37, is a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). The Commission also provides in this content standard that for a communication that satisfies this standard, see the conduct standard in 11 CFR 109.21(d)(6), under which the communication is evaluated. See the discussion above of 11 CFR 109.21(c)(2). This content standard at 11 CFR 109.37(a)(2)(i) for party coordinated communications is the same as the standard set forth for coordinated

communications by other persons in 11 CFR 109.21(c)(2).

The second content standard, at paragraph (a)(2)(ii) of section 109.37, is a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office. This content standard for party coordinated communications is identical to the standard set forth for coordinated communications by other persons in 11 CFR 109.21(c)(3).

The third content standard, at paragraph (a)(2)(iii) of section 109.37, is a public communication that (1) refers to a clearly identified candidate for Federal office; (2) is publicly distributed or otherwise publicly disseminated 120 days or fewer before a general, special, or runoff election, or 120 days or fewer before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate; and (3) is directed to voters in the jurisdiction of the clearly identified candidate. 11 CFR 109.37(a)(2)(iii)(A)–(C). See the discussion above of 11 CFR 109.21(c)(4). This content standard at section 109.37(a)(2)(iii) is based on the content standard at section 109.21(c)(4) but limits its coverage to communications that refer to a clearly identified candidate for Federal office.

Finally, the Commission notes that the content standard at 11 CFR 109.21(c)(1), coordinated electioneering communications, is not applied to party coordinated communications because electioneering communications, as defined, exclude communications which constitute expenditures under the Act, which includes political party committee expenditures. See 2 U.S.C. 434(f)(3)(B)(ii); 11 CFR 100.29(c)(3).

For the conduct standards for party coordinated communications, in paragraph (a)(3) of section 109.37, the Commission refers to the conduct standards set forth in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e) and other conditions. As in 11 CFR 109.21(d), agreement or formal collaboration is not necessary for a finding that a communication is coordinated. See the discussion above of 11 CFR 109.21(d) and (e). Further, paragraph (a)(3) of section 109.37 provides that a candidate's response to an inquiry about that candidate's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6). This safe harbor parallels the safe harbor at 11 CFR 109.21(f). See the discussion above of 11 CFR 109.21(f).

The Commission also addresses in paragraph (a)(3) of section 109.37 circumstances in which the in-kind contribution results solely from conduct in 11 CFR 109.21(d)(4) or (d)(5). Under these circumstances, the candidate does not receive or accept an in-kind contribution and is not required to report an expenditure. See the discussion above regarding 11 CFR 109.21(b)(2).

Paragraph (b) of section 109.37 explains the treatment of party coordinated communications. This paragraph provides that political party committees must treat payments for communications coordinated with candidates as either in-kind contributions or coordinated party expenditures.

The Commission excepts from 11 CFR 109.37(b) such payments that are otherwise excepted from the definitions of "contribution" and "expenditure" found at 11 CFR part 100 subparts C and E. For example, the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a contribution or an expenditure. 11 CFR 100.80 and 100.140. Thus, if such communications were coordinated with candidates, the payments for such communications would not be treated as either in-kind contributions or as coordinated party expenditures.

For such a payment that a political party committee treats as an in-kind contribution, paragraph (b)(1) of section 109.37 states that it is made for the purpose of influencing a Federal election. See the discussion above regarding 11 CFR 109.21(b).

For such a payment that a political party committee treats as a coordinated party expenditure, paragraph (b)(2) of section 109.37 states that such expenditure is made pursuant to coordinated party expenditure authority under 11 CFR 109.32 in connection with the general election campaign of the candidate with whom it was coordinated.

Finally, paragraphs (b)(1) and (b)(2) of section 109.37 each refer to the reporting obligations flowing from party coordinated communications under 11 CFR part 104.

11 CFR 110.1 Contributions by Persons Other Than Multicandidate Political Committees

The Commission clarifies that the section 110.1 limitations on contributions to political committees making independent expenditures apply to contributions made by persons other than multicandidate committees to political party committees that make independent expenditures. See 11 CFR 110.1(n). Paragraph 110.1(n) replaces pre-BCRA paragraph (d)(2) of section 110.1 regarding the application of the contribution limits to contributions to committees that make independent expenditures.

This section is being updated because under pre-BCRA paragraph (d)(2) of section 110.1, the Commission recognized that political committees other than party committees may make independent expenditures, but did not contemplate party committees doing so. See *Colorado I*, 518 U.S. at 618. For example, national party committees may receive contributions aggregating $20,000 per year from individuals, a contribution limit that Congress increased to $25,000 for contributions made on or after January 1, 2003. See 2 U.S.C. 441a(a)(1)(B). Consequently, under BCRA, the $20,000 ($25,000) contribution limit continues to apply when the recipient national party committee uses the contribution to make independent expenditures. The Commission notes that 11 CFR 110.1(h) regarding contributions to political committees supporting the same candidate, remains unchanged except to state that the support to candidates by political party committees may include independent expenditures. The Commission received no comments on this section.

Additional changes to 11 CFR 110.1 are addressed in a separate rulemaking on BCRA's increased contribution limits. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

11 CFR 110.2 Contributions by Multicandidate Political Committees

The Commission clarifies that the section 110.2 limitations on contributions to political committees making independent expenditures apply to contributions made by multicandidate committees to political party committees that make independent expenditures. See 11 CFR 110.2(k). Paragraph 110.2(k) replaces pre-BCRA paragraph (d)(2) of section 110.2 regarding the application of the contribution limits to contributions to

committees that make independent expenditures.

This section is being updated for the reasons set forth above in the discussion regarding 11 CFR 110.1. The Commission received no comments on this section.

Additional changes to 11 CFR 110.2 were addressed in a separate rulemaking on BCRA's increased contribution limits. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

11 CFR 110.7 Removed and Reserved

The pre-BCRA regulations at 11 CFR 110.7 contained the coordinated party expenditure limits and related provisions. As explained above, the Commission is moving section 110.7, in amended form, to 11 CFR part 109, subpart D. Specifically, the provisions in section 110.7 are revised and redesignated as follows: 11 CFR 110.7(a) and (b) to 11 CFR 109.32(a) and (b) and 109.36; 11 CFR 110.7(c) to 11 CFR 109.33; and 11 CFR 110.7(d) to 11 CFR 109.34.

11 CFR 110.8 Presidential Candidate Expenditure Limitations

As in 11 CFR 109.32(a) and (b) discussed above, the Commission clarifies that the expenditure limits for publicly funded Presidential candidates are increased in accordance with 11 CFR 110.17. See 11 CFR 110.8(a)(2). To accommodate this new section 110.8(a)(2), the Commission is re-designating pre-BCRA paragraphs (a)(1) and (a)(2) as (a)(1)(i) and (a)(1)(ii), respectively.

In 11 CFR 110.8(a)(3), the Commission references the definition of "voting age population" at 11 CFR 110.18. The voting age population is a factor in the calculation of expenditure limitations in 11 CFR 110.8(a). No commenters addressed this section.

The Commission also made additional changes to 11 CFR 110.9(c) in a separate rulemaking, including moving it to 11 CFR 110.17. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

11 CFR 110.14 Contributions to and Expenditures by Delegates and Delegate Committees

In light of the Congressional repeal of former 11 CFR 100.23, the removal of the separate definition of "independent expenditure" under 11 CFR 109.1, and the removal of 11 CFR 109.2, see Final Rules and Explanation and Justification for Bipartisan Campaign Reform Act of 2002 Reporting, published elsewhere in this issue of the **Federal Register**, the Commission is making several necessary technical revisions to 11 CFR 110.14. These technical revisions were not originally proposed in the NPRM. Within 11 CFR 110.14, the Commission is replacing all references to a "coordinated general public political communication under 11 CFR 100.23" with references to "coordinated communication under 11 CFR 109.21." In addition, the Commission is replacing all citations to former 11 CFR 109.2 with citations to 11 CFR 109.10. Finally, the Commission is replacing all references to independent expenditures under 11 CFR part 109 with references to independent expenditures under 11 CFR 100.16 to reflect the removal of the definition of "independent expenditure" in former 11 CFR 109.1.

11 CFR 110.18 Voting Age Population

The Commission is moving pre-BCRA section 110.9(d) regarding voting age population ("VAP") to 11 CFR 110.18 as part of a reorganization of section 110.9. This provision is referenced in sections 109.32(a) and (b) (coordinated party expenditure limits) and 110.8(a)(3) (Presidential candidate expenditure limits) where the VAP is used as a factor in calculating the limits. Section 110.18 is revised from pre-BCRA section 110.9(d) to clarify that the Secretary of Commerce each year certifies to the Commission and publishes in the **Federal Register** an estimate of the VAP pursuant to 2 U.S.C. 441a(e). No comments addressed this provision.

Changes to the other provisions of section 110.9, including paragraph (c) of this section, are addressed in a separate rulemaking. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

11 CFR 114.4 Disbursements for Communications Beyond the Restricted Class in Connection With a Federal Election

Paragraph (c)(5) of section 114.4 pertains to voter guides paid for by corporations and labor organizations. The Commission makes several changes to this paragraph to conform with other regulatory changes in response to BCRA.

The pre-BCRA version of paragraphs (c)(5)(i) and (ii) of section 114.4 provided that a corporation or labor organization must not, among other things, "contact" a candidate in the preparation of a voter guide, except in writing. In this rulemaking, the Commission is promulgating a safe harbor in the coordination rules that allows a person, such as a corporation or labor union, to contact a candidate to inquire about the candidate's positions on legislative or policy issues without a subsequent communication paid for by that person being deemed coordinated with the candidate (assuming there are no other actions resulting in coordination). See 11 CFR 109.21(f) and the above discussion relating to this provision.

Accordingly, paragraph (c)(5)(i) of section 114.4 is being amended to delete the prohibition against any contact with a candidate in the preparation of a voter guide.

Paragraph (c)(5)(ii) of section 114.4 is being amended to delete the requirement that contact with the candidate be in writing.

The Commission is also making several non-substantive changes to paragraphs (c)(5)(i) and (ii) of section 114.4 to conform these provisions to the statutory provisions on which they are based. Compare 2 U.S.C. 441a(a)(7)(B) with 11 CFR 114.5(c)(5)(i) and (ii).

The Commission received three comments on this section, all of which urged the Commission to include an exception to the coordination standard at 11 CFR 109.21 for inquiries to candidates in connection with voter guides. The Commission is including the described safe harbor at 11 CFR 109.21(f) to address this concern.

The Commission notes that an appeals court in one circuit invalidated portions of pre-BCRA 11 CFR 114.4(c)(5). See *Clifton* v. *Federal Election Commission*, 927 F. Supp. 493 (D. Me. 1996), *modified in part and remanded in part*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 522 U.S. 1108 (1998). Subsequently a Petition for Rulemaking asked the Commission to repeal its voter guide regulation. See Notice of Availability, 64 FR 46,319 (Aug. 25, 1999). The Commission's present rulemaking consists of changes necessitated by BCRA, although any additional changes to the voter guide regulations could be addressed in a future rulemaking.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, State, and local party committees of the two major political parties, and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental

jurisdictions. Further, individual citizens operating under these rules are not small entities.

To the extent that any political committee may fall within the definition of "small entities," their numbers are not substantial, particularly the number that would coordinate expenditures with candidates or political party committees in connection with a Federal election.

In addition, the small entities to which the rules apply will not be unduly burdened by the proposed rules because there is no significant extra cost involved, as any new potential recordkeeping responsibilities would be minimal and optional. Any commercial vendors whose clients include campaign committees or political party committees were previously subject to different rules regarding coordination, and will not experience a significant economic impact as a result of the new rules because the requirements of these new rules are no more than what is necessary to comply with the new statute enacted by Congress.

Derivation Table

The following derivation table identifies the new sections in parts 100, 109, and 110 and the corresponding pre-BCRA rules that addressed those subject areas.

New section	Old section
100.16(b)	109.1(e).
109.1	New.
109.3	109.1(b)(5).
109.11	109.3.
109.20	109.1(c).
109.21	New.
109.22	New.
109.23	109.1(d).
109.30	New.
109.31	New—Reserved.
109.32(a)	110.7(a) (except para. (a)(4) and para. (a)(5)).
109.32(b)	110.7(b).
109.33	110.7(a)(4) and (c).
109.34	110.7(d).
109.35	New.
109.36	110.7(a)(5).
109.37	New.
110.1(n)	New.
110.2(k)	New.
110.8(a)(2)	New.
110.8(a)(3)	New.
110.18	110.9(d).

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 109

Elections, reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, political committees and parties.

11 CFR Part 114

Business and industry, elections, labor.

For the reasons set out in the preamble, subchapter A of chapter 1 of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS

1. The authority citation for part 100 is revised to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.16 is revised to read as follows:

§ 100.16 Independent expenditure (2 U.S.C. 431(17)).

(a) The term *independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents. A communication is "made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents" if it is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.

(b) No expenditure by an authorized committee of a candidate on behalf of that candidate shall qualify as an independent expenditure.

(c) No expenditure shall be considered independent if the person making the expenditure allows a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents to become materially involved in decisions regarding the communication as described in 11 CFR 109.21(d)(2), or shares financial responsibility for the costs of production or dissemination with any such person.

§ 100.23 [Reserved.]

3. Remove and reserve § 100.23.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

4. The authority citation for Part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), and 441d.

5. Section 102.6(a)(1)(ii) is revised to read as follows:

§ 102.6 Transfers of funds; collecting agents.

(a) * * *

(1) * * *

(ii) Subject to the restrictions set forth at 11 CFR 109.35(c), 300.10(a), 300.31 and 300.34(a) and (b), transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated.

* * * * *

6. Part 109 is revised to read as follows:

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a(a) and (d), and Pub. L. 107–155 sec. 214(c))

Sec.

Subpart A—Scope and Definitions

109.1 When will this part apply?
109.2 [Reserved]
109.3 Definitions.

Subpart B—Independent Expenditures

109.10 How do political committees and other persons report independent expenditures?
109.11 When is a "non-authorization notice" (disclaimer) required?

Subpart C—Coordination

109.20 What does "coordinated" mean?
109.21 What is a "coordinated communication"?
109.22 Who is prohibited from making coordinated communications?
109.23 Dissemination, distribution, or republication of candidate campaign materials.

Subpart D—Special Provisions for Political Party Committees

109.30 How are political party committees treated for purposes of coordinated and independent expenditures?
109.31 [Reserved]
109.32 What are the coordinated party expenditure limits?
109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?

109.34 When may a political party committee make coordinated party expenditures?
109.35 What are the restrictions on a political party making both independent expenditures and coordinated party expenditures in connection with the general election of a candidate?
109.36 Are there additional circumstances under which a political party committee is prohibited from making independent expenditures?
109.37 What is a "party coordinated communication"?

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107–155, 116 Stat. 81.

Subpart A—Scope and Definitions

§ 109.1 When will this part apply?

This part applies to expenditures that are made independently from a candidate, an authorized committee, a political party committee, or their agents, and to those payments that are made in coordination with a candidate, an authorized committee, a political party committee, or their agents. The rules in this part explain how these types of payments must be reported and how they must be treated by candidates, authorized committees, and political party committees. In addition, subpart D of part 109 describes procedures and limits that apply only to payments, transfers, and assignments made by political party committees.

§ 109.2 [Reserved]

§ 109.3 Definitions.

For the purposes of 11 CFR part 109 only, agent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of the specified persons:

(a) In the case of a national, State, district, or local committee of a political party, any one or more of the activities listed in paragraphs (a)(1) through (a)(5) of this section:

(1) To request or suggest that a communication be created, produced, or distributed.

(2) To make or authorize a communication that meets one or more of the content standards set forth in 11 CFR 109.21(c).

(3) To create, produce, or distribute any communication at the request or suggestion of a candidate.

(4) To be materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication; or,

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(5) To make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication with a candidate.

(b) In the case of an individual who is a Federal candidate or an individual holding Federal office, any one or more of the activities listed in paragraphs (b)(1) through (b)(6) of this section:

(1) To request or suggest that a communication be created, produced, or distributed.

(2) To make or authorize a communication that meets one or more of the content standards set forth in 11 CFR 109.21(c).

(3) To request or suggest that any other person create, produce, or distribute any communication.

(4) To be materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication;

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(5) To provide material or information to assist another person in the creation, production, or distribution of any communication.

(6) To make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication with a different candidate.

Subpart B—Independent Expenditures

§ 109.10 How do political committees and other persons report independent expenditures?

(a) Political committees, including political party committees, must report independent expenditures under 11 CFR 104.4.

(b) Every person that is not a political committee and that makes independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year shall file a verified statement or report on FEC Form 5 in accordance with 11 CFR 104.4(e) containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so in accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii) and shall file a report or statement for any quarterly period during which any such independent expenditures that aggregate in excess of $250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made.

(c) Every person that is not a political committee and that makes independent expenditures aggregating $10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election, must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation.) The person making the independent expenditures aggregating $10,000 or more must ensure that the Commission receives the report or statement by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of this section.

(d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election, independent expenditures aggregating $1,000 or more with respect to a given election must report those independent expenditures and ensure that the Commission receives the report or signed statement by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate $1,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. (See 11 CFR 104.4(f) for aggregation.) Such report or statement shall contain the information required by paragraph (e) of this section.

(e) Content of verified reports and statements and verification of reports and statements.

(1) *Contents of verified reports and statement.* If a signed report or statement is submitted, the report or statement shall include:

(i) The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date, and purpose of each expenditure;

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents; and

(vi) The identification of each person who made a contribution in excess of $200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) *Verification of independent expenditure statements and reports.* Every person shall verify reports and statements of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (e)(2)(i) or (ii) of this section. Any report or statement verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(i) For reports or statements filed on paper (*e.g.*, by hand-delivery, U.S. Mail, or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports or statements filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by paragraph (e)(1)(v) of this section.

§ 109.11 When is a "non-authorization notice" (disclaimer) required?

Whenever any person makes an independent expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such person shall comply with the requirements of 11 CFR 110.11.

Subpart C—Coordination

§ 109.20 What does "coordinated" mean?

(a) *Coordinated* means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.

(b) Any expenditure that is coordinated within the meaning of paragraph (a) of this section, but that is not made for a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37, is either an in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee, unless otherwise exempted under 11 CFR part 100, subparts C or E.

§ 109.21 What is a "coordinated communication"?

(a) *Definition.* A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:

(1) Is paid for by a person other than that candidate, authorized committee, political party committee, or agent of any of the foregoing;

(2) Satisfies at least one of the content standards in paragraph (c) of this section; and

(3) Satisfies at least one of the conduct standards in paragraph (d) of this section.

(b) *Treatment as an in-kind contribution and expenditure; Reporting.*

(1) *General rule.* A payment for a coordinated communication is made for the purpose of influencing a Federal election, and is an in-kind contribution under 11 CFR 100.52(d) to the candidate, authorized committee, or political party committee with whom or which it is coordinated, unless excepted under 11 CFR part 100, subpart C, and must be reported as an expenditure made by that candidate, authorized committee, or political party committee under 11 CFR 104.13, unless excepted under 11 CFR part 100, subpart E.

(2) *In-kind contributions resulting from conduct described in paragraphs (d)(4) or (d)(5) of this section.* Notwithstanding paragraph (b)(1) of this section, the candidate, authorized committee, or political party committee with whom or which a communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure, that results from conduct described in paragraphs (d)(4) or (d)(5) of this section, unless the candidate, authorized committee, or political party committee, or an agent of any of the foregoing, engages in conduct described in paragraphs (d)(1) through (d)(3) of this section.

(3) *Reporting of coordinated communications.* A political committee, other than a political party committee, that makes a coordinated communication must report the payment for the communication as a contribution made to the candidate or political party committee with whom or which it was coordinated and as an expenditure in accordance with 11 CFR 104.3(b)(1)(v). A candidate, authorized committee, or political party committee with whom or which a communication paid for by another person is coordinated must report the usual and normal value of the communication as an in-kind contribution in accordance with 11 CFR 104.13, meaning that it must report the amount of the payment as a receipt under 11 CFR 104.3(a) and as an expenditure under 11 CFR 104.3(b).

(c) *Content standards.* Each of the types of content described in paragraphs (c)(1) through (c)(4) satisfies the content standard of this section.

(1) A communication that is an electioneering communication under 11 CFR 100.29.

(2) A public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). For a communication that satisfies this content standard, see paragraph (d)(6) of this section.

(3) A public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(4) A communication that is a public communication, as defined in 11 CFR 100.26, and about which each of the following statements in paragraphs (c)(4)(i), (ii), and (iii) of this section are true.

(i) The communication refers to a political party or to a clearly identified candidate for Federal office;

(ii) The public communication is publicly distributed or otherwise publicly disseminated 120 days or fewer before a general, special, or runoff election, or 120 days or fewer before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate; and

(iii) The public communication is directed to voters in the jurisdiction of the clearly identified candidate or to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot.

(d) *Conduct standards.* Any one of the following types of conduct satisfies the conduct standard of this section whether or not there is agreement or formal collaboration, as defined in paragraph (e) of this section:

(1) *Request or suggestion.*

(i) The communication is created, produced, or distributed at the request or suggestion of a candidate or an authorized committee, political party committee, or agent of any of the foregoing; or

(ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, political party committee, or agent of any of the foregoing, assents to the suggestion.

(2) *Material involvement.* A candidate, an authorized committee, a political party committee, or an agent of any of the foregoing, is materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication; or

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(3) *Substantial discussion.* The communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing. A discussion is substantial within the meaning of this paragraph if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.

(4) *Common vendor.* All of the following statements in paragraphs (d)(4)(i) through (d)(4)(iii) of this section are true:

(i) The person paying for the communication, or an agent of such person, contracts with or employs a commercial vendor, as defined in 11 CFR 116.1(c), to create, produce, or distribute the communication;

(ii) That commercial vendor, including any owner, officer, or employee of the commercial vendor, has provided any of the following services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, in the current election cycle:

(A) Development of media strategy, including the selection or purchasing of advertising slots;

(B) Selection of audiences;

(C) Polling;

(D) Fundraising;

(E) Developing the content of a public communication;

(F) Producing a public communication;

(G) Identifying voters or developing voter lists, mailing lists, or donor lists;

(H) Selecting personnel, contractors, or subcontractors; or

(I) Consulting or otherwise providing political or media advice; and

(iii) That commercial vendor uses or conveys to the person paying for the communication:

(A) Information about the clearly identified candidate's campaign plans, projects, activities, or needs, or his or her opponent's campaign plans, projects, activities, or needs, or a political party committee's campaign plans, projects, activities, or needs and that information is material to the creation, production, or distribution of the communication; or

(B) Information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, and that information is material to the creation, production, or distribution of the communication.

(5) *Former employee or independent contractor.* Both of the following statements in paragraph (d)(5)(i) and (d)(5)(ii) of this section are true:

(i) The communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, during the current election cycle; and

(ii) That former employee or independent contractor uses or conveys to the person paying for the communication:

(A) Information about the clearly identified candidate's campaign plans, projects, activities, or needs, or his or her opponent's campaign plans, projects, activities, or needs, or a political party committee's campaign plans, projects, activities, or needs, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, and that information is material to the creation, production, or distribution of the communication.

(6) *Dissemination, distribution, or republication of campaign material.* A communication that satisfies the content standard of paragraph (c)(2) of this section or 11 CFR 109.37(a)(2)(i) shall only satisfy the conduct standards of paragraphs (d)(1) through (d)(3) of this section on the basis of conduct by the candidate, the candidate's authorized committee, or the agents of any of the foregoing, that occurs after the original preparation of the campaign materials that are disseminated, distributed, or republished. The conduct standards of paragraphs (d)(4) and (d)(5) of this section may also apply to such communications as provided in those paragraphs.

(e) *Agreement or formal collaboration.* Agreement or formal collaboration between the person paying for the communication and the candidate clearly identified in the communication, his or her authorized committee, his or her opponent, or the opponent's authorized committee, a political party committee, or an agent of any of the foregoing, is not required for a

communication to be a coordinated communication. *Agreement* means a mutual understanding or meeting of the minds on all or any part of the material aspects of the communication or its dissemination. *Formal collaboration* means planned, or systematically organized, work on the communication.

(f) *Safe harbor for responses to inquiries about legislative or policy issues.* A candidate's or a political party committee's response to an inquiry about that candidate's or political party committee's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in paragraph (d) of this section.

§ 109.22 Who is prohibited from making coordinated communications?

Any person who is otherwise prohibited from making contributions or expenditures under any part of the Act or Commission regulations is prohibited from paying for a coordinated communication.

§ 109.23 Dissemination, distribution, or republication of candidate campaign materials

(a) *General rule.* The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.

(b) *Exceptions.* The following uses of campaign materials do not constitute a contribution to the candidate who originally prepared the materials:

(1) The campaign material is disseminated, distributed, or republished by the candidate, the candidate's authorized committee, or an agent of either of the foregoing who prepared that material;

(2) The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material;

(3) The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial exempted under 11 CFR 100.73 or 11 CFR 100.132;

(4) The campaign material used consists of a brief quote of materials that demonstrate a candidate's position as part of a person's expression of its own views; or

(5) A national political party committee or a State or subordinate political party committee pays for such dissemination, distribution, or republication of campaign materials using coordinated party expenditure authority under 11 CFR 109.32.

Subpart D—Special Provisions for Political Party Committees

§ 109.30 How are political party committees treated for purposes of coordinated and independent expenditures?

Political party committees may make independent expenditures subject to the provisions in this subpart. See 11 CFR 109.35 and 109.36. Political party committees may also make coordinated party expenditures in connection with the general election campaign of a candidate, subject to the limits and other provisions in this subpart. See 11 CFR 109.32 through 11 CFR 109.35.

§ 109.31 [Reserved]

§ 109.32 What are the coordinated party expenditure limits?

(a) *Coordinated party expenditures in Presidential elections.*

(1) The national committee of a political party may make coordinated party expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party.

(2) The coordinated party expenditures shall not exceed an amount equal to two cents multiplied by the voting age population of the United States. See 11 CFR 110.18. This limitation shall be increased in accordance with 11 CFR 110.17.

(3) Any coordinated party expenditure under paragraph (a) of this section shall be in addition to—

(i) Any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for President of the United States; and

(ii) Any contribution by the national committee to the candidate permissible under 11 CFR 110.1 or 110.2.

(4) Any coordinated party expenditures made by the national committee of a political party pursuant to paragraph (a) of this section, or made by any other party committee under authority assigned by a national committee of a political party under 11 CFR 109.33, on behalf of that party's Presidential candidate shall not count against the candidate's expenditure limitations under 11 CFR 110.8.

(b) *Coordinated party expenditures in other Federal elections.*

(1) The national committee of a political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make coordinated party expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party.

(2) The coordinated party expenditures shall not exceed:

(i) In the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(A) Two cents multiplied by the voting age population of the State (see 11 CFR 110.18); or

(B) Twenty thousand dollars.

(ii) In the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(3) The limitations in paragraph (b)(2) of this section shall be increased in accordance with 11 CFR 110.17.

(4) Any coordinated party expenditure under paragraph (b) of this section shall be in addition to any contribution by a political party committee to the candidate permissible under 11 CFR 110.1 or 110.2.

§ 109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?

(a) *Assignment.* Except as provided in 11 CFR 109.35(c), the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may assign its authority to make coordinated party expenditures authorized by 11 CFR 109.32 to another political party committee. Such an assignment must be made in writing, must state the amount of the authority assigned, and must be received by the assignee committee before any coordinated party expenditure is made pursuant to the assignment.

(b) *Compliance.* For purposes of the coordinated party expenditure limits, *State committee* includes a subordinate committee of a State committee and includes a district or local committee to which coordinated party expenditure authority has been assigned. State committees and subordinate State

committees and such district or local committees combined shall not exceed the coordinated party expenditure limits set forth in 11 CFR 109.32. The State committee shall administer the limitation in one of the following ways:

(1) The State committee shall be responsible for insuring that the coordinated party expenditures of the entire party organization are within the coordinated party expenditure limits, including receiving reports from any subordinate committee of a State committee or district or local committee making coordinated party expenditures under 11 CFR 109.32, and filing consolidated reports showing all coordinated party expenditures in the State with the Commission; or

(2) Any other method, submitted in advance and approved by the Commission, that permits control over coordinated party expenditures.

(c) *Recordkeeping.*

(1) A political party committee that assigns its authority to make coordinated party expenditures under this section must maintain the written assignment for at least three years in accordance with 11 CFR 104.14.

(2) A political party committee that is assigned authority to make coordinated party expenditures under this section must maintain the written assignment for at least three years in accordance with 11 CFR 104.14.

§ 109.34 When may a political party committee make coordinated party expenditures?

A political party committee authorized to make coordinated party expenditures may make such expenditures in connection with the general election campaign before or after its candidate has been nominated. All pre-nomination coordinated party expenditures shall be subject to the coordinated party expenditure limitations of this subpart, whether or not the candidate on whose behalf they are made receives the party's nomination.

§ 109.35 What are the restrictions on a political party committee making both independent expenditures and coordinated party expenditures in connection with the general election of a candidate?

(a) *Applicability.* For the purposes of this section, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

(b) *Restrictions on certain coordinated and independent expenditures.* On or after the date on which a political party nominates a candidate for election to Federal office, no committee of the political party may make:

(1) Any coordinated party expenditure under 11 CFR 109.32 with respect to the candidate during the election cycle at any time after it makes any independent expenditure with respect to the candidate during the election cycle; or

(2) Any independent expenditure with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under 11 CFR 109.32 with respect to the candidate during the election cycle.

(c) *Restrictions on certain transfers and assignments.* A committee of a political party that makes coordinated expenditures under 11 CFR 109.32 with respect to a candidate shall not, during the election cycle, transfer any funds to, assign authority to make coordinated expenditures under 11 CFR 109.32 to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

§ 109.36 Are there additional circumstances under which a political party committee is prohibited from making independent expenditures?

The national committee of a political party must not make independent expenditures in connection with the general election campaign of a candidate for President of the United States if the national committee of that political party is designated as the authorized committee of its Presidential candidate pursuant to 11 CFR 9002.1(c).

§ 109.37 What is a "party coordinated communication"?

(a) *Definition.* A political party communication is coordinated with a candidate, a candidate's authorized committee, or agent of any of the foregoing, when the communication satisfies the conditions set forth in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) The communication is paid for by a political party committee or its agent.

(2) The communication satisfies at least one of the content standards described in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

(i) A public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). For a communication that satisfies this content standard, see 11 CFR 109.21(d)(6).

(ii) A public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(iii) A communication that is a public communication, as defined in 11 CFR 100.26, and about which each of the following statements in paragraphs (a)(2)(iii)(A) through (a)(2)(iii)(C) of this section are true.

(A) The communication refers to a clearly identified candidate for Federal office;

(B) The public communication is publicly distributed or otherwise publicly disseminated 120 days or fewer before a general, special, or runoff election, or 120 days or fewer before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate; and

(C) The public communication is directed to voters in the jurisdiction of the clearly identified candidate.

(3) The communication satisfies at least one of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e). A candidate's response to an inquiry about that candidate's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6). Notwithstanding paragraph (b)(1) of this section, the candidate with whom a party coordinated communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure, that results from conduct described in 11 CFR 109.21(d)(4) or (d)(5), unless the candidate, authorized committee, or an agent of any of the foregoing, engages in conduct described in 11 CFR 109.21(d)(1) through (d)(3).

(b) *Treatment of a party coordinated communication.* A payment by a political party committee for a communication that is coordinated with a candidate, and that is not otherwise exempted under 11 CFR part 100, subpart C or E, must be treated by the political party committee making the payment as either:

(1) An in-kind contribution for the purpose of influencing a Federal election under 11 CFR 100.52(d) to the candidate with whom it was coordinated, which must be reported under 11 CFR part 104; or

(2) A coordinated party expenditure pursuant to coordinated party expenditure authority under 11 CFR 109.32 in connection with the general election campaign of the candidate with whom it was coordinated, which must be reported under 11 CFR part 104.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

7. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

8. In section 110.1, paragraph (d) is revised and paragraph (n) is added to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees.

* * * * *

(d) *Contributions to other political committees.* No person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

* * * * *

(n) *Contributions to committees making independent expenditures.* The limitations on contributions of this section also apply to contributions made to political committees making independent expenditures under 11 CFR Part 109.

9. In section 110.2, paragraph (d) is revised and paragraph (k) is added to read as follows:

§ 110.2 Contributions by multicandidate political committees.

* * * * *

(d) *Contributions to other political committees.* No multicandidate political committee shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

* * * * *

(k) *Contributions to multicandidate political committees making independent expenditures.* The limitations on contributions of this section also apply to contributions made to multicandidate political committees making independent expenditures under 11 CFR Part 109.

§ 110.7 [Reserved].

10. Remove and reserve § 110.7.

11. In section 110.8, paragraph (a) is amended as follows:

(a) Paragraph (a)(1) is redesignated as paragraph (a)(1)(i);

(b) The introductory text is redesignated as paragraph (a)(1);

(c) Paragraph (a)(2) is redesignated as paragraph (a)(1)(ii);

(d) Paragraph (a)(2) is revised; and

(e) A paragraph (a)(3) is added.

The revised text reads as follows:

§ 110.8 Presidential candidate expenditure limitations.

(a) * * *

(2) The expenditure limitations in paragraph (a)(1) of this section shall be increased in accordance with 11 CFR 110.17.

(3) Voting age population is defined at 11 CFR 110.18.

* * * * *

12. Section 110.14 is amended as follows:

(a) Paragraph (f)(2)(i) intro text is revised;

(b) Paragraph (f)(2)(ii) intro text is revised;

(c) Paragraph (f)(3)(iii) is revised;

(d) Paragraph (i)(2)(i) intro text is revised;

(e) Paragraph (i)(2)(ii) is revised;

(f) Paragraph (i)(3)(iii) is revised.

The revised text reads as follows:

§ 110.14 Contributions to and expenditures by delegates and delegate committees.

(f) * * *

(2) * * *

(i) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

* * * * *

(B) The delegate shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.10.

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated communications under 11 CFR 109.21.

* * * * *

(i) *Expenditures by a delegate committee referring to a candidate for public office*—* * *

(2) * * *

(i) Such expenditures are in-kind contributions to a Federal candidate if they are coordinated communications under 11 CFR 109.21.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR 100.16 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated communication under 11 CFR 109.21.

(A) Such independent expenditures must be made in accordance with the requirements of 11 CFR part 100.16.

(B) The delegate committee shall report the portion of the expenditure allocable to the Federal candidate as an independent expenditure in accordance with 11 CFR 109.10.

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated communications under 11 CFR 109.21.

* * * * *

13. Section 110.18 is added to read as follows:

§ 110.18 Voting Age Population.

There is annually published by the Department of Commerce in the **Federal Register** an estimate of the voting age population based on an estimate of the voting age population of the United States, of each State, and of each Congressional district. The term *voting age population* means resident population, 18 years of age or older.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

14. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8), and 441b.

15. In section 114.4, paragraphs (c)(5)(i) and (c)(5)(ii)(A) are revised to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

* * * * *

(c) *Communications by a corporation or labor organization to the general public.* * * *

(5) *Voter guides.* * * *

(i) The corporation or labor organization must not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the

preparation, contents and distribution of the voter guide, and no portion of the voter guide may expressly advocate the election or defeat of one or more clearly identified candidate(s) or candidates of any clearly identified political party.

(ii) (A) The corporation or labor organization must not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide;

* * * * *

Dated: December 17, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 03–90 Filed 1–2–03; 8:45 am]

BILLING CODE 6715–01–P

Reader Aids

Federal Register

Vol. 68, No. 2

Friday, January 3, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–254 2
255–458 3

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

7 CFR

Proposed Rules:
300 69

8 CFR

Proposed Rules:
217 292
231 292
251 292

11 CFR

100 ..... 404, 421
102 421
104 404
105 404
108 404
109 ..... 404, 421
110 421
114 421

14 CFR

23 ..... 1, 3
25 255
39 ..... 5, 10, 14, 16, 18, 23, 25, 27, 28, 31, 35, 257
61 39
71 ..... 43, 44, 259, 260, 261, 262, 263
97 264

Proposed Rules:
39 ..... 71, 302, 305, 308, 311, 315, 317, 320, 322, 324
71 328

15 CFR

902 204

17 CFR

230 188
240 188
420 402

Proposed Rules:
210 160
239 160
249 160
270 160
274 160

18 CFR

Ch. 1 45
260 266
357 266
385 266

30 CFR

250 45

39 CFR

3001 46

40 CFR

62 ..... 48, 50, 52, 53
82 238
180 ..... 269, 274, 283

Proposed Rules:
62 ..... 76, 77
63 ..... 77, 78, 329
281 329

41 CFR

Ch. 301 196

48 CFR

904 55
952 55
970 55

49 CFR

192 56
195 56
219 57

50 CFR

648 ..... 57, 60

Proposed Rules:
17 331

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 JANUARY 3, 2003

COMMERCE DEPARTMENT
Census Bureau
Special services and studies:
Geographically updated population certification program; published 12-4-02

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
Upstream interstate pipelines; firm capacity assignment; regulations removed; published 12-4-02

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Lambda-cyhalothrin; published 1-3-03
Mesotrione; published 1-3-03
S-metolachlor; published 1-3-03

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Official seals; published 12-4-02

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; published 11-29-02
Standard instrument approach procedures; published 1-3-03

COMMENTS DUE NEXT WEEK

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
Administrative investigations; transcripts of witness testimony; comments due by 1-8-03; published 12-9-02 [FR 02-30981]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic tunas, swordfish, and sharks, and Atlantic billfish; exempted fishing activities; comments due by 1-6-03; published 12-6-02 [FR 02-30874]
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permit applications; comments due by 1-6-03; published 12-20-02 [FR 02-32147]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Elimination of SF 129, solicitation mailing list application; comments due by 1-6-03; published 11-6-02 [FR 02-28205]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Residential and small-duct high-velocity central air conditioners and heat pumps; workshop; comments due by 1-8-03; published 10-28-02 [FR 02-27332]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Undue discrimination; remedying through open access transmission service and standard electricity market design
Merchant transmission provider obligation to expand facilities; comments due by 1-10-03; published 12-11-02 [FR 02-31145]
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practice standards; comments due by 1-8-03; published 12-9-02 [FR 02-30996]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Tier 2 motor vehicle emission standards and gasoline sulfur control requirements; amendments; comments due by 1-6-03; published 12-6-02 [FR 02-30842]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Tier 2 motor vehicle emission standards and gasoline sulfur control requirements; amendments; comments due by 1-6-03; published 12-6-02 [FR 02-30843]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Virgin Islands; comments due by 1-10-03; published 12-11-02 [FR 02-31237]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Virgin Islands; comments due by 1-10-03; published 12-11-02 [FR 02-31238]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 1-8-03; published 12-9-02 [FR 02-30940]
Indiana; comments due by 1-8-03; published 12-9-02 [FR 02-30938]
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 1-8-03; published 12-9-02 [FR 02-30838]

FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; comments due by 1-8-03; published 10-31-02 [FR 02-27642]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Elimination of SF 129, solicitation mailing list application; comments due by 1-6-03; published 11-6-02 [FR 02-28205]

INTERIOR DEPARTMENT
Indian Affairs Bureau
No Child Left Behind Act; implementation:
Negotiated rulemaking committee, intent to form; tribal representatives; comments due by 1-9-03; published 12-10-02 [FR 02-31121]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Mariana fruit bat, etc., from Guam and Northern Mariana Islands; comments due by 1-6-03; published 12-5-02 [FR 02-30802]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Elimination of SF 129, solicitation mailing list application; comments due by 1-6-03; published 11-6-02 [FR 02-28205]

TRANSPORTATION DEPARTMENT
Coast Guard
Pollution:
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions; comments due by 1-9-03; published 10-11-02 [FR 02-25462]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; comments due by 1-6-03; published 11-6-02 [FR 02-27792]
Bell Helicopter Textron Canada; comments due by 1-6-03; published 11-6-02 [FR 02-27791]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 1-6-03; published 11-6-02 [FR 02-28111]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Dornier; comments due by 1-9-03; published 12-10-02 [FR 02-31135]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; comments due by 1-6-03; published 11-6-02 [FR 02-27790]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Lindstrand Balloons Ltd.; comments due by 1-10-03; published 12-4-02 [FR 02-30778]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 1-10-03; published 1-3-03 [FR 03-00065]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 1-10-03; published 1-3-03 [FR 03-00069]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Multifunctional school activity bus; definition; comments due by 1-6-03; published 11-5-02 [FR 02-27996]

TREASURY DEPARTMENT
Acquisition regulations:
Revision; comments due by 1-10-03; published 12-11-02 [FR 02-31116]

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the second session of the 107th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the second session of the 107th Congress will appear in the issue of January 31, 2003.
Last List December 24, 2002

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: PENS will resume service when bills are enacted into law during the next session of Congress. This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                   /
                                DEC97 R 1
AFR SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                   /
                                DEC97 R 1
AFRDO SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature

10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

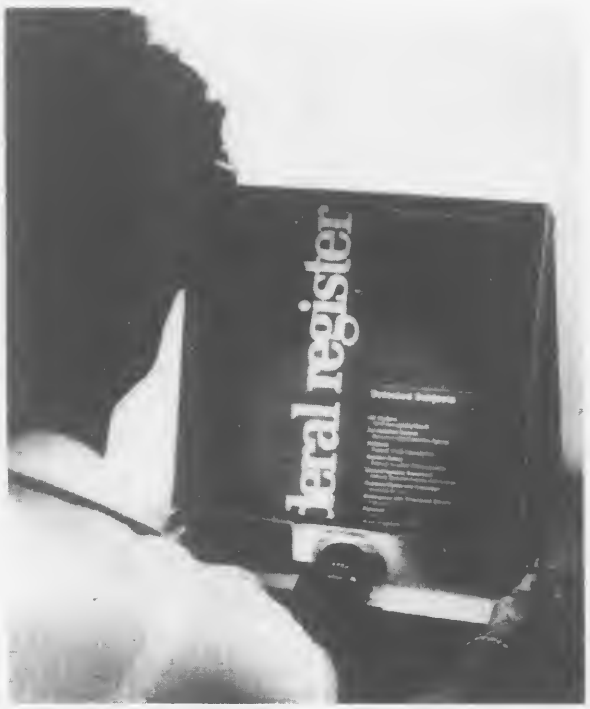
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

107th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 107th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 107th Congress for $225 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 5/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper