6–10–03 Tuesday
Vol. 68 No. 111 June 10, 2003

Pages 34517–34774

Federal Register

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–084–2]

Removal of Cold Treatment Requirement for Ya Pears Imported From Hebei Province in China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China. The cold treatment requirement had been imposed to ensure that Ya pears did not introduce the Oriental fruit fly into the United States. The People's Republic of China has submitted data indicating that no Oriental fruit flies have been found in Hebei Province since the beginning of 1997 and has requested that we remove the cold treatment requirement. This action will remove a restriction that no longer appears necessary.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

On December 20, 2002, we published in the **Federal Register** (67 FR 77940–77942, Docket No. 02–084–1) a proposal to amend the regulations in § 319.56–2ee by removing the requirement that Ya pears imported from Hebei Province in the People's Republic of China be cold treated for Oriental fruit fly. We proposed to remove this requirement because fruit fly trapping data submitted in March 2000 by the People's Republic of China showed no occurrence of Oriental fruit fly in Hebei Province for 1997 through 1999. Further data have continued to indicate that Oriental fruit fly is not present in Hebei Province. In addition, the cool climate of Hebei Province, which is comparable to that of Pennsylvania in the United States, does not favor the development of Oriental fruit fly. We proposed to leave the other safeguards required by § 319.56–2ee for Ya pears from Hebei Province in place, as they help to prevent against the introduction of other plant pests.

We solicited comments concerning our proposal for 60 days ending February 18, 2003. We received four comments by that date. They were from a private citizen, an industry advocacy group, and representatives of State and foreign governments. The issues raised by the commenters are discussed below.

One commenter opposed the proposed rule on the grounds that it would increase the risk of a fruit fly outbreak in the United States, with potentially devastating effects for U.S. agriculture.

When the Animal and Plant Health Inspection Service (APHIS) originally allowed the importation of Ya pears from China, we required that the pears be cold treated because we had no information indicating that Oriental fruit fly was not present in Hebei and Shandong Provinces. As stated above, we now have data submitted by the People's Republic of China that indicates that Oriental fruit fly is not present in Hebei Province; in addition, climatic conditions there do not favor its establishment. (**Note:** In the proposed rule and in the regulations in § 319.56–2ee, we incorrectly refer to Shandong Province as ''Shadong Province.'' This rule corrects that error in the regulations, and we refer to the province by its correct name throughout this document.)

In order to require cold treatment for Ya pears imported into the United States from Hebei Province, we would have to have scientific evidence indicating that Oriental fruit fly is present in Hebei Province and that importing Ya pears from Hebei Province would pose a risk of introducing Oriental fruit fly into the United States. The available scientific evidence, to the contrary, indicates that the cold treatment requirement for Ya pears imported from the Hebei Province in China is no longer necessary. We cannot require treatment based on a purely theoretical risk of pest introduction. Therefore, we are removing the requirement that Ya pears imported into the United States from Hebei Province be cold treated, and we are making no changes in response to this comment.

One commenter supported the proposed rule on the condition that the People's Republic of China maintain an Oriental fruit fly detection program in Hebei Province and submit annual reports to APHIS affirming that fruit fly continues not to be present in Hebei Province. Furthermore, this commenter asserted, if Oriental fruit fly is ever detected in Hebei Province, APHIS should immediately reinstate the cold treatment requirement.

The People's Republic of China will continue trapping and surveying for Oriental fruit fly and for other fruit flies and quarantine pests in Hebei Province after this final rule becomes effective. We will not, however, require that China submit the trapping and surveying data to us. Climatic conditions do not favor the establishment of Oriental fruit fly in Hebei Province, and we have no reason to suspect that Oriental fruit fly will become established there. Nevertheless, if trapping data were to indicate in the future that a quarantine pest such as Oriental fruit fly is present in Hebei Province, the national plant protection organization of China would notify APHIS immediately, fulfilling its obligation to do so under trade agreements for agricultural products. Thus, any requirement that the People's Republic of China continue submitting trapping data would, in practice, only mandate repeated submissions of negative data. Since we already have data sufficient to prove that Oriental fruit fly does not exist in Hebei Province, we do not believe further submissions of negative data are necessary.

In the event that Oriental fruit fly is detected in Hebei Province after this final rule becomes effective, we would take any and all appropriate actions to ensure that this plant pest is not introduced into the United States. Such actions may include, but may not be limited to, the reinstatement of the cold treatment requirement for Ya pears imported from Hebei Province.

One commenter questioned the reliability of the fruit fly trapping data submitted to us by the People's Republic of China. We have examined the data and believe it to be accurate. In the proposed rule, we invited persons interested in reviewing the data to contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We received no comments asserting that any specific aspects of the data appeared unreliable. We are making no changes in response to this comment.

One commenter argued that the recent rise in the quantity of imports of Ya pears from China and the decrease in the price of the imports, as described in the economic analysis in the proposed rule, showed that the cold treatment requirement was not significantly hampering the ability of Chinese producers to export Ya pears to the United States. The commenter also took issue with the statement in the economic analysis that Ya pears are not a substitute for domestically produced pears, on the grounds that all produce items compete for a share of the food dollar of U.S. consumers. This commenter stated that until restrictions on the export of U.S. pears to China are lifted by the Government of the People's Republic of China, APHIS restrictions on the importation of pears from China should remain in place. Another commenter opposed removing the cold treatment requirement on the grounds that the cost of complying with the cold treatment requirement was not particularly onerous.

Cold treatment was required for Ya pears from Hebei Province in China because we had no information indicating that Oriental fruit fly was not present in Hebei Province. Data made available by the People's Republic of China indicate that the Oriental fruit fly is not present in Hebei Province; therefore, this requirement appears to be unnecessary. The purpose of treating imported fruits and vegetables is to mitigate pest risk, not to impose economic barriers on the importation of fruits and vegetables; APHIS has no authority to regulate based on purely economic considerations. We are making no changes in response to these comments.

One commenter supported the proposed rule but argued that we should additionally remove the cold treatment requirement from Ya pears imported from Shandong Province in China. We will consider removing this requirement if the People's Republic of China provides APHIS with data similar to the data submitted for Hebei Province indicating that Oriental fruit fly is not present in Shandong Province. In addition, removing the cold treatment requirement from Ya pears imported from Shandong Province is beyond the scope of the present rulemaking. We are making no changes in response to this comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is warranted to remove a cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China that is no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule removes the cold treatment requirement for Ya pears imported from Hebei Province in the People's Republic of China. This action is based on data from the national plant protection organization of the People's Republic of China indicating that Oriental fruit fly does not occur in Hebei Province and the fact that climatic conditions do not favor the establishment of Oriental fruit fly in Hebei Province.

The rapid growth in Ya pear imports by the United States from China is evident in table 1. Imports increased from about 329,000 kilograms in 1998 to over 6.57 million kilograms in 2001. The estimated cost savings discussed in this analysis are based on the import quantity and value for 2001.

TABLE 1.—YA VARIETY PEAR IMPORTS FROM CHINA

	Quantity (kilograms)	Value (millions of dollars)	Price (dollars per kilogram)
1998	328,818	$0.328	$1.00
1999	2,097,863	2.011	0.96
2000	5,264,099	3.746	0.71
2001	6,573,113	3.559	0.54

Source: World Trade Atlas, based on data from the U.S. Bureau of the Census. Harmonized Tariff Schedule code 080820.

We expect that removing the cold treatment requirement for Ya pears imported from Hebei Province will reduce shipping costs. The magnitude of the reduction will depend on transport costs with and without the cold treatment requirement. While refrigeration costs will still be borne by importers in the absence of the cold treatment requirement, the costs required to maintain, monitor, and report cold treatment temperatures during transport will all be saved.

The cold treatment schedule for Ya pears from China, as specified in the Plant Protection and Quarantine Treatment Manual, is T107–F. The number of days required for cold treatment en route under the schedule—10 to 14 days, depending on the treatment temperature—is less than the number of days it takes to ship Ya pears to the United States from China. No reduction in shipping time, and thus no associated cost savings, is expected to result from the removal of the cold treatment requirement.

A recent analysis of cold treatment requirements for the Mediterranean fruit fly at U.S. ports, used here as a proxy

for cold treatment costs en route, indicated a cost of 50 cents per day per pallet.[1] Most of this expense is the cost of refrigeration. Under this rule, Ya pears from Hebei Province will still be refrigerated while en route to the United States, although not to cold treatment specifications. For this analysis, it is assumed that the savings from not having to meet cold treatment requirements would be 25 cents per day per pallet. This amount probably exceeds the actual savings that will be realized, providing an upper-bound approximation of potential effects.

Assuming that boxing and pallet loading capacities are similar to those of domestic pears, a box of Ya pears would contain about 20 kilograms and a pallet would contain 49 boxes.[2] Assuming further a 14-day cold treatment period, the longest specified in the cold treatment regimen, the cost of cold treatment will be about 36 cents per 100 kilograms, or 0.36 cents per kilogram.[3] As shown in table 1, the average price of Ya pears has steadily fallen since imports began in 1998. Even so, estimated savings from not having to meet cold treatment requirements represent less than 1 percent of the 2001 price of 54 cents per kilogram. In addition, pears from Shandong Province will be unaffected by the proposed change, further dampening the total cost effect in the United States.

Ya pears are not produced in the United States, and Ya pears are not a substitute for domestically produced pears. Thus, this rule is not expected to affect the U.S. domestic pear industry.

Economic Effects on Small Entities

Under the criteria established by the Small Business Administration, fruit importers (North American Industry Classification System code 422480, ''Fresh Fruit and Vegetable Wholesalers'') must have 100 or fewer employees to be considered small entities. At least some U.S. importers of Ya pears from Hebei Province in China may be small entities, but the expected economic effect of no longer needing to meet cold treatment requirements is minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–2ee is amended as follows:

■ a. In paragraph (a)(1), by removing the word ''Shadong'' and adding the word ''Shandong'' in its place.

■ b. By revising paragraphs (b) and (c) to read as set forth below.

§ 319.56–2ee Administrative instructions: Conditions governing the entry of Ya variety pears from China.

* * * * *

(b) *Treatment.* Pears from Shandong Province must be cold treated for *Bactrocera dorsalis* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(c) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of this section have been met.

Done in Washington, DC, this 5th day of June, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–14551 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–34–P

[1] Analysis for APHIS Docket 02–071–1, published in the **Federal Register** on October 15, 2002 (67 FR 63529–63536).

[2] The packing measure used for pears is four-fifths of a bushel, which corresponds to about 42 to 45 pounds. (Kevin Moffett, Pear Bureau, personal communication).

[3] (Twenty-five cents per day per pallet) × (14 days per treatment) = $3.50 per pallet per treatment. (Twenty kilograms per box) × (49 boxes per pallet) = 980 kilograms per pallet. ($3.50) / (980 kilograms) = $0.00357/kg.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 802

Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Direct final rule.

SUMMARY: In accordance with a periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations under the United States Grain Standards Act, as amended, entitled Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems. FGIS is incorporating by reference the applicable requirements of the National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' 2002 edition (Handbook 44 issued November 2001) and continues to adopt all of the requirements of NIST Handbook 105–1, ''Specifications and Tolerances for Reference Standard Weights and Measures,'' 1990 revision (Handbook 105–1). Currently, the 1994 Edition of Handbook 44 and the 1990 edition of Handbook 105–1 are incorporated into Part 802 by reference.

DATES: This rule is effective September 8, 2003 without further action, unless adverse comments or written notice of intent to submit adverse comments are received by July 10, 2003. If adverse comments are received, GIPSA will publish a timely withdrawal of the rule in the **Federal Register**. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 8, 2003.

ADDRESSES: Please send any adverse comments or written notice of intent to submit adverse comments to H. Tess Butler, GIPSA, USDA, 1400

Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or fax to (202) 690–2755. Comments may also be sent by e-mail to: *comments.gipsa@usda.gov.* All comments received will be made available for public inspection at the above address during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his e-mail address: *david.m.orr@usda.gov,* or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it has been determined that this rule will not have a significant economic impact on a substantial number of small entities. GIPSA has determined that most users of the official weighing service and those entities that perform these services do not meet the requirements for small entities. This rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates approximately 9,500 off-farm storage facilities and 57 export elevators in the United States could receive official weighing services by GIPSA, delegated States, or designated agencies. GIPSA also estimates this rule affects 18 scale manufacturing and 39 scale service companies who provide weighing equipment and service to these elevators and storage facilities. Twelve GIPSA field offices, 2 Federal/State offices, 7 GIPSA suboffices, 7 delegated States, and 11 designated agencies provide official weighing service. Under provisions of the Act, it is not mandatory for non-export grain to be officially weighed except for waterborne carriers into export port locations. Further, most users of the official weighing services and those entities that perform these services do not meet the requirements for small entities. Even though some users could be considered small entities, this rule only updates regulatory requirements and makes GIPSA weighing guidelines more like State weights and measures organizations' laws and regulations who automatically adopt Handbook 44 on a yearly basis. Updating these requirements will help manufacturers of weighing equipment and grain elevators avoid making, installing, and maintaining equipment to meet two sets of design and performance requirements for commercial and official weighing to meet old specifications and new. No additional cost or burden is expected to result from this action.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements in Part 802 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

Part 802 of the regulations, Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems (7 CFR 802.0–802.1), sets forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services. This review of the regulations includes a determination of continued need for and consequences of the regulations. An objective of the review is to ensure that the regulations are consistent with FGIS policy and authority and are up-to-date. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, therefore, will incorporate the 2002 edition of Handbook 44 by reference into Part 802 of the regulations, in order to update the regulations, and continues to adopt all of the requirements of NIST Handbook 105–1 ''Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures,'' 1990 edition.

Effective August 18, 1995, FGIS incorporated by reference into Part 802 of the regulations most provisions in NIST Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' 1994 edition (Handbook 44) (60 FR 31907). Those provisions in Handbook 44 that obviously did not pertain to FGIS services were not incorporated by reference. The provisions that were not incorporated are listed in section 802.0(b) of the regulations.

We are publishing this rule without a prior proposal because we regularly update this portion of the regulations and view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 90 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 90 days following its publication.

Direct Final Action

In 1995, FGIS incorporated by reference the 1994 edition of Handbook 44. FGIS will continue to adopt this edition by reference in section 802.0(a) of the regulations.

The 1994 edition of Handbook 44 has been changed annually by NIST as new items are adopted, deleted, or revised by the National Conference on Weights and Measures. Many of these changes were for clarity. Further, most State weights and measures organizations automatically adopt each new edition of Handbook 44 and Handbook 105–1. FGIS will revise section 802.0(a) by incorporating by reference the 2002

edition of Handbook 44 including the following sections:

Section 1.10 General Code
Section 2.20 Scales
Section 2.22 Automatic Bulk Weighing Systems
Section 2.23 Weights

The following table lists those relevant codes and paragraphs, but not definitions, in which amendments and editorial changes were made in 1994 through 2001 by the 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, and 86th National Conference on Weights and Measures (NCWM) as they appeared in the 1995 through 2002 editions of Handbook 44. The column headed ''Action'' indicates changes noted as ''added'', ''amended'', ''deleted'', ''renumbered'', or provides an explanation.

Code	Paragraph	Action
1994 Amendments		
General	G–UR.4.6	Added.
Scales	S.2.5.1	Changed Electronic in title and lead sentence to Digital Indicating to be consistent with other references in code.
1995 Amendments		
General	G–S.6.	Amended.
Scales	S.1.7.	Amended.
Scales	S.2.5.1.	Amended.
Scales	S.5.3.	Amended.
Scales	UR.1. Footnote	Added.
Scales	UR.1.5.	Added.
Scales	Table 7a	Amended.
Scales	S.5.1., S.5.2., S.5.3.	Added paragraph titles.
Scales	Table S.6.3.b.—Note 9	Added missing third line.
1996 Amendments		
Scales	UR.3.2.1., Table UR.3.2.1.	Added.
Scales	S.5.4.	Amended.
Scales	UR.4.3.	Amended.
1997 Amendments		
Scales	Table 3	Amended.
Scales	N.1.3.4. a. & b.	Amended.
Scales	T.N.9.	Amended.
Automatic Bulk Weighing Systems	S.3.3(b)	Added.
Scales	T.N.8.1.2. & Table	Added title of Table T.N.8.1.2. and added reference in paragraph for clarity.
Scales	T.N.9.	Revised Footnote.
1998 Amendments		
Scales	S.2.1.6.	Amended.
Scales	N.1.2.1.	Amended.
Scales	N.1.2.2.	Amended.
Scales	Table 1.1.1., Footnote 3	Added Footnote.
1999 Amendments		
General	G–S.1.	Amended.
Scales	S.1.2.2.1.	Amended.
Scales	S.1.2.2.2.	Amended.
Scales	Table 3	Amended Footnote #1.
Scales	Table S.6.3.a.	Amended.
Scales	Table S.6.3.b.	Amended Note #7.
Scales	Table S.3.6.a. and b.	Added Note 20 & 21.
Scales	S.6.1.	Amended.
Scales	S.6.1.	Amended.
Scales	N.1.3.6.1.	Amended.
Scales	T.N.3.8.	Amended.
Scales	UR.1.3.	Amended.
Scales	S.1.2.2.1., UR.1.3.1., and UR.3.10	Added.
Scales	Table UR.3.2.1.	Amended.
2000 Amendments		
General	G–S.1.	Added new (c). Relettered d, e, and f.
Scales	S.1.4.3.(a)	Amended.
Scales	N.1.3.4.	Amended.
Scales	Tables S.6.3.(a) and (b) Note 1	Amended.

Code	Paragraph	Action
Scales	UR.3.9.	Amended.
2001 Amendments		
General	G–S.1.1. G.S.1.(g) G.S.1.(c)	Added.
Scales	Table S.6.3.a. Table S.6.3.a. S.6.4. N.1.3.4.(a)	Amended Column Headings. Added footnote 1. Amended. Amended.
Automatic Bulk Weighing Systems	U.R.1.1.	Removed ''and enforceable'' for consistency with other nonretroactive statements.

List of Subjects in 7 CFR Part 802

Administrative practice and procedure, Export, Grain, Incorporation by reference, Reporting and recordkeeping requirements.

■ For reasons set out in the preamble, accordingly, 7 CFR part 802 is amended as follows:

PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

■ 1. The authority citation for part 802 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

■ 2. Section 802.0 is revised to read as follows:

§ 802.0 Applicability.

(a) The requirements set forth in this part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services, official inspection services, and commercial services under the Act. All scales used for official grain weight and inspection certification services provided by FGIS shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 2002 edition of National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices'' (Handbook 44); and NIST Handbook 105–1 (1990 Edition), ''Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures,'' (Handbook 105–1). These requirements are confirmed to be met by having National Type Evaluation Program or Federal Grain Inspection Service type approval. Scales used for commercial purposes will be required to meet only the applicable requirements of the 2002 edition of the NIST Handbook 44. Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b) of this section, the materials in Handbooks 44 and 105–1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The NIST Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. They can be downloaded without charge at *http://ts.nist.gov/ts/htdocs/230/235owmhome.htm.* They are also available for inspection at the Office of the Federal Register, 800 North Capital, Street, NW., Suite 700, Washington, DC.

(b) The following Handbook 44 requirements are not incorporated by reference:

Scales (2.20)

S.1.8. Computing Scales
S.1.8.2. Money-Value Computation
S.1.8.3. Customer's Indications
S.1.8.4. Recorded Representations, Point of Sale
S.2.5.2. Jeweler's, Prescription, & Class I & II Scales
S.3.3. Scoop Counterbalance
N.1.3.2. Dairy-Product Test Scales
N.1.5. Discrimination Test (Not adopted for Grain Test Scales only)
N.1.8. Material Tests
N.3.1.2. Interim Approval
N.3.1.3. Enforcement Action For Inaccuracy
N.4. Coupled-in-Motion Railroad Weighing Systems
N.6. Nominal Capacity of Prescription Scales
T.1.2. Postal and Parcel Post Scales
T.2.3. Prescription Scales
T.2.4. Jewelers' Scales (all sections)
T.2.5. Dairy—Product-Test Scales (all sections)
T.N.3.9. Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials
UR.1.4. Grain Test Scales: Value of Scale Divisions
UR.3.1. Recommended Minimum Load
UR.3.1.1. Minimum Load, Grain Dockage

Automatic Bulk Weighing Systems (2.22)

N.1.3. Decreasing-Load Test

Dated: June 4, 2003.

JoAnn Waterfield,

Acting Administrator.

[FR Doc. 03–14553 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30371; Amdt. No. 442]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

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 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment 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 95

Airspace Navigation (air).

Issued in Washington, DC on June 5, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, July 10, 2003.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 442, Effective date, July 10, 2003]

From	To	MEA	MAA
§ 95.5000 High Altitude RNAV Routes			
§ 95.5001 RNAV Route No. Q1 is added to read			
ELMAA, WA FIX #GNSS REQUIRED #DME/DME RNAV NA	POINT REYES, CA VORTAC	#18000	45000
§ 95.5003 RNAV Route No. Q3 is added to read			
FEPOT, WA WP #GNSS REQUIRED #DME/DME RNAV NA	POINT REYES, CA VORTAC	#18000	45000
§ 95.5005 RNAV Route No. Q5 is added to read			
HAROB, WA WP #GNSS REQUIRED #DME/DME RNAV NA	STIKM CA WP	#18000	45000
§ 95.5007 RNAV Route No. Q7 is added to read			
JINMO, WA WP #GNSS REQUIRED #DME/DME RNAV NA	AVENAL, CA VORTAC	#18000	45000
§ 95.5009 RNAV Route No. Q9 is added to read			
SUMMA, WA FIX #GNSS REQUIRED #DME/DME RNAV NA	DERBB, CA FIX	#18000	45000
§ 95.5011 RNAV Route No. Q11 is added to read			
PAAGE, WA WP	LOS ANGELES, CA VORTAC	#18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 442, Effective date, July 10, 2003]

From	To	MEA	MAA
#GNSS REQUIRED #DME/DME RNAV NA			
§ 95.5013 RNAV Route No. Q13 is added to read			
PAWLI, OR WP	LIDAT, NV FIX	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA			
§ 95.5501 RNAV Route No. Q501 is added to read			
SOBME, SD WP	GOPHER, MN VORTAC	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA			
GOPHER, MN VORTAC	VIXIS, CANADA FIX	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA #Excludes the Portion within Canada			
§ 95.5502 RNAV Route No. Q502 is added to read			
SOBME, SD WP	GOPHER, MN VORTAC	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA			
GOPHER, MN VORTAC	KENPA, CANADA FIX	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA #Excludes the Portion within Canada			
§ 95.5504 RNAV Route No. Q504 is added to read			
HEMDI, SD WP	NOTAP, CANADA WP	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA #Excludes the Portion within Canada			
§ 95.5505 RNAV Route No. Q505 is added to read			
HEMDI, SD WP	OMAGA, CANADA FIX	#18000	45000
#GNSS REQUIRED #DME/DME RNAV NA #Excludes the Portion within Canada			

From	To	MEA
§ 95.6001 Victor Routes—U.S. § 95.6003 VOR Federal Airway 3 Is Amended To Read in Part		
Brunswick, GA VORTAC	*Broun, GA FIX	**3,000
*11,000—MRA **2,200—MOCA		
Broun, GA FIX	*Harps, GA FIX	**3,000
*3,800—MRA **2,200—MOCA		
Harps, GA FIX	Keler, GA FIX	*3,000
*2,200—MOCA		
Keler, GA FIX	Savannah, GA VORTAC	*3,000
*1,900—MOCA		
§ 95.6033 VOR Federal Airway 33 is Amended To Read in Part		
Bradford, PA VOR/DME	Vairs, NY FIX	*10,000
*4800—MOCA		
Vairs, NY FIX	Buffalo, NY VOR/DME	*5,000
*4000—MOCA		
§ 95.6037 VOR Federal Airway 37 is Amended To Read in Part		
Brunswick, GA VORTAC	*Broun, GA FIX	**3,000
*11,000—MRA **2,200—MOCA		
Broun, GA FIX	*Harps, GA FIX	**3,000

From	To	MEA
*3,800—MRA **2,200—MOCA		
Harps, GA FIX	Keler, GA FIX	*3,000
*2,200—MOCA		
Keler, GA FIX	Savannah, GA VORTAC	*3,000
*1,900—MOCA		
Savannah, GA VORTAC	Allendale, SC VOR	*4,000
*1,500—MOCA		
§ 95.6154 VOR Federal Airway 154 is Amended To Read in Part		
Ocone, GA FIX	Savannah, GA VORTAC	*3,000
*1,800—MOCA		
§ 95.6185 VOR Federal Airway 185 is Amended To Read in Part		
Savannah, GA VORTAC	*Spong, GA FIX	**3,000
*5,000—MRA **2,200—MOCA		
Spong, GA FIX	Colliers, SC VORTAC	*3,000
*2,200—MOCA		
§ 95.6298 VOR Federal Airway 298 is Amended To Read in Part		
Chang, WY FIX	Gillette, WY VOR/DME	7,200
§ 95.6437 VOR Federal Airway 437 is Amended To Read in Part		
Ormond Beach, FL VORTAC	*Jetso, FL FIX	**3,000
*3,500—MRA **1,300—MOCA		
Jetso, FL FIX	Hotar, FL FIX	*5,000
*1,200—MOCA		
Hotar, FL FIX	Stary, GA FIX	*8,000
*1,200—MOCA		
Stary, GA FIX	Savannah, GA VORTAC	*3,000
*1,900—MOCA		
§ 95.6441 VOR Federal Airway 441 is Amended To Read in Part		
Stary, GA FIX	Savannah, GA VORTAC	*3,000
*1,900—MOCA		
§ 95.6578 VOR Federal Airway 578 is Amended To Read in Part		
Alma, GA VORTAC	Savannah, GA VORTAC	*6,000
*2,600—MOCA		

From	To	MEA	MAA
§ 95.7001 Jet Routes § 95.7002 Jet Route No. 2 Is Amended To Read in Part			
Lake Charles, LA VORTAC	Baton Rouge, LA VORTAC	18,000	45,000
Baton Rouge, LA VORTAC	Semmes, LA VORTAC	18,000	45,000
§ 95.7138 Jet Route No. 138 Is Amended To Read in Part			
Lake Charles, LA VORTAC	Baton Rouge, LA VORTAC	18,000	45,000
Baton Rouge, LA VORTAC	Semmes, LA VORTAC	18,000	45,000
§ 95.7590 Jet Route No. 590 Is Amended To Read in Part			
Lake Charles, LA VORTAC	Baton Rouge, LA VORTAC	18,000	45,000
Baton Rouge, LA VORTAC	Greene County, MS VORTAC	18,000	45,000

Airway Segment		Changeover Points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points Is Amended To Delete Changeover Point V–437			
Ormond Beach FL, VORTAC	Savannah, GA VORTAC	80	Ormond Beach.

[FR Doc. 03–14586 Filed 6–9–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 745, and 774

[Docket No. 030523133–3133–01]

RIN 0694–AC70

Implementation of the Understandings Reached at the June 2002 Australia Group (AG) Plenary Meeting and the AG Intersessional Decision on Cross Flow Filtration Equipment—Chemical and Biological Weapons Controls in the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to describe the understandings reached at the June 2002 plenary meeting of the Australia Group (AG) and to amend the Export Administration Regulations (EAR), as needed, to implement these AG understandings. This final rule amends the licensing policy provisions in the EAR that apply to exports and reexports of items on the AG control list by clarifying several factors that are among those used to evaluate license applications for these AG-listed items and by identifying additional factors not previously listed in the EAR. In addition, this rule clarifies the circumstances under which BIS would deny license applications to export or reexport these AG-listed items. All of these changes are intended to ensure that the EAR provisions that apply to AG-listed items are consistent with the ''Guidelines for Transfers of Sensitive Chemical or Biological Items,'' which were adopted at the June 2002 AG plenary meeting.

This rule also implements understandings reached at the June 2002 plenary meeting concerning AG controls on fermenters and toxins. The control threshold for AG-listed fermenters described on the Commerce Control List (CCL) is lowered from a capacity of 100 liters or greater to a capacity of 20 liters or greater. In addition, this rule adds eight new toxins to the list of AG-listed human and zoonotic pathogens and toxins described on the CCL.

In addition to the AG plenary meeting changes described above, this rule implements an AG intersessional decision concerning cross (tangential) flow filtration equipment.

The rule makes corrections in four CCL entries that contain AG-listed items. One entry, containing AG-listed genetic elements and genetically modified organisms, is amended to correct errors in the use of the terms ''organism'' and ''microorganism.'' Another entry, containing AG-listed chemical manufacturing facilities and equipment, is amended to clarify the scope of that entry's controls on certain valves containing nickel and nickel alloys and on agitators for use in reaction vessels or reactors. Two other CCL entries are amended to clarify the license requirements that apply to technology for the ''development'' or ''production'' of AG-listed valves containing nickel and nickel alloys. In addition, the rule amends the AG-based licensing provisions in the EAR to identify certain CCL entries that were inadvertently omitted when BIS amended these provisions on previous occasions.

Finally, this rule updates the list of countries that are currently States Parties to the Chemical Weapons Convention (CWC) by adding six countries that recently became States Parties: Andorra, Guatemala, Palau, Saint Vincent and the Grenadines, Samoa, and Thailand.

DATES: This rule is effective June 10, 2003.

ADDRESSES: Written comments should be sent to Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–7900.

SUPPLEMENTARY INFORMATION:

Background

A. Revisions to the EAR Based on the June 2002 Plenary Meeting of the Australia Group

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement understandings reached at the annual plenary meeting of the Australia Group (AG) that was held in Paris on June 3–6, 2002. The Australia Group is a multilateral forum, consisting of 33 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

This rule implements two understandings reached at the June 2002 plenary meeting concerning AG controls on fermenters and toxins. The control threshold for AG-listed fermenters, described in ECCN 2B352.b on the Commerce Control List (CCL), is lowered from a capacity (*i.e.*, volume) of 100 liters or greater to a capacity of 20 liters or greater. In addition, this rule adds the following eight toxins to the list of AG-listed toxins described in ECCN 1C351.d on the CCL: (1) abrin, (2) cholera toxin, (3) diacetoxyscirpenol toxin, (4) T–2 toxin, (5) HT–2 toxin, (6) modeccin toxin, (7) volkensin toxin, and (8) viscum album lectin 1 (viscumin). These AG-listed toxins, along with all other items controlled by ECCN 1C351, require a license for export or reexport to all destinations, worldwide.

This rule makes conforming changes to the List of Items Controlled in ECCN 1C991 by revising ECCN 1C991.d to include medical products containing any of the eight toxins that were added to ECCN 1C351.d by this rule. In addition, this rule revises the Related Definitions paragraph in the List of Items Controlled by ECCN 1C991 by adding the AG definition of ''vaccine,'' which was adopted at the June 2002 AG plenary meeting. For the purpose of ECCN 1C991, ''vaccine'' is defined as a medicinal (or veterinary) product in a pharmaceutical formulation, approved by the U.S. Food and Drug Administration or the U.S. Department of Agriculture to be marketed as a medical (or veterinary) product or for use in clinical trials, that is intended to stimulate a protective immunological response in humans or animals in order to prevent disease in those to whom or to which it is administered. ECCN 1C991.a is revised to conform with the AG definition of ''vaccine'' by clarifying the control language to indicate that 1C991.a controls vaccines against items controlled by ECCN 1C351, 1C352, 1C353, or 1C354.

This final rule also amends the EAR to ensure that the licensing policy provisions in the EAR that apply to AG-listed items are consistent with the ''Guidelines for Transfers of Sensitive Chemical or Biological Items,'' which were adopted by the AG at the June 2002 plenary meeting. Specifically, this rule amends section 742.2(b)(2) of the EAR by clarifying several factors that are among those used to evaluate license applications to export or reexport these AG-listed items and by identifying

additional factors not previously listed in the EAR. The additional licensing factors that are now identified in the EAR include: (1) The reliability of the parties to the transaction (including previous licensing history, information on any clandestine or illegal procurement activities, and the end-user's ability to securely handle and store the items to be exported); (2) relevant information about proliferation and terrorism activities (including those involving any parties to the transaction); (3) the risk of diversion of the items; and (4) the applicability of other multilateral export control or nonproliferation agreements (*e.g.*, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention) to the transaction.

In addition, this rule clarifies the circumstances under which BIS would deny license applications to export or reexport AG-listed chemical and biological items. Specifically, this rule amends section 742.2(b)(1) of the EAR to show that where an export is intended to be used in a chemical weapons or biological weapons program, or for chemical or biological weapons terrorism purposes, it is deemed to make a material contribution to the design, development production, stockpiling, or use of chemical or biological weapons. Note that certain AG-listed chemicals also are controlled for Chemical Weapons Convention (CW) reasons and, therefore, are subject to the licensing requirements and policies described in section 742.18 of the EAR, as well as those in section 742.2 of the EAR.

B. Additional Understandings Reached at the June 2002 Plenary Meeting of the Australia Group That Conform With Existing Provisions in the EAR

Certain understandings reached at the June 2002 plenary meeting of the Australia Group (AG) do not require any regulatory action by the BIS, because they are adequately addressed by existing provisions in the EAR. These understandings are important because they represent a significant step by AG participating countries to further harmonize controls on AG-listed items and related technology.

Participating countries in the AG reached an understanding, at the June 2002 plenary meeting, to control transfers of technology for the ''development'' or ''production'' of AG-listed dual-use biological equipment. Since this technology currently is controlled by the EAR under ECCNs 2E001 and 2E002, this rule makes no changes in existing EAR controls on such technology.

The AG participating countries also agreed, for the first time, to establish AG controls on the intangible transfer of information and knowledge that could be used for chemical or biological weapons purposes. The transfer of such information and knowledge currently is defined in the EAR as ''technical assistance,'' which may take such forms as instruction, skills, training, working knowledge, and consulting services and may involve the transfer of ''technical data'' (''technical assistance'' is described in the note that follows the definition of ''technology'' in section 772.1 of the EAR). Since the EAR currently define ''technology'' (*e.g.*, technology for AG-listed items) to include ''technical data'' or ''technical assistance,'' this rule makes no changes in existing EAR controls that apply to the provision of ''technical assistance.''

Finally, the AG participating countries agreed to expand the license requirement for exports of AG-listed biological agents to apply to all destinations, with an exception for intra-European Union (EU) trade. In accordance with section 742.2(a)(1) of the EAR, these AG-listed biological agents currently are controlled under ECCNs 1C351, 1C352, 1C353, and 1C354 on the CCL and require a license, for CB (chemical/biological) reasons, to all of the destinations indicated under CB Column 1 in the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR), *i.e.*, all destinations, worldwide. Since the EAR currently have a worldwide licensing requirement for these biological agents, this rule makes no changes in the existing EAR licensing provisions for these agents. In addition, please note that the EAR continue to require a license for reexports of U.S.-origin AG-listed biological agents to all destinations, including reexports among EU member countries.

C. Revisions to the EAR Based on an Intersessional Decision by the Australia Group

BIS is amending the EAR to implement an intersessional decision by the AG that was made prior to the June 2002 plenary meeting. Specifically, this rule revises AG controls on cross (tangential) flow filtration equipment by amending ECCN 2B352.d to lower the control threshold for such equipment from a total filtration area equal to or greater than 5 square meters (5 m^2) to a total filtration area equal to or greater than 1 square meter (1 m^2). In addition, this rule revises 2B352.d to indicate that the ECCN controls not only cross (tangential) flow filtration equipment capable of in-situ sterilization, but also such equipment capable of being disinfected in-situ. A technical note is added to 2B352.d to define the terms ''sterilized'' and ''disinfected'' and to demonstrate how the processes of ''disinfection'' and ''sterilization'' are distinct from the process of ''sanitization.'' This rule also adds a *nota bene* (*i.e.*, N.B.) to 2B352.d that excludes reverse osmosis equipment, as specified by the manufacturer, from control under this ECCN.

In addition, this rule amends 2B352.d to control cross (tangential) flow filtration components that: (1) have a filtration area equal to or greater than 0.2 square meters (0.2 m^2) for each component and (2) are designed for use with the cross (tangential) flow filtration equipment described in 2B352.d.

D. Corrections to ECCN 1C353 (Genetic Elements and Genetically Modified Organisms) and ECCN 2B350 (Chemical Manufacturing Facilities and Equipment).

This rule amends the heading and the List of Items Controlled in ECCN 1C353 to correct errors in the use of the terms ''organism'' and ''microorganism.'' The revisions to this ECCN that were made in a final rule published by BIS on May 31, 2002 (67 FR 37977) incorrectly used the term ''organisms'' in 1C353.a.1 and .b.1 when referring to ''microorganisms'' controlled by 1C351.a. to .c. In addition, that rule did not revise the heading of the ECCN to include the term genetically modified ''organisms.'' This rule corrects these errors.

In addition, this rule amends the heading in ECCN 2B350 to indicate that this entry does not control valves described in ECCN 2A292. BIS published a rule, on August 29, 2002 (67 FR 55594), that revised the heading of ECCN 2B350 to exclude valves controlled by ECCN 2A226; however, an exclusion for valves controlled by ECCN 2A292 was unintentionally omitted. This rule corrects that omission. Valves controlled by ECCN 2A226 or ECCN 2A292, which also meet or exceed the technical parameters described in ECCN 2B350.g, continue to be subject to CB controls (as well as NP and AT controls) even though they are not controlled under ECCN 2B350.

This rule also amends the List of Items Controlled in ECCN 2B350 to clarify that 2B350.b controls only those agitators that are for use in reaction vessels or reactors described in 2B350.a.

E. Corrections to § 742.2 (Proliferation of Chemical and Biological Weapons) and ECCNs 2E001 and 2E002

This rule revises § 742.2(a)(3) of the EAR, which identifies ECCNs

containing items that require a license to Country Group D:3 destinations for CB reasons, to include a reference to medical products controlled by ECCN 1C991.d. A reference to these medical products was inadvertently omitted in previous rulemakings. ECCN 1C991.d controls medical products containing biological toxins controlled by ECCN 1C351.d.2 through .d.19, except biological toxins controlled for CW reasons under 1C351.d.5 or .d.6.

This rule also revises § 742.2(a)(3) of the EAR and ECCNs 2E001 and 2E002 to clarify the control status of technology for valves described in ECCN 2A226 or 2A292 that also possess the characteristics of valves described in ECCN 2B350.g. The control status of the valves, themselves, was first clarified in a final rule published by BIS on August 29, 2002 (67 FR 55594) and is further clarified in this rule (*see* the changes to the heading of ECCN 2B350, as described in part D, Background, in the **SUPPLEMENTARY INFORMATION** section of this rule). First, this rule revises § 742.2(a)(3) to clarify that ''development'' and ''production'' technology for valves controlled by ECCN 2A226 or 2A292 for CB reasons (*i.e.*, valves in 2A226 or 2A292 that also possess the characteristics of valves described in ECCN 2B350.g) is controlled under ECCNs 2E001 (''development'' technology) and 2E002 (''production'' technology) and requires a license to Country Group D:3 destinations for CB reasons—note that this technology also requires a license to certain destinations for NP and AT reasons. *Second,* this rule revises § 742.2(a)(3) to indicate that ''use'' technology for valves controlled by ECCN 2A226 or 2A292 for CB reasons is controlled under ECCNs 2E201 and 2E290, respectively, and requires a license to Country Group D:3 destinations for CB reasons—note that this technology also requires a license to certain destinations for NP and AT reasons. *Third,* this rule revises the License Requirements sections of ECCNs 2E001 and 2E002 on the CCL to indicate that CB controls apply to technology in these ECCNs for the ''development'' or ''production,'' respectively, of valves controlled for CB reasons under ECCN 2A226 or 2A292.

F. Clarifications to ECCNs 1C351 and 1C991

This rule revises the heading of ECCN 1C351 to clarify that this entry controls certain zoonotic pathogens and toxins that are the causative organisms for a number of zoonoses (*i.e.*, diseases of animals that may be transmitted to humans under natural conditions). In addition, this rule revises ECCN 1C991.d to clarify that it does not control medical products containing botulinum toxins described in ECCN 1C351.d.1. Medical products containing 1C351.d.1 toxins are controlled by 1C991.c for anti-terrorism (AT) reasons only, while the medical products in 1C991.d are controlled for both CB and AT reasons.

G. Changes to the EAR Based on the Addition of New States Parties to the Chemical Weapons Convention (CWC)

This rule revises Supplement No. 2 to part 745 of the EAR (titled ''States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction'') by adding the names of six countries that have recently become States Parties to the CWC (*i.e.*, Andorra, Guatemala, Palau, Saint Vincent and the Grenadines, Samoa, and Thailand).

Savings Clause

Shipments of items removed from license exception eligibility or NLR authorization as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on June 10, 2003, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or NLR authorization provisions so long as they have been exported from the United States before July 10, 2003. Any such items not actually exported before midnight, on July 10, 2003, require a license in accordance with this regulation.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This rule contains collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694–0088 and 0694–0117.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

List of Subjects

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 742, 745, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; sec. 901–911, Pub. L. 106–387; sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 2. Section 742.2 is amended by revising paragraphs (a)(3) and (b) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

(a) * * *

(3) If CB Column 3 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to Country Group D:3 (*see* Supplement No. 1 to part 740 of the EAR) for the following:

(i) Equipment and materials identified in ECCN 2B350 or 2B351 on the CCL, and valves controlled by ECCN 2A226 or ECCN 2A292 having the characteristics of those described in 2B350.g, which can be used in the production of chemical weapons precursors or chemical warfare agents;

(ii) Equipment and materials identified in ECCN 2B352, which can be used in the production of biological agents;

(iii) Medical products identified in ECCN 1C991.d;

(iv) Technology identified in ECCN 2E001, 2E002, or 2E301 for:

(A) The development, production, or use of items controlled by ECCN 2B350, 2B351, or 2B352; or

(B) The development or production of valves controlled by ECCN 2A226 or 2A292 having the characteristics of those described in ECCN 2B350.g; and

(v) Technology identified in ECCN 2E201 or 2E290 for the use of valves controlled by ECCN 2A226 or 2A292 having the characteristics of those described in 2B350.g.

* * * * *

(b) *Licensing policy.* (1) License applications for the items described in paragraph (a) of this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling or use of chemical of biological weapons. When an export or reexport is deemed to make such a material contribution, the license will be denied. When an export or reexport is intended to be used in a chemical weapons or biological weapons program, or for chemical or biological weapons terrorism purposes, it is deemed to make a material contribution. The factors listed in paragraph (b)(2) of this section are among those that will be considered to determine what action should be taken on license applications for these items.

(2) The following factors are among those that will be considered to determine what action should be taken on license applications for the items described in paragraph (a) of this section:

(i) The specific nature of the end-use, including the appropriateness of the stated end-use;

(ii) The significance of the export and reexport in terms of its potential contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The nonproliferation credentials of the importing country, including the importing country's chemical and biological capabilities and objectives;

(iv) The risk that the items will be diverted for use in a chemical weapons or biological weapons program, or for chemical weapons or biological weapons terrorism purposes;

(v) The reliability of the parties to the transaction, including whether:

(A) An export or reexport license application involving any such parties has previously been denied;

(B) Any such parties have been engaged in clandestine or illegal procurement activities;

(C) The end-user is capable of securely handling and storing the items to be exported or reexported;

(vi) Relevant information about proliferation and terrorism activities, including activities involving the design, development, production, stockpiling, or use of chemical or biological weapons by any parties to the transaction;

(vii) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case, including any relevant assurances provided by the importing country or the end-user;

(viii) The applicability of other multilateral export control or nonproliferation agreements (*e.g.*, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention) to the transaction; and

(ix) The existence of a pre-existing contract.

(3) BIS will review license applications in accordance with the licensing policy described in paragraph (b)(1) of this section for items not described in paragraph (a) of this section that:

(i) Require a license for reasons other than short supply; *and*

(ii) Could be destined for the design, development, production, stockpiling, or use of chemical or biological weapons, or for a facility engaged in such activities.

* * * * *

PART 745—[AMENDED]

■ 4. The authority citation for 15 CFR part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; notice of November 9, 2000, 65 FR 68063, 3 CFR, 2000 Comp., p. 408.

■ 5. Supplement No. 2 to part 745 is amended by revising the undesignated center heading ''List of States Parties as of May 1, 2002'' to read ''List of States Parties as of April 1, 2003'' and by adding, in alphabetical order, the countries ''Andorra'', ''Guatemala'', ''Palau'', ''Saint Vincent and the Grenadines'', ''Samoa'' and ''Thailand'.

PART 774—[AMENDED]

■ 6. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; sec. 901–911, Pub. L. 106–387; sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins,'' ECCN 1C351 is amended by revising the heading of the ECCN and the List of Items Controlled to read as follows:

1C351 Human and zoonotic pathogens and ''toxins'', as follows (*see* **List of Items Controlled).**

* * * * *

List of Items Controlled

Unit: Value.

Related Controls: Certain forms of ricin and saxitoxin in 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (*see* § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. *see* § 745.1 of the EAR for notification procedures. *see* 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State. All vaccines and ''immunotoxins'' are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.5 and d.6, are excluded

from the scope of this entry. Vaccines, ''immunotoxins'', certain medical products, and diagnostic and food testing kits excluded from the scope of this entry are controlled under ECCN 1C991. For the purposes of this entry, only saxitoxin is controlled under paragraph d.6; other members of the paralytic shellfish poison family (*e.g.* neosaxitoxin) are classified as EAR99.

Related Definitions: 1. For the purposes of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.*, tumor cells) that bear antigens homologous to the antibody. 2. For the purposes of this entry ''subunit'' is defined as a portion of the ''toxin''.

Items:

a. Viruses, as follows:
- a.1. Chikungunya virus;
- a.2. Congo-Crimean haemorrhagic fever virus;
- a.3. Dengue fever virus;
- a.4. Eastern equine encephalitis virus;
- a.5. Ebola virus;
- a.6. Hantaan virus;
- a.7. Japanese encephalitis virus;
- a.8. Junin virus;
- a.9. Lassa fever virus
- a.10. Lymphocytic choriomeningitis virus;
- a.11. Machupo virus;
- a.12. Marburg virus;
- a.13. Monkey pox virus;
- a.14. Rift Valley fever virus;
- a.15. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
- a.16. Variola virus;
- a.17. Venezuelan equine encephalitis virus;
- a.18. Western equine encephalitis virus;
- a.19. White pox; or
- a.20. Yellow fever virus.

b. Rickettsiae, as follows:
- b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);
- b.2. Coxiella burnetii;
- b.3. Rickettsia prowasecki; or
- b.4. Rickettsia rickettsii.

c. Bacteria, as follows:
- c.1. Bacillus anthracis;
- c.2. Brucella abortus;
- c.3. Brucella melitensis;
- c.4. Brucella suis;
- c.5. Burkholderia mallei (Pseudomonas mallei);
- c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);
- c.7. Chlamydia psittaci;
- c.8. Clostridium botulinum;
- c.9. Francisella tularensis;
- c.10. Salmonella typhi;
- c.11. Shigella dysenteriae;
- c.12. Vibrio cholerae; or
- c.13. Yersinia pestis.

d. ''Toxins'', as follows, and ''subunits'' thereof:
- d.1. Botulinum toxins;
- d.2. Clostridium perfringens toxins;
- d.3. Conotoxin;
- d.4. Microcystin (Cyanginosin);
- d.5. Ricin;
- d.6. Saxitoxin;
- d.7. Shiga toxin;
- d.8. Staphylococcus aureus toxins;
- d.9. Tetrodotoxin;
- d.10. Verotoxin;
- d.11. Aflatoxins;
- d.12. Abrin;
- d.13. Cholera toxin;
- d.14. Diacetoxyscirpenol toxin;
- d.15. T–2 toxin;
- d.16. HT–2 toxin;
- d.17. Modeccin toxin;
- d.18. Volkensin toxin; or
- d.19. Viscum Album Lectin 1 (Viscumin).

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins,'' ECCN 1C353 is amended by revising the ECCN heading and the List of Items Controlled to read as follows:

1C353 Genetic elements and genetically modified organisms, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: Vaccines that contain genetic elements or genetically modified organisms identified in this entry are controlled by ECCN 1C991.

Related Definitions: N/A.

Items:

a. Genetic elements, as follows:
- a.1. Genetic elements that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a. to .c, 1C352, or 1C354;
- a.2. Genetic elements that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''subunits of toxins'' thereof.

Technical Note: Genetic elements include, *inter alia*, chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified.

b. Genetically modified organisms, as follows:
- b.1. Genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a. to .c, 1C352, or 1C354;
- b.2. Genetically modified organisms that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''subunits of toxins'' thereof.

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins,'' ECCN 1C991 is amended by revising the List of Items Controlled to read as follows:

1C991 Vaccines, immunotoxins, medical products, diagnostic and food testing kits, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: Medical products containing ricin or saxitoxin, as follows, are controlled for CW reasons under ECCN 1C351:

(1) Ricinus Communis $Agglutinin_{II}$ (RCA_{II}), also known as ricin D, or Ricinus Communis $Lectin_{III}$ (RCL_{III});

(2) Ricinus Communis $Lectin_{IV}$ (RCL_{IV}), also known as ricin E; or

(3) Saxitoxin identified by C.A.S. #35523–89–8.

Related Definitions: For the purpose of this entry, ''*immunotoxin*'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.*, tumor cells) that bear antigens homologous to the antibody. For the purpose of this entry, ''*medical products*'' are: (1) pharmaceutical formulations designed for human administration in the treatment of medical conditions, (2) prepackaged for distribution as medical products, and (3) approved by the U.S. Food and Drug Administration to be marketed as medical products. For the purpose of this entry, ''*diagnostic and food testing kits*'' are specifically developed, packaged and marketed for diagnostic or public health purposes. Biological toxins in any other configuration, including bulk shipments, or for any other end-uses are controlled by ECCN 1C351. For the purpose of this entry, ''*vaccine*'' is defined as a medicinal (or veterinary) product in a pharmaceutical formulation, approved by the U.S. Food and Drug Administration or the U.S. Department of Agriculture to be marketed as a medical (or veterinary) product or for use in clinical trials, that is intended to stimulate a protective immunological response in humans or animals in order to prevent disease in those to whom or to which it is administered.

Items:

a. Vaccines against items controlled by ECCN 1C351, 1C352, 1C353, or 1C354;

b. Immunotoxins containing items controlled by 1C351.d;

c. Medical products containing botulinum toxins controlled by ECCN 1C351.d.1;

d. Medical products containing items controlled by ECCN 1C351.d, except

botulinum toxins controlled by ECCN 1C351.d.1 and items controlled for CW reasons under 1C351.d.5 or .d.6; *and*

e. Diagnostic and food testing kits containing items controlled by ECCN 1C351.d, except items controlled for CW reasons under ECCN 1C351.d.5 or .d.6.

10. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by revising the ECCN heading and the List of Items Controlled to read as follows:

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number.

Related Controls: The controls in this entry do not apply to equipment that is: (a) Specially designed for use in civil applications (*e.g.*, food processing, pulp and paper processing, or water purification); AND (b) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical weapons precursors controlled by 1C350.

Related Definitions: For purposes of this entry the term ''chemical warfare agents'' are those agents subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (*See* 22 CFR part 121)

Items:

a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m^3 (100 liters) and less than 20 m^3 (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  a.1. Alloys with more than 25% nickel and 20% chromium by weight;
  a.2. Fluoropolymers;
  a.3. Glass (including vitrified or enameled coating or glass lining);
  a.4. Nickel or alloys with more than 40% nickel by weight;
  a.5. Tantalum or tantalum alloys;
  a.6. Titanium or titanium alloys; *or*
  a.7. Zirconium or zirconium alloys.

b. Agitators for use in reaction vessels or reactors described in 2B350.a, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  b.1. Alloys with more than 25% nickel and 20% chromium by weight;
  b.2. Fluoropolymers;
  b.3. Glass (including vitrified or enameled coatings or glass lining);
  b.4. Nickel or alloys with more than 40% nickel by weight;
  b.5. Tantalum or tantalum alloys;
  b.6. Titanium or titanium alloys; *or*
  b.7. Zirconium or zirconium alloys.

c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m3 (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  c.1. Alloys with more than 25% nickel and 20% chromium by weight;
  c.2. Fluoropolymers;
  c.3. Glass (including vitrified or enameled coatings or glass lining);
  c.4. Nickel or alloys with more than 40% nickel by weight;
  c.5. Tantalum or tantalum alloys;
  c.6. Titanium or titanium alloys; *or*
  c.7. Zirconium or zirconium alloys.

d. Heat exchangers or condensers with a heat transfer surface area of less than 20 m^2, but greater than 0.15 m^2, and tubes, plates, coils or blocks (cores) designed for such heat exchangers or condensers, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
  d.1. Alloys with more than 25% nickel and 20% chromium by weight;
  d.2. Fluoropolymers;
  d.3. Glass (including vitrified or enameled coatings or glass lining);
  d.4. Graphite or carbon-graphite;
  d.5. Nickel or alloys with more than 40% nickel by weight;
  d.6. Silicon carbide;
  d.7. Tantalum or tantalum alloys;
  d.8. Titanium or titanium alloys;
  d.9. Titanium carbide; *or*
  d.10. Zirconium or zirconium alloys.

e. Distillation or absorption columns of internal diameter greater than 0.1 m, and liquid distributors, vapor distributors or liquid collectors designed for such distillation or absorption columns, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
  e.1. Alloys with more than 25% nickel and 20% chromium by weight;
  e.2. Fluoropolymers;
  e.3. Glass (including vitrified or enameled coatings or glass lining);
  e.4. Graphite or carbon-graphite;
  e.5. Nickel or alloys with more than 40% nickel by weight;
  e.6. Tantalum or tantalum alloys;
  e.7. Titanium or titanium alloys; *or*
  e.8. Zirconium or zirconium alloys.

f. Remotely operated filling equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
  f.1. Alloys with more than 25% nickel and 20% chromium by weight; *or*
  f.2. Nickel or alloys with more than 40% nickel by weight.

g. Valves with nominal sizes greater than 1.0 cm (3/8 in.), and casings (valve bodies) or preformed casing liners designed for such valves, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  g.1. Nickel or alloys with more than 40% nickel by weight;
  g.2. Alloys with more than 25% nickel and 20% chromium by weight;
  g.3. Fluoropolymers;
  g.4. Glass or glass lined (including vitrified or enameled coatings);
  g.5. Tantalum or tantalum alloys;
  g.6. Titanium or titanium alloys; *or*
  g.7. Zirconium or zirconium alloys.

h. Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
  h.1. Alloys with more than 25% nickel and 20% chromium by weight;
  h.2. Fluoropolymers;
  h.3. Glass (including vitrified or enameled coatings or glass lining);
  h.4. Graphite or carbon-graphite;
  h.5. Nickel or alloys with more than 40% nickel by weight;
  h.6. Tantalum or tantalum alloys;
  h.7. Titanium or titanium alloys; *or*
  h.8. Zirconium or zirconium alloys.

i. Multiple-seal, canned drive, magnetic drive, bellows or diaphragm pumps, with manufacturer's specified maximum flow-rate greater than 0.6 m^3/hour, or vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m^3/hour (under standard temperature (273 K (0° C)) and pressure (101.3 kPa) conditions), and casings (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for such pumps, in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the of the following materials:

i.1. Alloys with more than 25% nickel and 20% chromium by weight;
i.2. Ceramics;
i.3. Ferrosilicon;
i.4. Fluoropolymers;
i.5. Glass (including vitrified or enameled coatings or glass lining);
i.6. Graphite or carbon-graphite;
i.7. Nickel or alloys with more than 40% nickel by weight;
i.8. Tantalum or tantalum alloys;
i.9. Titanium or titanium alloys, *or*
i.10. Zirconium or zirconium alloys.

j. Incinerators designed to destroy chemical warfare agents, chemical weapons precursors controlled by 1C350, or chemical munitions having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000° C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:
j.1. Alloys with more than 25% nickel and 20% chromium by weight;
j.2. Ceramics; *or*
j.3. Nickel or alloys with more than 40% nickel by weight.

Technical Note: Carbon-graphite is a composition consisting primarily of graphite and amorphous carbon, in which the graphite is 8 percent or more by weight of the composition.

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended by revising the List of Items Controlled to read as follows:

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number
Related Controls: N/A
Related Definitions: For purposes of this entry, isolators include flexible isolators, dry boxes, anaerobic chambers and glove boxes.
Items:

a. Complete containment facilities at P3 or P4 containment level.

Technical Note: P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (Geneva, 1983).

b. Fermenters capable of cultivation of pathogenic microorganisms, viruses, or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 20 liters.

Technical Note: Fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:
c.1. One or more sealing joints within the steam containment area;
c.2. A flow rate greater than 100 liters per hour;
c.3. Components of polished stainless steel or titanium; *and*
c.4. Capable of in-situ steam sterilization in a closed state.

Technical Note: Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment and accessories, as follows:
d.1. Cross (tangential) flow filtration equipment capable of separation of pathogenic microorganisms, viruses, toxins or cell cultures, without the propagation of aerosols, having all of the following characteristics:
d.1.a. A total filtration area equal to or greater than 1 square meter (1 m^2); *and*
d.1.b. Capable of being sterilized or disinfected in-situ.

N.B.: 2B352.d.1 does not control reverse osmosis equipment, as specified by the manufacturer.

d.2. Cross (tangential) flow filtration components (*e.g.*, modules, elements, cassettes, cartridges, units or plates) with filtration area equal to or greater than 0.2 square meters (0.2 m^2) for each component and designed for use in cross (tangential) flow filtration equipment controlled by 2B352.d.1.

Technical Note: In this ECCN, ''sterilized'' denotes the elimination of all viable microbes from the equipment through the use of either physical (*e.g.*, steam) or chemical agents. ''Disinfected'' denotes the destruction of potential microbial infectivity in the equipment through the use of chemical agents with a germicidal effect. ''Disinfection'' and ''sterilization'' are distinct from ''sanitization'', the latter referring to cleaning procedures designed to lower the microbial content of equipment without necessarily achieving elimination of all microbial infectivity or viability.

e. Steam sterilizable freeze-drying equipment with a condenser capacity of 10 kgs of ice or greater in 24 hours, but less than 1,000 kgs of ice in 24 hours.

f. Protective and containment equipment, as follows:
f.1. Protective full or half suits, or hoods dependant upon a tethered external air supply and operating under positive pressure;

Technical Note: This entry does not control suits designed to be worn with self-contained breathing apparatus.

f.2. Class III biological safety cabinets or isolators with similar performance standards, *e.g.*, flexible isolators, dry boxes, anaerobic chambers, glove boxes or laminar flow hoods (closed with vertical flow).

g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 m^3 or greater.

■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E001 is amended by revising the License Requirements section to read as follows:

2E001 ''Technology according to the General Technology Note for the ''development'' of equipment or ''software'' controlled by 2A (except 2A991, 2A993, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997 or 2B998), or 2D (except 2D991, 2D992, or 2D994).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to ''technology'' for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002.	NS Column 1
MT applies to ''technology'' for items controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, 2D001 or 2D101 for MT reasons.	MT Column 1
NP applies to ''technology'' for items controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D001, 2D002, 2D101, 2D201 or 2D202 for NP reasons.	NP Column 1
NP applies to ''technology'' for items controlled by 2A290 to 2A293, 2B290, or 2D290 for NP reasons.	NP Column 2
CB applies to ''technology'' for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 3

Control(s)	Country chart
AT applies to entire entry	AT Column 1

License Requirement Notes: *See* § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E002 is amended by revising the License Requirements section to read as follows:

2E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment controlled by 2A, (except 2A991, 2A993, or 2A994) or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to ''technology'' for equipment controlled by 2A001, 2B001 to 2B009.	NS Column 1
MT applies to ''technology'' for equipment controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116 or 2B117 for MT reasons.	MT Column 1
NP applies to ''technology'' for equipment controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232 for NP reasons.	NP Column 1
NP applies to ''technology'' for equipment controlled by 2A290 to 2A293, 2B290 for NP reasons.	NP Column 2
CB applies to ''technology'' for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 3
AT applies to entire entry	AT Column 1

License Requirement Notes: *See* § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

Dated: May 29, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–14602 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Pyrantel Pamoate Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Cross Vetpharm Group, Ltd. The ANADA provides for the oral use of pyrantel pamoate paste for the removal and control of certain internal parasites in horses and ponies.

DATES: This rule is effective June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed ANADA 200–350 that provides for the use of EXODUS (pyrantel pamoate) Paste for the removal and control of certain internal parasites in horses and ponies. Cross Vetpharm Group Ltd.'s EXODUS Paste is approved as a generic copy of Pfizer, Inc.'s STRONGID (pyrantel pamoate) Paste approved under NADA 129–831. The ANADA is approved as of March 25, 2003, and the regulations are amended in 21 CFR 520.2044 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.2044 is amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

§ 520.2044 Pyrantel pamoate paste.

(a) * * *

(3) Each mL contains 171 mg pyrantel base (as pyrantel pamoate).

(b) * * *

(3) No. 061623 for use of product described in paragraph (a)(3) of this section.

* * * * *

Dated: May 27, 2003.

Steven F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–14546 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two approved new

animal drug applications (NADAs) from Anthony Products Co. to Cross Vetpharm Group Ltd.

DATES: This rule is effective June 10, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967; e-mail: *dnewkirk@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Anthony Products Co., 5600 Peck Rd., Arcadia, CA 91006, has informed FDA that it has transferred ownership of, and all rights and interest in, the following two approved NADAs to Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland:

NADA Number	Trade Name
065–505	MICROCILLIN Injectable Suspension
065–506	COMBICILLIN Injectable Suspension

Accordingly, the agency is amending the regulations in 21 CFR 522.1696a and 522.1696b to reflect the transfer of ownership.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1696a [Amended]

■ 2. Section 522.1696a *Penicillin G benzathine and penicillin G procaine sterile suspension* is amended in paragraph (b)(1) by removing ''000864, 010515, and 049185'' and by adding in its place ''010515, 049185, and 061623''; and in paragraph (b)(3) by removing ''000864, 010515, and 059130'' and by adding in its place ''010515, 059130, and 061623''.

§ 522.1696b [Amended]

■ 3. Section 522.1696b *Penicillin G procaine aqueous suspension* is amended in paragraph (b)(2) by removing ''000864 and 055529'' and by adding in its place ''055529 and 061623''; in paragraph (d)(2)(i)(A) by removing ''000864, 010515, 053501, and 059130'' and by adding in its place ''010515, 053501, 059130, and 061623''; and in paragraph (d)(2)(iii)(A) by removing ''000864, 010515, 053501, and 059130'' and by adding in its place ''010515, 053501, and 059130''.

Dated: May 19, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–14547 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole.

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA provides for use of an approved fenbendazole Type A medicated article to make Type B and Type C medicated feeds used for the control of gastrointestinal worms in horses.

DATES: This rule is effective June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed a supplement to NADA 131–675 that provides for the use of SAFE-GUARD (fenbendazole) 20% Type A medicated article to make Type B and Type C medicated horse feeds. The medicated feeds are used for the control of large strongyles (*Strongylus edentatus*, *S. equinus*, *S. vulgaris*, *Triodontophorus* spp.), small strongyles (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicostephanus* spp.), pinworms (*Oxyuris equi*), and ascarids (*Parascaris equorum*) in horses. The NADA is approved as of March 14, 2003 , and the regulations are amended in 21 CFR 558.258 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning March 14, 2003.

The agency has determined under § 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.258 is amended by redesignating paragraph (e)(4) as paragraph (e)(5) and by adding new paragraph (e)(4) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(e) * * *

(4) *Horses*.

Amount fenbendazole in grams per ton	Indications for use	Limitations	Sponsor
(i) 4,540	5 mg/kg body weight (2.27 mg/lb) for the control of large strongyles (*Strongylus edentatus*, *S. equinus*, *S. vulgaris*, *Triodontophorus* spp.), small strongyles (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicostephanus* spp.), and pinworms (*Oxyuris equi*); 10 mg/kg body weight (4.54 mg/lb) for the control of ascarids (*Parascaris equorum*).	Feed at the rate of 0. 1lb of feed per 100 lb of body weight to provide 2.27 mg fenbendazole/lb of body weight in a 1-day treatment or 0.2 lb of feed per 100 lb of body weight to provide 4.54 mg fenbendazole/lb of body weight in a 1-day treatment. All horses must be eating normally to ensure that each animal consumes an adequate amount of the medicated feed. Regular deworming at intervals of 6 to 8 weeks may be required due to the possibility of reinfection. Do not use in horses intended for food.	057926
(ii) [Reserved]			

* * * * *

Dated: May 27, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–14545 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–087]

Drawbridge Operation Regulations; NE. 8th Street (George Bush Boulevard) Bridge, Atlantic Intracoastal Waterway, Mile 1038.7, Delray Beach, Palm Beach County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the NE. 8th Street (George Bush Boulevard) bridge at Delray Beach across the Atlantic Intracoastal Waterway, mile 1038.7 in Delray Beach, Palm Beach County, Florida. Under this deviation, the bridge need only open a single-leaf of the bridge and shall provide double-leaf openings with two-hours advance notice to the bridge tender. This temporary deviation is required to allow the bridge owner to safely complete repairs to the bridge.

DATES: This deviation is effective from 7 a.m. on June 16, 2003, until 6 p.m. on August 16, 2003.

ADDRESSES: Material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–03–087] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The existing regulations of the NE. 8th Street bridge, mile 1038.7 at Delray Beach require the bridge to open on signal; except that, from November 1 to May 31, from 11 a.m. to 6 p.m., on Saturdays, Sundays and Federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour. On May 7, 2003, Palm Beach County, the bridge owner, requested a deviation from the current regulations to allow the bridge to only open a single-leaf of the bridge. Double-leaf openings are available with two-hours advance notice to the bridge tender. The other leaf of the bridge will remain in the upright, open to navigation position. This schedule will be in effect from 7 a.m. on June 16, 2003, to 6 p.m. on July 3, 2003, and from 7 a.m. on July 8, 2003, to 6 p.m. on August 16, 2003. During all other times, the bridge will open according to the published schedule in 33 CFR 117.261(z). This temporary deviation is required to allow the bridge owner to safely complete repairs to the bridge structure.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.261(z). Under this deviation, the NE. 8th Street (George Bush Boulevard) bridge need only open a single-leaf of the bridge from 7 a.m. on June 16, 2003, to 6 p.m. on July 3, 2003, and from 7 a.m. on July 8, 2003, to 6 p.m. on August 16, 2003. During this time the bridge shall provide double-leaf openings with two-hours advance notice to the bridge tender.

Dated: May 29, 2003.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03–14590 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–217]

RIN 1625–AA00

Safety Zone; Grosse Point Shores, Lake St. Clair, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Celebrate America fireworks display on June 14, 2003. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Lake St. Clair.

DATES: This temporary final rule is effective from 8 p.m. until 11 p.m. on June 14, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–217] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave. Detroit, MI 48207, between 8 a.m. and 4 p.m.,

Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207. The telephone number is (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing safety zones to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°26′4″ N, 082°52′1″ W (approximately 500′ off shore of 930 Lake Shore Drive, Grosse Point Shores, MI). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor if any impacts to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 8 p.m. until 11 p.m. the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, we will issue maritime advisories widely available to users of Lake St. Clair by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES.**) Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1 of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T09–217 is added to read as follows:

§ 165.T09–217 Safety Zone; Lake St. Clair, Grosse Pointe Shores, MI.

(a) *Location.* The safety zone will encompass all waters of Lake St. Clair surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42° 26′4″ N, 082° 52′1″ W (approximately 500′ off shore of 930 Lake Shore Drive, Grosse Point Shores, MI). The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from 8 p.m. (local time) until 11 p.m. (local time) on June 14, 2003. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative.

Dated: May 27, 2003.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 03–14435 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR PART 165

CGD09–03–216

RIN 1625–AA00

Safety Zone; Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the International Freedom Festival Fireworks display on June 25, 2003. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Detroit River.

DATES: This temporary final rule is effective from 5 p.m. until 12 a.m. on June 25, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–216] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass the portion of the Detroit River bounded on the South by the International Boundary, on the West by 83°03′30″ W, on the North by the City of Detroit shoreline and on the East by 083°01′ W. These geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on-scene patrol representative. The designated on-scene patrol representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor if any impacts to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 5 p.m. until 12 midnight on the day of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1 of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T09–216 is added to read as follows:

§ 165.T09–216 Safety Zone; Detroit River, Detroit, MI.

(a) *Location.* The waters of the Detroit River bounded on the South by the International Boundary, on the West by 83°03′30″ W, on the North by the City of Detroit Shoreline and on the East by 083° 01′ W (NAD 83).

(b) *Effective time and date.* This section is effective from 5 p.m. until 12 a.m. on June 25, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative.

Dated: May 27, 2003.

P. G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 03–14434 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 13

RIN 2900–AL29

Compensation and Pension Provisions of the Veterans Education and Benefits Expansion Act of 2001

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations and its Veterans Benefit Administration fiduciary activities regulations to reflect statutory provisions of the Veterans Education and Benefits Expansion Act of 2001. These changes address the presumption of service connection for respiratory cancers based on herbicide exposure in Vietnam; benefits for Gulf War veterans' chronic disabilities; repeal of the limitation of benefits for incompetent institutionalized veterans; non-service-connected pension eligibility; the limitation on pension for certain recipients of Medicaid-covered nursing home care; the prohibition on certain benefits to fugitive felons; and the limitation on the payment of compensation for veterans remaining incarcerated since October 7, 1980. This document also makes nonsubstantive changes for purposes of clarity and miscellaneous technical amendments in those regulations.

DATES: *Effective Date:* June 10, 2003.

Applicability Dates: In accordance with statutory provisions, the following amendments in this final rule will be applied retroactively:

The amendments to 38 CFR 3.3 are applicable September 17, 2001. The amendment to 38 CFR 3.307(a)(6)(ii) is applicable January 1, 2002. The amendment to 38 CFR 3.307(a)(6)(iii) is applicable December 27, 2001. The amendments to 38 CFR 3.317 are applicable March 1, 2002. The amendments to 38 CFR 3.353, 3.400(e), 3.452, 3.454, 3.501, 3.551, 3.552, 3.557 through 3.559, 3.666, 3.801, 3.852, 3.853, 3.1007, 13.70, 13.71, 13.74 through 13.77, 13.107, 13.108, and 13.109 are applicable December 27, 2001. The amendment to 38 CFR 3.665(a) is applicable December 27, 2001. The amendment to 38 CFR 3.665(c) is applicable April 1, 2002. The removal of the authority citation following 38 CFR 3.665(m) and the addition of 38 CFR 3.665(n) are applicable December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC, 20420, telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: On December 27, 2001, the Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103 (the Act), was enacted. Several provisions of the Act directly affect the payment of VA compensation or pension benefits. These provisions concern presumptions based on herbicide exposure in Vietnam, Gulf War veterans' chronic disabilities, the repeal of the limitation of benefits for incompetent institutionalized veterans, non-service-connected pension eligibility, the extension of the limitation on pension for certain recipients of Medicaid-covered nursing home care, the prohibition on certain benefits to fugitive felons and their dependents, and a limitation on the payment of compensation for certain veterans remaining incarcerated since October 7, 1980.

Section 201 of the Act amended 38 U.S.C. 1116(a)(2)(F) to eliminate the requirement that respiratory cancer (cancers of the lung, bronchus, larynx, trachea) become manifest within 30 years of the veteran's departure from Vietnam to qualify for the presumption of service connection based on exposure to herbicides such as Agent Orange. Section 201 also expanded the presumption of exposure to herbicides to include all Vietnam veterans, not just those who have a disease on the presumptive list in 38 U.S.C. 1116(a)(2) and 38 CFR 3.309(e). In this document we are amending 38 CFR 3.307 to reflect these changes. In addition, section 201 added Type 2 diabetes to the presumptive list in 38 U.S.C. 1116(a)(2). This disease had previously been added to VA's list in 38 CFR 3.309(e).

Section 202(a) of the Act amended 38 U.S.C. 1117 to expand the definition of ''qualifying chronic disability'' (for service connection) to include not only a disability resulting from an undiagnosed illness as stated in prior law, but also any diagnosed illness that the Secretary determines in regulations warrants a presumption of service-connection under 38 U.S.C. 1117(d). We

are amending § 3.317 to reflect that change.

Section 202(a) also expanded the definition of ''qualifying chronic disability'' to include a ''medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs or symptoms.'' We believe this provision may be difficult for VA adjudicators to understand and apply consistently due to the highly technical medical aspects of the task of determining whether an illness meets the criteria of ''medically unexplained chronic multisymptom illness * * * that is defined by a cluster of signs or symptoms.'' Therefore this rulemaking clarifies this category of illnesses by defining the term ''medically unexplained chronic multisymptom illness'' in new § 3.317(a)(2)(ii) to mean ''a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities.'' We also state: ''Chronic multisymptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained.''

This definition is based on the Joint Explanatory Statement for H.R. 1291, the Veterans Education and Benefits Expansion Act of 2001, December 13, 2001, 147 CR 13235 at 13238, which said ''it is the intent of the Committees to ensure eligibility for chronically disabled Gulf War veterans not withstanding [sic] a diagnostic label by a clinician in the absence of conclusive pathophysiology or etiology.'' The Joint Explanatory Statement also stated, ''The compromise agreement's definition [of medically unexplained chronic multisymptom illness * * * that is defined by a cluster of signs or symptoms] encompasses a variety of unexplained clinical conditions, characterized by overlapping symptoms and signs, that share features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities.'' *Id.* The Joint Explanatory Statement also said, ''The Committees do not intent [sic] this definition to assert that the cited syndromes can be clinically or scientifically linked to Gulf War service based on current evidence, nor do they intend to include chronic multisymptom illnesses of partially understood etiology and pathophysiology such as diabetes or multiple sclerosis.'' *Id.* We are incorporating this guidance into our regulatory criteria for what constitutes such an illness.

The Joint Explanatory Statement also said, ''By listing the first three diagnoses as examples, it is the Committees' intend [sic] to give guidance to the Secretary rather than limit eligibility for compensation based upon other similarly described conditions that may be defined or redefined in the future.'' *Id.* We believe that Congress intended that the Secretary have the authority to decide which illnesses satisfy the criteria and to add to this list as he or she becomes aware of them (through advances in medical or other scientific knowledge). As yet, VA has not identified any illness other than the three identified in section 202(a) as a ''medically unexplained chronic multisymptom illness,'' and we therefore specify in new § 3.317(a)(2)(i)(B)(*1*) through (*3*) only chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome as currently meeting this definition. We also provide in new § 3.317(a)(2)(i)(B)(*4*) that the list may be expanded in the future when the Secretary determines that other illnesses meet the criteria for a ''medically unexplained chronic multisymptom illness.''

In addition, section 202(b) changed the phrase ''Neurological signs or symptoms'' to ''Neurological signs and symptoms,'' and we are amending 38 CFR 3.317 accordingly.

Section 204 of the Act amended 38 U.S.C. 5503 to eliminate the withholding of benefits for incompetent, institutionalized veterans without dependents. This document therefore removes the VA regulations on this type of withholding (38 CFR 3.557, 3.559, 13.74 through 13.77, and 13.108), and amends § 3.558, to reflect this change. This document amends § 3.852 to remove the references to institutional awards made under 38 U.S.C. 5503(b). (This document also clarifies that the authority for VA to pay benefits to an institution housing an incompetent veteran is 38 U.S.C. 5502.)

In addition, this document generally removes the references to §§ 3.557, 3.559, and 13.108 that are found in title 38. Specifically, this document removes the references to 38 CFR 3.557 contained in 38 CFR 3.353, 3.400, 3.452, 3.454, 3.501, 3.551, 3.552, 3.801, and 3.853. (We are also changing the heading of § 3.452 to more clearly explain the purpose of that regulation.)

We have retained, however, the references to § 3.557 in §§ 3.558, 3.1003, and 3.1007. Although Public Law 107–103 repealed former 38 U.S.C. 5503(b), the new statute does not require distribution of funds that were properly withheld by VA while former 38 U.S.C. 5503(b) remained in effect, until such time as the veteran regains competency. Also, VA is not obligated under Public Law 107–103 to distribute funds properly withheld under former section 5503(b) to a veteran's survivors in the event that the veteran dies without regaining competency.

This document removes the reference to 38 CFR 3.559 contained in 38 CFR 3.551. This document removes the references to 38 CFR 13.108 contained in 38 CFR 13.70 and 13.71.

We are removing 38 CFR 13.109 because the provisions of that section only pertain to former section 5503(b) and/or former 38 U.S.C. 5505. Section 5505 expired September 30, 1992 (38 U.S.C. 5505(c)), and was later repealed by the Veterans' Benefits Improvements Act of 1994, Public Law 103–446, section 1201(g)(4)(A), 108 Stat. 4645, 4687.

Section 206 of the Act amended 38 U.S.C. 1502(a) to authorize VA to consider a veteran to be permanently and totally disabled for the purposes of non-service-connected disability pension if the veteran is: a patient in a nursing home for long-term care due to disability, or determined to be disabled for purposes of Social Security Administration benefits. This document amends 38 CFR 3.3 to reflect these changes, as well as to reflect expressly the other bases already contained in section 1502(a) for considering persons to be totally and permanently disabled.

Section 207 of the Act added a new 38 U.S.C. 1513, under which a veteran who is age 65 or over and meets the military service and income/net worth requirements for non-service-connected pension is eligible for pension without regard to whether the veteran is permanently and totally disabled. This document amends 38 CFR 3.3 to reflect that change.

Section 504 of the Act amended 38 U.S.C. 5503 to extend the $90 limitation on pension for certain recipients of Medicaid-covered nursing home care to September 30, 2011. This document amends 38 CFR 3.551 to reflect this change.

Section 505 of the Act added a new 38 U.S.C. 5313B to prohibit the payment of benefits to a veteran while he or she is a fugitive felon or to a veteran's dependent while the veteran or the dependent is a fugitive felon. This amendment includes definitions of the terms ''fugitive felon'' and ''felony.'' The amendment's prohibition applies to compensation, dependency and indemnity compensation, pension,

medical care, life insurance, vocational rehabilitation, and education benefits. This document amends 38 CFR 3.665 and 38 CFR 3.666 to reflect this change, including by changing the heading of each of those sections. We are changing the heading of § 3.665 from ''Penal institutions—compensation'' to ''Incarcerated beneficiaries and fugitive felons—compensation,'' which we believe more clearly identifies the content of that section. For the same reason, we are changing the heading of § 3.666 from ''Penal institutions—pension'' to ''Incarcerated beneficiaries and fugitive felons—pension.''

Section 506 of the Act amended 38 U.S.C. 5313 to extend its current limitations on payment of compensation benefits to incarcerated veterans to also apply to any veteran who is entitled to compensation and who on October 7, 1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date; and remains so incarcerated for conviction of that felony as of December 27, 2001, the date of enactment of the Act. This document amends 38 CFR 3.665 to reflect this change. We are also removing the phrase '', or prior to October 7, 1980,'' from 38 CFR 3.341(b) (referring to veterans rated as unemployable prior to October 7, 1980) since it is now obsolete.

Administrative Procedure Act

Changes made by this final rule merely reflect statutory provisions, are nonsubstantive changes made for purposes of clarity, or are nonsubstantive technical changes. Accordingly, there is a basis for dispensing with the prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule does not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers for this rule are 64.104, 64.105, 64.109, and 64.110.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

38 CFR Part 13

Surety bonds, Trusts and trustees, and Veterans.

Approved: March 10, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR parts 3 and 13 are amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.3 is amended by:
■ A. Removing the authority citation following paragraph (a)(3)(v), redesignating paragraphs (a)(3)(v) and (a)(3)(vi) as new paragraphs (a)(3)(vi)(B) introductory text and (a)(3)(v), respectively.
■ B. Adding new paragraphs (a)(3)(vi)(A) and (a)(3)(vi)(B)(*1*) through (*4*).
■ C. In newly redesignated paragraph (a)(3)(v), removing ''§ 3.23.'' and adding, in its place, ''§ 3.23; and''.
■ D. In newly redesignated paragraph (a)(3)(vi)(B) introductory text, removing ''misconduct; and'' and adding, in its place, ''misconduct. For purposes of this paragraph, a veteran is considered permanently and totally disabled if the veteran is any of the following:''.

The additions read as follows:

§ 3.3 Pension.

* * * * *

(a) * * *

(3) * * *

(vi)(A) Is age 65 or older; or

(B) * * *

(*1*) A patient in a nursing home for long-term care because of disability; or

(*2*) Disabled, as determined by the Commissioner of Social Security for purposes of any benefits administered by the Commissioner; or

(*3*) Unemployable as a result of disability reasonably certain to continue throughout the life of the person; or

(*4*) Suffering from:

(*i*) Any disability which is sufficient to render it impossible for the average person to follow a substantially gainful occupation, but only if it is reasonably certain that such disability will continue throughout the life of the person; or

(*ii*) Any disease or disorder determined by VA to be of such a nature or extent as to justify a determination that persons suffering from that disease or disorder are permanently and totally disabled.

(Authority: 38 U.S.C. 1502(a), 1513, 1521, 1522)

* * * * *

§ 3.307 [Amended]

■ 3. Section 3.307 is amended by:
■ A. In paragraph (a)(6)(ii), removing '', and respiratory cancers within 30 years,''.
■ B. In paragraph (a)(6)(iii), removing ''and has a disease listed at § 3.309(e)'' and adding, in its place, a comma.

■ 4. Section 3.317 is amended by:
■ A. In paragraph (a)(1) introductory text, removing ''shall'' and adding, in its place, ''will'', and removing ''chronic disability resulting from an illness or combination of illnesses manifested by one or more signs or symptoms such as those listed in paragraph (b) of this section'' and adding, in its place, ''a qualifying chronic disability''.
■ B. Redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(3) through (a)(6), respectively.
■ C. Adding a new paragraph (a)(2).
■ D. In paragraph (b) introductory text, removing ''undiagnosed illness'' and adding, in its place, ''undiagnosed illness or medically unexplained chronic multisymptom illness''.
■ E. In paragraph (b)(6), removing ''or'' and adding, in its place, ''and''.

■ F. In paragraph (d)(1), removing ''Persian Gulf veteran'' '' and adding, in its place, ''*Persian Gulf veteran*''.

The addition reads as follows:

§ 3.317 Compensation for disabilities occurring in Persian Gulf War veterans.

(a) * * *

(2)(i) For purposes of this section, a *qualifying chronic disability* means a chronic disability resulting from any of the following (or any combination of the following):

(A) An undiagnosed illness;

(B) The following medically unexplained chronic multisymptom illnesses that are defined by a cluster of signs or symptoms:

(*1*) Chronic fatigue syndrome;

(*2*) Fibromyalgia;

(*3*) Irritable bowel syndrome; or

(*4*) Any other illness that the Secretary determines meets the criteria in paragraph (a)(2)(ii) of this section for a medically unexplained chronic multisymptom illness; or

(C) Any diagnosed illness that the Secretary determines in regulations prescribed under 38 U.S.C. 1117(d) warrants a presumption of service-connection.

(ii) For purposes of this section, the term *medically unexplained chronic multisymptom illness* means a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities. Chronic multisymptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained.

* * * * *

§ 3.341 [Amended]

■ 8. Section 3.341 is amended by:

■ A. In paragraph (b), removing '', or prior to October 7, 1980,'' and removing ''required the'' and adding, in its place, ''required, the''.

■ B. In paragraph (c), removing ''Division'' and adding, in its place, ''Service''.

§ 3.353 [Amended]

■ 9. Section 3.353(b)(1) is amended by removing ''the discontinuance and payment of amounts withheld because of an estate that equals or exceeds the amount specified in § 3.557(b)(4),''.

■ 10. Section 3.400 is amended by revising the headings of paragraphs (b)(1) and (e) to read as follows:

§ 3.400 General.

* * * * *

(b) * * *

(1) *Disability pension (§ 3.3).*

* * * * *

(e) *Apportionment (§§ 3.450 through 3.461, 3.551).*

* * * * *

■ 11. Section 3.452 is amended by:

■ A. Revising the section heading.

■ B. In paragraph (c)(1), removing ''(c)(3)'' and adding, in its place, ''(c)(2)''.

■ C. Removing paragraph (c)(2).

■ D. Redesignating paragraph (c)(3) as new paragraph (c)(2).

■ E. Revising the authority citation at the end of new paragraph (c)(2).

■ F. In the Cross References, removing ''Incompetents; estate equals or exceeds statutory limit and institutionalized. *See* § 3.557.''

The revisions read as follows:

§ 3.452 Situations when benefits may be apportioned.

* * * * *

(Authority: 38 U.S.C. 501(a); 5307; 5503(a)).

* * * * *

§ 3.454 [Amended]

■ 12. Section 3.454 is amended by removing paragraphs (c) and (d) and their authority citations, respectively.

§ 3.501 [Amended]

■ 13. Section 3.501 is amended by removing paragraph (i)(7).

■ 14. Section 3.551 is amended by:

■ A. In paragraph (a) introductory text, removing ''and for discontinuance of awards for incompetent veterans in § 3.557'' and removing ''3.559'' and adding, in its place, ''3.556''.

■ B. In paragraph (i), removing ''September 30, 2008,'' and adding, in its place, ''September 30, 2011,''.

■ C. In the Cross References, removing ''Incompetents; hospitalized. See § 3.557.''

■ D. Adding authority citations at the end of paragraphs (a) and (b).

The additions read as follows:

§ 3.551 Reduction because of hospitalization.

(a) * * *

(Authority: 38 U.S.C. 5503(a))

(b) * * *

(Authority: 38 U.S.C. 5503(a))

* * * * *

§ 3.552 [Amended]

■ 15. Section 3.552(a)(2) is amended by removing ''and § 3.557''.

§ 3.557 [Removed and Reserved]

■ 16. Section 3.557 is removed and reserved.

§ 3.558 [Amended]

■ 17. Section 3.558 is amended by

■ A. Removing paragraph (a).

■ B. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

■ C. In newly redesignated paragraph (b), removing ''§ 3.557(b)'' both times it appears and adding, in its place, ''former § 3.557(b) (as in effect prior to December 27, 2001)''.

§ 3.559 [Removed and Reserved]

■ 18. Section 3.559 is removed and reserved.

■ 19. Section 3.665 is amended by:

■ A. Revising the section heading.

■ B. In paragraph (a), in the first sentence, removing ''shall not'' and adding, in its place, ''will not''; in the second sentence, removing ''A'' and adding, in its place, ''VA will inform a'' and removing ''shall be informed''; in the third sentence, removing ''addition,'' and adding, in its place, ''addition, VA will also notify'', removing ''shall also be notified'', and removing ''the Department of Veterans Affairs'' and adding, in its place, ''VA''; and at the end of the paragraph, adding a sentence.

■ C. Adding paragraph (c)(3).

■ D. Removing the authority citation following paragraph (m).

■ E. Adding paragraph (n).

The revision and additions read as follows:

§ 3.665 Incarcerated beneficiaries and fugitive felons—compensation.

(a) * * * However, no apportionment will be made if the veteran or the dependent is a fugitive felon as defined in paragraph (n) of this section.

* * * * *

(c) * * *

(3) A veteran who, on October 7, 1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date, and who remains so incarcerated for a conviction of that felony as of December 27, 2001.

* * * * *

(n) *Fugitive felons.*

(1) Compensation is not payable on behalf of a veteran for any period during which he or she is a fugitive felon. Compensation or DIC is not payable on behalf of a dependent of a veteran for any period during which the veteran or the dependent is a fugitive felon.

(2) For purposes of this section, the term *fugitive felon* means a person who is a fugitive by reason of:

(i) Fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(ii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(3) For purposes of paragraph (n) of this section, the term *felony* includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(4) For purposes of paragraph (n) of this section, the term *dependent* means a spouse, surviving spouse, child, or dependent parent of a veteran.

(Authority: 38 U.S.C. 501(a), 5313, 5313B; Sec. 506, Pub. L. 107–103, 115 Stat. 996–997)

■ 20. Section 3.666 is amended by:
■ A. Revising the section heading.
■ B. In the introductory text, removing ''Where'' and adding, in its place, ''If''; removing ''Payments'' and adding, in its place, ''However, no apportionment will be made if the veteran or the dependent is a fugitive felon as defined in paragraph (e) of this section. Payments'', and removing ''received in'' and adding, in its place, ''received by''.
■ C. Adding paragraph (e).

The revision and additions read as follows:

§ 3.666 Incarcerated beneficiaries and fugitive felons—pension.

* * * * *

(e) *Fugitive felons.*

(1) Pension is not payable on behalf of a veteran for any period during which he or she is a fugitive felon. Pension or death pension is not payable on behalf of a dependent of a veteran for any period during which the veteran or the dependent is a fugitive felon.

(2) For purposes of this section, the term *fugitive felon* means a person who is a fugitive by reason of:

(i) Fleeing to avoid prosecution, or custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(ii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(3) For purposes of paragraph (e) of this section, the term *felony* includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(4) For purposes of paragraph (e) of this section, the term *dependent* means a spouse, surviving spouse, child, or dependent parent of a veteran.

(Authority: 38 U.S.C. 501(a), 5313, 5313B)

■ 21. Section 3.801 is amended by:
■ A. In paragraph (e), removing ''§§ 3.551 and 3.557'' and adding, in its place, ''§ 3.551''.
■ B. Adding an authority citation at the end of the section.

The addition reads as follows:

§ 3.801 Special acts.

* * * * *

(Authority: 38 U.S.C. 501(a), 5503)

■ 22. Section 3.852 is amended by:
■ A. In paragraph (a)(2), removing the semicolon and adding, in its place, a period.
■ B. Removing paragraph (a)(3).
■ C. Revising the authority citation at the end of paragraph (a).
■ D. Removing paragraph (d), and redesignating paragraph (e) as paragraph (d).

The revision reads as follows:

§ 3.852 Institutional awards.

(a) * * *

(Authority: 38 U.S.C. 501(a); 5307; 5502)

* * * * *

§ 3.853 [Amended]

■ 23. Section 3.853 is amended by removing paragraph (d)..

■ 24. Section 3.1007 is amended by:
■ A. Removing ''under § 3.557(b)'' and adding, in its place, ''under former § 3.557(b) (as applicable prior to December 27, 2001)''.
■ B. Removing ''the amount specified in § 3.557(b)(4)'' and adding, in its place, ''the statutory maximum''.
■ C. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.1007 Hospitalized incompetent veterans.

* * * * *

(Authority: 38 U.S.C. 5503)

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

■ 25. The authority citation for part 13 continues to read as follows:

Authority: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501, 5502, 5503, 5711, unless otherwise noted.

■ 26. Section 13.70 is amended by:
■ A. Redesignating paragraph (a)(1) as paragraph (a) and removing paragraph (a)(2).
■ B. Adding an authority citation at the end of the section.

The addition reads as follows:

§ 13.70 Apportionment of benefits to dependents.

* * * * *

(Authority: 38 U.S.C. 501, 512, 5502, 5503)

■ 27. Section 13.71 is amended by:
■ A. Removing paragraph (a) heading and paragraph (b).
■ B. Redesignating paragraphs (a)(1) through (a)(1)(iii) as paragraphs (a) through (a)(3), respectively.
■ C. Redesignating paragraphs (a)(2) through (a)(2)(iii) as paragraphs (b) through (b)(3), respectively; and redesignating paragraph (a)(3) as paragraph (c).
■ D. In newly redesignated paragraph (a) introductory text and paragraph (c), removing ''(a)(2)'' and adding, in its place, ''(b)''.
■ E. In newly redesignated paragraph (b)(3), removing ''shall determine'' and adding, in its place, ''determines''.
■ F. In newly redesignated paragraph (c), removing ''may'' and adding, in its place, ''will''.
■ G. Revising the authority citation.

The revision reads as follows:

§ 13.71 Payment of cost of veteran's maintenance in institution.

* * * * *

(Authority: 38 U.S.C. 501, 512, 5502, 5503)

§§ 13.74 through 13.77 [Removed and Reserved]

■ 28. Sections 13.74 through 13.77 are removed and reserved.

■ 29. Section 13.107 is amended by revising the authority citation to read as follows:

§ 13.107 Accounts of chief officers of public or private institutions.

* * * * *

(Authority: 38 U.S.C. 5502)

§§ 13.108 and 13.109 [Removed and Reserved]

■ 30. Sections 13.108 and 13.109 are removed and reserved.

[FR Doc. 03–14415 Filed 6–9–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 179–1179a; FRL–7510–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the state of Kansas. The purpose of this revision is to delete the Wyandotte County Air Pollution Control Regulations from the Federally-Approved Regulations. These regulations were originally incorporated

into the SIP to assure that local-specific air quality issues were addressed with Federally-enforceable provisions. Due to the continued evolution of the Kansas Air Quality Regulations, these local regulations are no longer necessary to assure continued maintenance of air quality standards for Wyandotte County.

DATES: This direct final rule will be effective August 11, 2003, unless EPA receives adverse comments by July 10, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail her at *hamilton.heather@epa.gov.*

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

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039.

SUPPLEMENTARY INFORMATION:

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

What Is a SIP?

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

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

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

What Is the Federal Approval Process for a SIP?

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

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

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

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

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

What Is Being Addressed in This Document?

This action approves the deletion of the Wyandotte County Air Pollution Control Regulations from the Federally-Approved Regulations. These regulations were originally incorporated into the SIP on April 3, 1981, and codified in 40 CFR 52.870(c). Due to the continuing evolution of the Kansas Air Quality Regulations, these local regulations are no longer necessary to assure continued maintenance of the air quality.

The Wyandotte County Air Pollution Control Regulations 2A–1 through 2A–32 have been cross-reviewed with the Kansas Air Quality Regulations and the Kansas Statutes. All of the former Wyandotte County Air Pollution Control regulations have an equivalent state rule or statute with the exception of four regulations. The content of these four regulations, 2A–2 ''Purpose,'' 2A–3 ''Definitions'' (definition of ''Vehicle'' to include ''railroad engines''), 2A–23 ''Restriction of Emissions of Odors,'' and 2A–32 ''Conflict of Ordinances, Effect of Partial Invalidity,'' do not directly affect air quality standards.

The Kansas Department of Health and Environment approved the recommendation to remove these rules on January 14, 2003. The rules will be deleted with this direct final action.

Have the Requirements for Approval of a SIP Revision Been Met?

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

What Action Is EPA Taking?

EPA is approving the revision to the Kansas SIP to delete the Wyandotte County Air Pollution Control Regulations from the Federally-Approved Regulations. On January 14, 2003, the state of Kansas submitted a request for EPA to remove Wyandotte County Air Pollution Control regulations which are no longer necessary to assure continued maintenance of the air quality standards for the area. The Wyandotte County regulations that affect air quality have been replicated in the Kansas Air Quality Regulations or Kansas Statutes.

We are processing this action as a direct final action because it removes duplicative regulations from the SIP. We do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

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

Dated: May 30, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

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

Part 52—[AMENDED]

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

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

Subpart R—Kansas

■ 2. Section 52.870 is amended by:

■ a. Revising paragraph (b)(3); and

■ b. In the table for paragraph (c) by removing the heading ''Wyandotte County'' and all entries for 2A–1 through 2A–32.

The revision reads as follows:

§ 52.870 Identification of Plan.

* * * * *

(b) * * *

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

* * * * *

[FR Doc. 03–14456 Filed 6–9–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

RIN 1660–AA15

Disaster Assistance; Public Assistance Program and Community Disaster Loan Program Statutory Changes

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Adoption of interim final rule as final.

SUMMARY: This final rule adopts the interim final rule, published in the **Federal Register** on May 4, 2001, to implement portions of the Disaster Mitigation Act of 2000 that affect large in-lieu contributions (alternate projects), irrigation facilities, critical/non-critical private nonprofit facilities, and community disaster loans.

DATES: The Interim Final Rule published on May 4, 2001 at 66 FR

22443 became effective on October 30, 2000.

FOR FURTHER INFORMATION CONTACT: James Walke, FEMA, 500 C Street, SW., Washington, DC 20472, (facsimile) (202) 646–3304, or e-mail *james.walke@dhs.gov.*

SUPPLEMENTARY INFORMATION: On May 4, 2001, FEMA published in the **Federal Register** an interim final rule to implement portions of the Disaster Mitigation Act of 2000 that affect large in-lieu contributions (alternate projects), irrigation facilities, critical/non-critical private nonprofit facilities, and community disaster loans (66 FR 22443, May 4, 2001). The closing date for the submission of comments was July 3, 2001.

Comments on the Interim Final Rule

By the close of the comment period, FEMA received one comment on the interim final rule from an emergency management association. The major concern expressed by the membership of the association was the reduction from 90% to 75% of the Federal share for alternate projects. The association recognized that this reduction is a statutory change to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172 and therefore beyond the scope of FEMA's rulemaking authority.

Adoption as Final Rule

Accordingly, the interim final rule to implement portions of the Disaster Mitigation Act of 2000 that affect large in-lieu contributions (alternate projects), irrigation facilities, critical/non-critical private nonprofit facilities, and community disaster loans which was published at 66 FR 22443 on May 4, 2001, is adopted as a final rule without change.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for ''major federal actions significantly affecting the quality of the human environment.'' If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this final rule is to amend our Stafford Act rules to incorporate part of the changes mandated by the Disaster Mitigation Act of 2000 for the Public Assistance Program and for Community Disaster Loans. Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion. The changes reflected in this rule are exempt from NEPA because they reflect administrative changes to the programs that have no potential to affect the environment. We would perform an environmental review under 44 CFR part 10, Environmental Considerations, on each proposed project that we would fund and implement under the authorities covered in this rule.

Paperwork Reduction Act

This rule is not subject to the provisions of the Paperwork Reduction Act. It does not require any new information collections and therefore would not revise the number and types of responses, frequency, and burden hours.

Regulatory Planning and Review

We have prepared and reviewed this final rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

This final rule implements certain mandatory provisions of the Disaster Mitigation Act of 2000 that relate to the Public Assistance Program and the Community Disaster Loan Program. The authorities mandated would not of themselves have an annual effect on the economy of $100 million or more. We anticipate that the impacts of the alternate projects provision will be neutral, expecting that the savings from reducing the Federal share of the Federal estimate from 90 percent to 75 percent will be offset by fewer applications for assistance under this authority. We do not anticipate any change in costs by adding irrigation facilities to the definition of eligible private nonprofit facilities inasmuch as the rule reflects the statute and codifies our current policy and practices. Most of the private nonprofit organizations that will have to apply for SBA disaster loans before being eligible to apply for FEMA disaster assistance have damages well below the SBA loan limit of $1,500,000. We do not expect this provision will have an impact of $100,000,000 or more per year. Finally, we do not anticipate that savings from amendments to the Community Disaster Loan provision will exceed $100,000,000 over a several-year period—our experience is that disaster loan forgiveness rates are between 60 and 70 percent. Over the last 25 years, the annual amount of money forgiven has been an average of $2.7 million. We know of no conditions that would qualify the rule as a significant regulatory action'' within the definition of section 3(f) of the Executive Order. To the extent possible this rule adheres to the principles of regulation as set forth in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of Executive Order 12866.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this final rule under Executive Order 13132 and have

determined that the rule does not have federalism implications as defined by the Executive Order. The rule would define and establish the conditions and criteria under which FEMA would grant public assistance and make community disaster loans. The rule would in no way that we foresee affect the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the States.

The interim final rule published on May 4, 2001 at 66 FR 22443 is adopted as final without change.

Dated: June 2, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14487 Filed 6–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[WT Docket No. 03–66; RM–10586; WT Docket No. 03–67; MM Docket No. 97–217; WT Docket No. 02–68; RM–9718; FCC 03–56]

Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: This document suspends construction deadlines for Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) authorization holders until the completion of a companion rulemaking proceeding. The MO&O also temporarily suspends acceptance of applications for new ITFS licenses and applications to amend or modify either ITFS or MDS stations in the 2500–2690 MHz band, subject to certain exceptions. The purpose of the MO&O is to ensure that the Federal Communications Commission (FCC) neither requires nor allows significant investments in new or modified facilities that would be inconsistent with new rules proposed in the companion NPRM.

DATES: Effective June 10, 2003, § 21.930 is suspended indefinitely.

FOR FURTHER INFORMATION CONTACT: Nancy Zaczek or Charles Oliver at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau or via the Internet to *nzaczek@fcc.gov or coliver@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Memorandum Opinion and Order, FCC 03–56, adopted on March 13, 2003, and released on April 2, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

■ 1. In this *Memorandum Opinion and Order*, the FCC:

• Temporarily suspends, until the completion of this rulemaking proceeding, acceptance of applications for new ITFS licenses and applications to amend or modify either ITFS or MDS stations in the 2500–2690 MHz band, subject to certain exceptions; and

• Suspends the current construction deadline for MDS and ITFS authorization holders until the completion of this rulemaking proceeding.

Ordering Clauses

2. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this Memorandum Opinion and Order is hereby *adopted.*

3. The five-year build-out requirement in § 21.930 of the FCC's rules, 47 CFR 21.930, *is suspended* until further notice.

4. The build-out requirements for site-based ITFS and MDS licensees and permittees that have not expired as of the release date of this *Memorandum Opinion and Order are suspended* until further notice.

5. Applications for new ITFS licenses, major modifications of MDS stations, or changes to ITFS stations other than minor modifications, applications for license assignments or transfers of control *will not be accepted* until further notice.

6. Mutually exclusive ITFS applications for acceptance of settlement agreements filed after the release date of this *Memorandum Opinion and Order will not be accepted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission suspends 47 CFR 21.930 indefinitely.

§ 21.930 [Suspended]

Section 21.930 is suspended indefinitely.

[FR Doc. 03–14221 Filed 6–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; DA 03–1753]

Petition for Declaratory Ruling on Local Number Portability Implementation Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for declaratory ruling.

SUMMARY: The Commission seeks comment on a petition for declaratory ruling from the Cellular Telecommunications & Internet Association (CTIA) asking the Commission to clarify carrier obligations with respect to a number of local number portability (LNP) implementation issues.

DATES: Comments are due on or before June 13, 2003, and reply comments are due on or before June 24, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Attorney, 202–418–1310.

SUPPLEMENTARY INFORMATION:

1. On May 13, 2003, the Cellular Telecommunications & Internet Association filed a Petition for Declaratory Ruling (Petition), asking the Commission to clarify carrier obligations (as found at 47 CFR 52.23—52.33) with respect to a number of local number portability implementation issues. CTIA contends that, although many of the issues associated with the implementation of LNP have been resolved by consensus in industry fora, including the North American Numbering Council (NANC), there are a number of outstanding issues that cannot be resolved without specific direction from the Commission.

2. We seek comment on the issues raised in the Petition. Interested parties may file comments on or before June 13, 2003. Reply comments are due June 24, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments and reply comments should be filed in the docket number, CC Docket No. 95–116.

3. This is a ''permit but disclose'' proceeding pursuant to § 1.1206 of the Commission's Rules. Ex parte presentations that are made with respect to the issues involved in the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's Rules.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html.*

5. Parties who choose to file by paper must file an original and four copies of each filing. Each filing should include the applicable docket number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. In addition, a diskette copy should be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail to *qualexint@aol.com.*

6. The full text of the Petition and responsive comments will be available electronically on the Commission's ECFS under CC Docket No. 95–116. In addition, copies of these documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov.* This Public Notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cib/dro.* For further information concerning this proceeding, contact Jennifer Salhus, Policy Division, Wireless Telecommunications Bureau, at (202) 418–1310 (voice) or (202) 418–1169 (TTY), or Pam Slipakoff, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418–1500 (voice), or (202) 418–0484 (TTY).

Federal Communications Commission.

D'Wana Terry,

Acting Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 03–14740 Filed 6–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA34

Removal of References to the Transportation Security Administration and the United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Transportation (OST) is updating the regulatory language to reflect the departures of the Transportation Security Administration and the United States Coast Guard to the new Department of Homeland Security, and to change the name of the Urban Mass Transportation Administration (UMTA) to the Federal Transit Administration (FTA).

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer S. Thibodeau, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh St., SW., Room 10424, Washington, DC 20590, (202) 366–4723.

SUPPLEMENTARY INFORMATION: This final rule deletes references to the Transportation Security Administration (TSA) and the United States Coast Guard (USCG) in 49 CFR part 1 that concern delegations, organization, and duties within the Department of Transportation. It also deletes responsibilities and duties to TSA and USCG. These two agencies transferred with other agencies to form the new Department of Homeland Security, and are no longer part of the Department of Transportation. Additionally, this rule is changing the name of the Urban Mass Transit Administration (UMTA) to the Federal Transit Administration (FTA) to properly reflect the agency's name.

This final rule does not impose substantive requirements. It simply updates the CFR to reflect the departures of TSA and USCG from the Department of Transportation. The final rule is technical in nature and relates only to Departmental management, organization, procedure, and practice. Therefore, the Department has determined that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). These changes will not have substantive impact. The Department does not expect to receive substantive comments on the rule. Therefore, the Department finds that there is good cause under 5 U.S.C. 553 (d)(3) to make this rule effective less than 30 days after publication in the **Federal Register.**

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

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

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This statute is not applicable because there was no issuance of a notice of proposed rulemaking (NPRM); however, I hereby certify this final rule, which amends the CFR to reflect the departure of TSA and USCG from the Department of Transportation to the new Department of Homeland Security, will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

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

F. Unfunded Mandates Reform Act of 1995

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

G. Environmental Impact

Because this rule concerns the updating of CFR provisions to reflect the departure of TSA and USCG from the Department of Transportation, this final rule is not a major OST action requiring the preparation of an environmental impact statement or environmental assessment.

List of Subjects in 49 CFR Part 1

Authority delegations, Organization and functions.

■ For the reasons set out in the preamble, the Department of Transportation amends 49 CFR part 1 as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

■ 1. Revise the authority citation for part 1 to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064.

■ 2. In § 1.2 remove paragraphs (a) and (l), redesignate existing paragraphs (b) through (k) as (a) through (j), and revise new paragraph (e) to read as follows:

§ 1.2 Definitions.

* * * * *

(e) The Federal Transit Administrator.

* * * * *

■ 3. In § 1.3 remove paragraphs (b)(1) and (b)(12), redesignate existing paragraphs (b)(2) through (11) as (b)(1) through (10), and revise new paragraph (b)(5) to read as follows:

§ 1.3 Organization of the Department.

* * * * *

(b) * * *

(5) The Federal Transit Administration, headed by the Administrator.

* * * * *

■ 4. In § 1.4 remove paragraphs (b) and (n), redesignate existing paragraphs (c) through (m) as (b) through (l), and revise new paragraph (f) introductory text to read as follows:

§ 1.4 General responsibilities.

* * * * *

(f) The Federal Transit Administration. Is responsible for:

* * * * *

■ 5. In § 1.22 revise paragraph (d) to read as follows:

§ 1.22 Structure.

* * * * *

(d) *Office of the General Counsel.* This Office is composed of the Offices of Environmental, Civil Rights, and General Law; International Law; Litigation; Legislation; Regulation and Enforcement; and Aviation Enforcement and Proceedings.

* * * * *

■ 6. Amend § 1.23 by revising paragraph (c) to read as follows:

§ 1.23 Spheres of primary responsibility.

* * * * *

(c) *General Counsel.* Legal services as the chief legal officer of the Department, legal advisor to the Secretary and the Office of the Secretary; final authority within the Department on questions of law; professional supervision, including coordination and review, over the legal work of the legal offices of the Department; drafting of legislation and review of legal aspects of legislative matters; point of coordination for the Office of the Secretary and Department Regulations Council; advice on questions of international law; advice and assistance with respect to uniform time matters; ensures uniform departmental implementation of the Freedom of Information Act (5 U.S.C. 552); responds to requests for records of the Office of the Secretary including the Office of the Inspector General, under that statute; review and final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3); promotion and coordination of efficient use of Department legal resources; recommendation, in conjunction with the Assistant Secretary for Administration, of legal career development programs within the Department.

■ 6a. Amend § 1.44 by revising paragraph (e)(8) to read as follows, remove paragraph (m), and redesignate existing paragraphs (n) through (r) as (m) through (q):

§ 1.44 Reservation of authority.

* * * * *

(e) * * *

(8) Authority to develop, coordinate, and issue wage schedules under the Federal Wage system.

* * * * *

■ 7. In § 1.45, remove paragraph (c)(1)(i), redesignate existing paragraphs (c)(1)(ii) through (ix) as (c)(1)(i) through (viii), and revise new paragraph (c)(1)(iv) to read as follows;

§ 1.45 Delegations to all Administrators.

* * * * *

(c) * * *

(1) * * *

(iv) Federal Transit Administration;

* * * * *

■ 7a. Remove and reserve § 1.46.

■ 8. In § 1.48 revise paragraph (c)(19)(i) to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(c) * * *

(19) * * *

(i) Except sections 165 and 531 as they relate to matters within the primary responsibility of the Federal Transit Administrator; 105(f), 413; 414(b)(1) and (2); 421, 426, and title III; and

* * * * *

■ 9. In § 1.51 revise the title and introductory text to read as follows:

§ 1.51 Delegations to Federal Transit Administrator.

The Federal Transit Administrator is delegated authority to exercise the functions vested in the Secretary by:

* * * * *

■ 10. In § 1.57 remove paragraphs (e) and (f) and redesignate existing paragraphs (g) through (s) as (e) through (q).

■ 10a. Amend § 1.59 by revising paragraph (b)(8) to read as follows:

§ 1.59 Delegations to the Assistant Secretary for Administration.

* * * * *

(b) * * *

(8) Develop, coordinate, and issue wage schedules for Department employees under the Federal Wage System.

* * * * *

■ 11. In § 1.65 remove paragraph (b)(2) and redesignate existing paragraphs (b)(3) and (4) as (b)(2) and (3); and remove paragrpah (c)(2) and redesignate existing paragraphs (c)(3) and (4) as (c)(2) and (3).

■ 12. In § 1.66 revise paragraph (aa)(1) to read as follows, remove paragraphs (bb) and (cc) and redesignate existing paragraphs (dd) through (ff) as (bb) through (dd).

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(aa) * * *

(1) The authority to process applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(bb)).

* * * * *

■ 13. In § 1.70 remove paragraph (k) and redesignate paragraphs (l) through (v) as (k) through (u).

■ 14. In Appendix A to Part 1 remove ''2. Chief Counsel, U.S. Coast Guard.'', redesignate ''3. Chief Counsels'' as 2., and amend the third paragraph of newly designated 2. (b) to read as follows:

Appendix A to Part 1—Delegations and Redelegations by Secretarial Officers

* * * * *

2. Chief Counsels. The General Counsel has delegated to the Chief Counsels the authority delegated to the General Counsel by authority delegated to the General Counsel by Amendment 1–41 to part 1 of title 49, Code of Federal Regulations, 35 FR 17653, November 17, 1970, as follows:

* * * * *

The Chief Counsels of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Federal Transit Administration, the St. Lawrence Seaway Development Corporation, Maritime Administration, and Research and Special Programs Administration are hereby authorized to approve the sufficiency of the title to land being acquired by purchase of condemnation by the United States for the use of their respective organizations. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegation of this authority may only be made by the Chief Counsels to attorneys within their respective organizations.

* * * * *

Issued in Washington, DC on this 28th day of May, 2003.

Norman Mineta,

Secretary of Transportation.

[FR Doc. 03–14438 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 060303F]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the third seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 6, 2003, through 1200 hrs, A.l.t., June 29, 2003.

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

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

The third seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 49 metric tons as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the amount of the third seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI will be caught. Consequently, NMFS is closing directed fishing for species in the yellowfin sole fishery category by vessels using trawl gear in the BSAI.

Classification

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

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: June 4, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–14579 Filed 6–5–03; 2:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 111
Tuesday, June 10, 2003

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN 0575–AC28

Guaranteed Rural Rental Housing Program; Secondary Mortgage Market Participation

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS) proposes to amend its regulations for the Guaranteed Rural Rental Housing Program (GRRHP). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities for low or moderate income families in rural areas. RHS administers the GRRHP under the authority of the Housing Act of 1949. The GRRHP regulations are being amended to allow RHS, in the case of a default, to buy back guaranteed loans from investors. Another change includes lowering the minimum level of rehabilitation work when guaranteed loans are used for acquisition and rehabilitation. These regulatory changes are made to increase participation by the secondary mortgage market in the GRRHP.

DATES: Written or E-mail comments must be received on or before August 11, 2003.

ADDRESSES: Written comments may be submitted, in duplicate, to Tracy Givelekian, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. Comments may be submitted via the Internet by addressing them to *comments@rus.usda.gov* and must contain the words ''Secondary Mortgage'' in the subject. All written comments will be available for public inspection at 300 7th Street SW., Washington, DC 20024, during normal working hours.

FOR FURTHER INFORMATION CONTACT: Arlene Nunes, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781, Telephone (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and this regulation has been assigned OMB control number 0575–0174, in accordance with the Paperwork Reduction Act of 1995. There will be a slight increase in the collection requirements from those approved by OMB. Those increased requirements will be addressed when the rule change is published as a final rule.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132, Federalism

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.438, Section 538 Rural Rental Housing Guaranteed Loans.

Intergovernmental Consultation

For the reasons contained in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has

determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Background

The Guaranteed Rural Rental Housing Program (GRRHP) is a relatively new program that is administered by the Rural Housing Service (RHS). The GRRHP was operated as a pilot program in 1996 and 1997, and has been a permanent program since 1998. The program has been designed to increase the availability of affordable multifamily housing in rural America through partnerships between the Agency and lending sources, as well as with state and local housing finance agencies and bond issuers. During the early stages of the program, barriers were identified that have limited the success of the program. One of the primary barriers has been the inability of lenders to close loans due to a lack of participation by the secondary mortgage market. As a result of this poor performance, we consulted industry and governmental experts in the loan guarantee field at a December 2000 stakeholders' meeting. Our main goal was to learn what we could do to close more loans. The regulatory changes herein are the result of meetings with industry stakeholders, including input from banks, housing finance agencies, and secondary market sectors. The meetings were held to identify program stumbling blocks and brainstorm solutions. The purpose of the following changes is to make the program more industry friendly while not jeopardizing the best interests of the Government.

Allow for a timely payment to investors. In other Rural Development guaranteed programs, the security holder may demand that either the lender or the Government buy out the guaranteed portion of the loan from the holder if payments are delinquent by at least 60 days, or if the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of its receipt. While the holder is effectively taken out prior to liquidation of the loan, the lender must continue to meet all of its obligations to the Government under the Lender's Agreement and Loan Note Guarantee. This provision is important to investors because they do not want to wait for the lender to liquidate the collateral to be reimbursed for their investment, enabling them to put their money to better use elsewhere. By this rule change, the Agency is also adding a definition of the term ''Holder.''

Define conditions of the guarantee. A common concern found among lenders reviewing the GRRHP were the policies on termination or reduction of the guarantee due to a performance failure of the lender. It was the consensus that these policies needed to be more clearly delineated. In addition, it is important for the regulation to make clear that the investor will be held harmless unless they are complicit with the lender in cases involving fraud, abuse, negligence or misrepresentation of fact. This issue has been addressed in the revision of § 3565.52.

Allow the accrual of interest for 90 days after loan default. When the lender is liquidating a guaranteed loan and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate. Upon payment under the current policy, interest accrual terminates on the defaulted loan if an estimated payment of loss is made. This revision changes this policy to allow interest to accrue for 90 days after the date the decision is made to liquidate the loan in default. This interest accrual policy is consistent with other Agency loan guarantee programs. Based on the weight of the factors used to calculate the program's subsidy rate, the impact of this interest accrual policy would be negligible.

Lower per unit threshold for acquisition with rehabilitation from $15,000 per unit to $6,500 per unit. The purpose of lowering the per unit rehabilitation threshold affords new opportunities to preserve affordable housing in a rural community.

Eliminate the timeframe for liquidation, which is currently at 9 months. Eliminating the liquidation timeframe affords the lender the opportunity to sell the property for the highest and best price in accordance with market conditions.

List of Subjects in 7 CFR Part 3565

Banks, Conflict of interests, Credit, Environmental impact statements, Fair housing, Hearing and appeal procedures, Low and moderate income housing, Mortgages, Real property acquisition.

Therefore, chapter XXXV, title 7, Code of Federal Regulations is proposed to be amended to read as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

2. Section 3565.3 is amended by adding, in alphabetical order, a definition of ''Holder.''

§ 3565.3 Definitions.

* * * * *

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through use of an assignment guarantee agreement form approved by the Agency.

* * * * *

Subpart B— Guarantee Requirements

3. Section 3565.52 is revised to read as follows:

§ 3565.52 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee.

(a) *Rights and liabilities.* A Guarantee under this part is backed by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender had knowledge at the time the lender acquired the Guarantee, or which a lender participates in or condones. The Guarantee will be unenforceable by the lender to the extent any loss is occasioned by fraud, misrepresentation or abuse, violation of usury laws, negligent servicing or origination by the lender, including a failure to acquire required security, or as a result of a use of proceeds by the lender for purposes other than those authorized by the Agency and permissible under this regulation. Negligent servicing or origination is a failure to perform those services, which a reasonably prudent lender would perform in servicing or originating its own portfolio, and includes not only the failure to act, but also the failure to act in a timely manner. These acts constitute grounds for the cancellation of the guarantee or refusal to make full payment under the guarantee. If in the judgment of the Agency these acts or omissions can reasonably be expected to have a material adverse effect on the credit

quality of the Guaranteed Loan or the physical condition of the property securing the Guaranteed Loan, the Agency may cancel or modify a guarantee to the extent of the potential loss. The Agency shall give notice to the lender of the acts or omissions that it considers to constitute such grounds and give the lender a reasonable opportunity to cure the acts or omissions. Other violations or performance deficiencies of the lender may themselves be a basis to bar the lender from receiving further Loan Note Guarantees, but will not constitute grounds for cancellation or reduction of the guarantee or refusal to make a claim payment. When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations.

(b) *Liability of the holder.* The holder shall not be liable for the actions of the lender including negligence, fraud, abuse, misrepresentation or misuse of funds, and its rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender, unless the holder has knowledge of such actions when it becomes the holder or condones or participates in such actions.

(c) *Guarantee percentage and payment.* Both permanent loans and combination construction and permanent loans are eligible for a guaranty subject to the following limitations:

(1) *Permanent loans.* A minimum level of acceptable occupancy as determined by the lender with Agency concurrence must be attained prior to the expiration of Form 3565–2 Conditional Commitment, including any extensions thereto, and the issuance of a loan guarantee for the permanent loan. The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and accrued interest 90 days from the date the decision is made to liquidate the loan. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee.

(2) *Combination construction and permanent loans.* For combination construction and permanent loans, the Agency will guarantee advances during the construction loan period (which cannot exceed 24 months). The guarantee of construction loan advances will convert to a permanent loan guarantee once the required level of occupancy has been reached. The maximum guarantee of construction advances related to a combination construction and permanent loan will not at any time exceed the lesser of 90 percent of the amount of principal advanced for eligible construction expenses or 90 percent of the original principal amount of the combination loan. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. In addition, the lender shall require the borrower or the contractor to provide credit enhancements to protect the Government's guarantee. Acceptable credit enhancements include:

(i) Surety bonding or performance and payment bonding (the preferred credit enhancement);

(ii) An irrevocable letter of credit acceptable to the Agency; and

(iii) A pledge by the lender of acceptable collateral.

(3) *Maximum loss payment.* The maximum loss payment to a lender or holder is as follows:

(i) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(ii) To the lender, the lesser of:

(A) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(B) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

Subpart C—Lender Requirements

4. Section 3565.102 is amended by revising paragraph (b) to read as follows:

§ 3565.102 Lender eligibility.

* * * * *

(b) Meet the qualifications and be approved by Fannie Mae or Freddie Mac to make multifamily housing loans that are to be sold to or securitized by such corporations;

* * * * *

Subpart E—Loan Requirements

5. Section 3565.212 is amended by removing the word ''; and'' from paragraph (c) and adding a period and by removing paragraph (d).

Subpart F—Property Requirements

6. Section 3565.252 is revised to read as follows:

§ 3565.252 Housing types.

The property may include new construction or rehabilitated existing structures. The units may be attached, detached, semi-detached, row houses, modular or manufactured houses, or multifamily structures. Manufactured housing must meet Agency requirements contained in 7 CFR part 1924, subpart A or a successor regulation. The Agency will guarantee proposals for new construction or acquisition with moderate or substantial rehabilitation of at least 15 percent of the total estimated replacement cost of the project or $6,500 per dwelling unit, whichever is greater. The portion of guarantee funds available for projects involving acquisition and rehabilitation may be limited in the annual Notice of Fund Availability.

Subpart I—Servicing Requirements

7. Section 3565.403 is amended by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively, and by adding a new paragraph (a) to read as follows:

§ 3565.403 Special servicing.

* * * * *

(a) *Repurchase from holder.* For securitized loans, the holder may require the lender or Government to repurchase the security in accordance with the provisions of § 3565.405.

* * * * *

8. Section 3565.405 is added to read as follows:

§ 3565.405 Repurchase of guaranteed loans.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lenders receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase.

The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. The lender will notify the holder and the Agency of its decision.

(b) *Repurchase by Agency.*

(1) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. This demand notice is in addition to the copy of the written demand on the lender. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the assignment guarantee agreement, on a form approved by the Agency, properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(3) The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30 day payment requirement.

(4) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

Subpart J—Assignment, Conveyance, and Claims

9. Section 3565.452 is amended by revising paragraph (a) to read as follows:

§ 3565.452 Decision to liquidate.

(a) A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 or it has been determined that it is in the best interest of the Agency and the lender to liquidate. If the loan has not already been repurchased when a decision to liquidate is made, provisions will be made for repurchase in accordance with § 3565.405.

* * * * *

10. Section 3565.453 is revised to read as follows:

§ 3565.453 Disposition of the property.

(a) Submission of the liquidation plan. The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing, its proposed detailed plan of liquidation. The Agency will inform the lender in writing whether the Agency concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan submitted to the Agency by the lender shall include:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments.

(2) A copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(3) A full and complete list of all collateral including any personal and corporate guarantees.

(4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

(i) Obtaining an appraisal of the collateral;

(ii) Acquiring and disposing of all collateral;

(iii) Collecting from guarantors;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

(5) Necessary steps for protection of the tenants and preservation of the collateral.

(6) Copies of the borrower's latest available financial statements.

(7) Copies of the guarantor's latest available financial statements.

(8) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(9) A schedule to periodically report to the Agency on the progress of liquidation.

(10) Estimated protective advance amounts with justification.

(11) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(13) Any legal opinions supporting the decision to liquidate.

(14) If the outstanding balance of principal and accrued interest is less than $200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is $200,000 or more, the lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the fair market value and potential liquidation value, and an examination of the title on the collateral. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral.

(b) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(c) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and

reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of weatherization, and prior liens.

(d) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the outstanding loan amount minus the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the loss claim will be promptly processed in accordance with applicable Agency regulations, as set forth in this section.

(e) Property disposition. Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants in 7 CFR part 1944, subpart L or successor regulation.

(f) Accounting and reports. When the lender conducts liquidation, the lender will account for funds during the period of liquidation and provide the Agency with reports at least quarterly on the progress of liquidation, including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(g) Transmitting payments and proceeds to the Agency. When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds.

11. Section 3565.457 is revised to read as follows:

§ 3565.457 Determination of claim amount.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party which may be liable.

(a) *Report of loss form.* An Agency approved form will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) *Estimated loss.* An estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the loan debt. Such application does not release the borrower from liability.

(2) A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations.

(c) *Final loss.* Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on the report of loss form.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds.

(5) Accrued interest will be supported by documentation as to how the amount was accrued.

(6) Loss payments will be paid by the Agency within 60 days after the receipt of the final loss report and accounting of the collateral.

(7) Should there be a circumstance where the lender cannot or will not sign a final report of loss, the State Director may complete the final report of loss and submit it to the Finance Office without the lender's signature. Before this action can be taken, all collateral must be disposed of or accounted for; there must be no evidence of fraud, misrepresentation, or negligent servicing by the lender; and all efforts to obtain the cooperation of the lender must have been exhausted and documented.

(d) *Maximum guarantee payment.* The maximum guarantee payment will not exceed the amount of guarantee percentage as contained in the guarantee agreement (but in no event more than 90%) times the allowable loss amount.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt after paying operating expenses of the property.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve the form and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

(3) If the Agency determines that it is in the Government's best interest to take assignment of the loan and conduct liquidation, as stipulated in the 538 statute 42 U.S.C. 1490, i(3) Assignment by Secretary, the Agency will pay the

lender in accordance with the Loan Note Guarantee.

(h) *Date of loss.* The date of loss is the date on which the collateral will be liquidated in the liquidation plan, unless an alternative date is approved by the Agency. Where the Agency chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Agency accepts assignment of the loan or conveyance of title.

(i) *Allowable claim amount.* The allowable claim amount must be calculated by:

(1) Adding to the unpaid principal and interest on the date of loss, an amount approved by the Agency for payments made by the lender for amounts due and owing on the property, including:

(i) Property taxes and other protective advances as approved by the Agency;

(ii) Water and sewer charges and other special assessments that are liens prior to the guaranteed loan;

(iii) Insurance of the property; and

(iv) Reasonable liquidation expenses.

(2) And by deducting the following items:

(i) Any amount received by the lender on the account of the guaranteed loan after the date of default;

(ii) Any net income received by the lender from the secured property after the date of default; and

(iii) Any cash items retained by the lender, except any amount representing a balance of the guaranteed loan not advanced to the borrower. Any loan amount not advanced will be applied by the lender to reduce the outstanding principal on the loan.

(j) *Lender certification.* The lender must certify that all possibilities of collection have been exhausted and that all of the items specified in paragraph (c) of this section have been identified and reported to the Agency as a condition for payment of claim.

Dated: March 18, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03–14480 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F Airplanes; and Model MD–10–10F and –30F 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 McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F airplanes; and certain Model MD–10–10F and –30F airplanes. This proposal would require inspections for cracking and corrosion of the bolt assemblies and bushings on the hinge fittings of the inboard and outboard flaps of the left and right wings, and follow-on and corrective actions. This action is necessary to prevent failure of the bolt and bushing that attach the hinge fitting to the flap, which could result in loss of the flap and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–164–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–164–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 or 2000 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: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; 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–164–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–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating failure of the bolts and bushings that attach the hinge fittings to the inboard and outboard flaps on certain McDonnell Douglas Model DC–10 airplanes. In two cases, the failure was in the radius area of the bolt head; in one case, the failure was in the threaded portion of the bolt; in another case, both the head and threaded end had failed. Additional failures occurred in the lubrication hole in the middle of the shank. The cause of these failures has been attributed to hydrogen embrittlement. Subsequent to installation of new hinge bolts with improved corrosion protection, the corrosion and failures continued to occur.

In addition, multiple reports have been received from operators of corrosion on the bolt and bushing. Investigation revealed that a lack of lubrication caused the initiation of corrosion, and the corrosion led to the stress corrosion failure of the bolt and bushing. The bolt and bushing provide a fail-safe mechanism at the flap hinge pivot point. Such conditions, if not corrected, could result in failure of the bolts and bushings that attach the hinge fitting to the flap, which could result in loss of the flap and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin DC10–57A148, Revision 01, dated August 13, 2002, which describes procedures for magnetic particle and visual inspections for cracking and corrosion of the outboard pivot bolt assemblies and bushings on the hinge fittings of the inboard flaps of the left and right wings. The service bulletin also describes procedures for follow-on actions and repair of any discrepancy found, as follows:

- *Condition 1—No cracking or corrosion found:* Option 1—Reinstall each existing bushing, replace each existing pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricate the assembly. Option 2—Reinstall each existing bushing and pivot bolt assembly, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.
- *Condition 2—Corrosion on bolt and/or bushing:* Option 1—Replace each affected bushing with a new equivalent part, replace each affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricate the assembly. Option 2—Repair the existing bushing and pivot bolt assembly and reinstall them, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.
- *Condition 3—Cracks in bolt and/or bushing:* Option 1—Replace each affected bushing with a new equivalent part, replace each affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricate the assembly. Option 2—Replace each affected bushing and pivot bolt assembly with new equivalent parts, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.

We also have reviewed and approved Boeing Alert Service Bulletin DC10–57A117, Revision 01, dated July 23, 2002, which describes procedures for magnetic particle and visual inspections for cracking and corrosion of the pivot bolt assemblies on the hinge fitting of the outboard flaps of the left and right wings. The service bulletin also describes procedures for follow-on actions and repair of any discrepancy found, as follows:

- *Condition 1—No cracking or corrosion found:* Option 1—Replace each existing pivot bolt assembly with a new assembly made from multi-phase material, and lubricate the assembly. Option 2—Reinstall each pivot bolt assembly, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.
- *Condition 2—Corrosion on bolt:* Option 1—Replace each affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricate the assembly. Option 2—Repair the existing pivot bolt assembly and reinstall, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.
- *Condition 3—Cracks in bolt:* Option 1—Replace each affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricate the assembly. Option 2—Replace each affected pivot bolt assembly with a new equivalent part, lubricate the assembly, repeat the lubrication at the intervals specified, and do repetitive ultrasonic inspections of each assembly for cracking at the intervals specified.

Accomplishment of the actions specified in the service bulletins 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.

Changes to 14 CFR part 39/Effect on the Proposed AD

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

Cost Impact

There are approximately 402 airplanes of the affected design in the worldwide fleet. The FAA estimates that 297 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed initial inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $17,820, or $60 per airplane.

It would take approximately 2 work hours per flap, to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,982 for the outboard flap, and $2,825 for the inboard flap. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $1,795,959, or $6,047 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–164–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F airplanes; and Model MD–10–10F and –30F airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bolts and bushings that attach the hinge fitting to the flap, which could result in loss of the flap and consequent reduced controllability of the airplane, accomplish the following:

Initial General Visual and Magnetic Particle Inspections

(a) Within 6 months after the effective date of this AD: Do initial general visual and magnetic particle inspections for cracking and corrosion of the pivot bolt assemblies and bushings on the hinge fittings of the inboard and outboard flaps of the left and right wings, per Boeing Alert Service Bulletin DC10–57A148, Revision 01, dated August 13, 2002; and Boeing Alert Service Bulletin DC10–57A117, Revision 01, dated July 23, 2002; as applicable. Before further flight, do the applicable follow-on and corrective actions required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

Note 1: 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.''

Follow-on and Corrective Actions

(1) If no cracking or corrosion is found: Before further flight, do the actions specified in either (a)(1)(i) or (a)(1)(ii) of this AD per Condition 1 of the Work Instructions of the applicable service bulletin.

(i) Do the actions specified in Option 1 of Condition 1 per the applicable service bulletin. The actions include (for the inboard flaps) reinstalling each existing bushing, replacing each existing pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricating the assembly; (for the outboard flaps) replacing each existing pivot bolt assembly with a new assembly made from multi-phase material, and lubricating the assembly.

(ii) Do the actions specified in Option 2 of Condition 1 per the applicable service bulletin. The actions include (for the inboard flaps) reinstalling the existing bushing and pivot bolt assembly, lubricating the assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified; (for the outboard flaps) reinstalling the pivot bolt assembly, lubricating the assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified. Accomplishment of paragraph (a)(1)(i) terminates the requirements of this paragraph.

(2) If corrosion is found: Before further flight, do the actions specified in either (a)(2)(i) or (a)(2)(ii) of this AD per Condition 2 of the Work Instructions of the applicable service bulletin.

(i) Do the actions specified in Option 1 of Condition 2 per the applicable service bulletin. The actions include (for the inboard flaps) replacing the affected bushing with a new equivalent part, replacing the affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricating each assembly; (for the outboard flaps) replacing the affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricating each assembly.

(ii) Do the actions specified in Option 2 of Condition 2 per the applicable service bulletin. The actions include (for the inboard flaps) repairing and re-installing the existing bushing and affected pivot bolt assembly, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified; (for the outboard flaps) repairing and installing the existing pivot bolt assembly, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking, at the intervals specified. Do the inspections until paragraph (a)(2)(i) of this AD has been done.

(3) If cracking is found: Before further flight, do the actions specified in either paragraph (a)(3)(i) or (a)(3)(ii) of this AD per Condition 3 of the Work Instructions of the applicable service bulletin.

(i) Do the actions specified in Option 1 of Condition 3 per the applicable service bulletin. The actions include (for the inboard flaps) replacing the affected bushing with a new equivalent part, replacing the affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricating each assembly; (for the outboard flaps) replacing the affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricating each assembly.

(ii) Do the actions specified in Option 2 of Condition 3 per the applicable service bulletin. The actions include (for the inboard flaps) replacing the affected bushing and pivot bolt assembly with new equivalent parts, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified; (for the outboard flaps) replacing the affected pivot bolt assembly with a new equivalent part, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified. Do the inspections until paragraph (a)(3)(i) of this AD has been done.

Credit for Actions Done per Previous Issue of Service Bulletins

(b) Accomplishment of the specified actions before the effective date of this AD per Boeing Alert Service Bulletin DC10–57A148, dated June 14, 2002; or Boeing Alert Service Bulletin DC10–57A117, dated February 11, 1991; is considered acceptable

for compliance with the applicable requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on June 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14525 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 179–1179; FRL–7510–3]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted by the State of Kansas. The purpose of this revision is to delete the Wyandotte County Air Pollution Control Regulations from the Federally-Approved Regulations. These regulations were originally incorporated into the SIP to assure that local-specific air quality issues were addressed with Federally-enforceable provisions. Due to the continued evolution of the Kansas Air Quality Regulations, these local regulations are no longer necessary to assure continued maintenance of air quality standards in Wyandotte County.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by July 10, 2003.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail her at *hamilton.heather@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: May 30, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–14457 Filed 6–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21,74 and 101

[WT Docket No. 03–66; RM–10586; WT Docket No. 03–67; MM Docket No. 97–217; WT Docket No. 02–68; RM–9718; FCC 03–56]

Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this document the Federal Communications Commission (FCC) proposes rules that would require Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) operators to limit the strength of some or all of the radio signals they transmit to levels that would make it possible for operators in adjacent service areas to provide two-way, low-power cellular services. The new rules would also expand ITFS eligibility criteria to include commercial as well as non-profit educational entities and perhaps merge ITFS with MDS, but they would maintain the amount of educational content provided on those channels at levels comparable to those attained under existing requirements. The purpose of the proposals is to facilitate provision of high-speed wireless Internet access services and mobile radio services in a band that has traditionally been used primarily for high-powered, one-way television.

DATES: Comments are due on or before September 8, 2003 and reply comments are due on or before October 23, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Zaczek or Charles Oliver at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau or via the Internet to *nzaczek@fcc.gov* or *coliver@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Purposed Rulemaking, FCC 03–56, adopted on March 13, 2003, and released on April 2, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. By this *Notice of Proposed Rulemaking (NPRM),* the FCC initiates a comprehensive examination of the FCC's rules and policies governing the licensing of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) (collectively, the Services) in the 2500–2690 MHz band. By this action, the FCC seeks to promote competition, innovation and investment in wireless broadband services, and to promote educational services. Additionally, the FCC also seeks to foster the development of innovative service offerings to consumers as well as educational, medical and other institutions, simplify the licensing process and delete obsolete and unnecessary regulatory burdens. The FCC believes that it is appropriate and prudent to take this action at this time because the Services and the potential uses for the spectrum allotted to them have evolved significantly since the inception of the Services. Those uses present a significant opportunity to provide alternatives for the provision of broadband services to consumers in urban, suburban and rural areas and to improve opportunities for distance

learning and telemedicine services. In addition, this proceeding has been prompted, in part, by the request of a group of representatives of licensees in the Services—namely, the Wireless Communications Association International (WCA), the National ITFS Association (NIA) and the Catholic Television Network (CTN) (collectively, the Coalition)—that the FCC substantially change the rules governing the Services. The FCC's proposals are intended to foster the provision of innovative and traditional service offerings to consumers as well as educational, medical and other institutions, to simplify the licensing process, and to remove obsolete rules and unnecessary regulatory burdens.

2. The rule changes proposed in this *NPRM* would facilitate the provision of high-speed data and voice services accessible to mobile as well as fixed users on channels that today are used primarily for one-way video operations to fixed locations. These changes would ultimately affect between 142 and 190 MHz of spectrum, depending upon which of the alternative sets of rules proposed in this NPRM are adopted. The FCC emphasizes, however, that it does not intend to evict any incumbent licensees from the affected band if they have been in compliance with the FCC's rules and continue to comply with the FCC's rules when the FCC modifies or augments them nor does it intend to undermine the educational mission of ITFS licensees. Far from evicting existing licensees, the FCC anticipates that the streamlined regulations and revised spectrum plan adopted in this proceeding will facilitate the provision of advanced wireless communications services by incumbent licensees.

3. The following is a summary of the FCC's major proposals and determinations. In the *NPRM,* the FCC:

- Seek comment on whether and how to reconfigure the 2500–2690 MHz band;
- Seek comment on the best means of ensuring the efficient utilization of unassigned ITFS spectrum, including geographic area licensing and unlicensed operation;
- Propose to convert site-by-site licenses of MDS and ITFS incumbents to geographic service areas;
- Seek comment on how best to promote increased access to and efficient utilization of ITFS spectrum;
- Propose technical rules to increase licensee flexibility and protect incumbent operations in the 2500–2690 MHz band;
- Propose technical and service rules for mobile operations;
- Propose to simplify and streamline the licensing process for the Services;
- Propose application filing and processing procedures to facilitate implementation of the Services into the Universal Licensing System (ULS) administered by the Wireless Telecommunications Bureau; and
- Propose to consolidate all service-specific rules for the Services under parts 27 and 101 but seek comment on alternatives.

I. Procedural Matters

A. Ex Parte *Rules—Permit-But-Disclose*

4. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the FCC's rules.

B. Comment Period and Procedures

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the FCC's rules, interested parties may file comments on this NPRM on or before September 8, 2003, and reply comments on or before October 23, 2003. Comments and reply comments should be filed in WT Docket No. 03–66, and may be filed using the FCC's Electronic Comment Filing System (ECFS) or by filing paper copies. All relevant and timely comments will be considered by the FCC before final action is taken in this proceeding.

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by e-mail via the Internet. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

7. Parties who choose to file by paper must file an original and four copies of each filing. If parties want each FCC Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. All filings must be sent to the FCC's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Furthermore, parties are requested to provide courtesy copies for the following FCC staff: (1) Nancy Zaczek, Charles Oliver and Stephen Zak, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room. 3–C124, Washington, DC 20554; and (2) Gary Michaels and Andrea Kelly, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554. One copy of each filing (together with a diskette copy, as indicated below) should also be sent to the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–863–2893.

8. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–863–2893.

9. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov.* Copies of comments and reply comments are also available through the FCC's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–863–2893. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov.*

10. As required by the Regulatory Flexibility Act of 1980 (RFA), the FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the

possible significant economic impact on small entities of the policies and rules proposed in the NPRM. The analysis is found in Appendix A. The FCC requests written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the *NPRM,* and must have a separate and distinct heading designating them as responses to the IRFA. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

II. Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the FCC has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *NPRM* for comments. The FCC will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

12. In this *NPRM* the FCC proposes a number of changes and ask for comments concerning the rules governing the 2500–2690 MHz band, for the Multipoint Distribution Service (MDS), the Multichannel Multipoint Distribution Service (MMDS), and the Instructional Television Fixed Service (ITFS). The FCC's proposals include:

- Proposing technical rules to increase licensee flexibility;
- Seeking comment on revising the band plan;
- Proposing service rules for mobile operation;
- Proposing to encourage entrepreneurial efforts to develop new technologies and services by opening ITFS spectrum to a wide range of applicants;
- Proposing to simplify and streamline the licensing process;
- Proposing application filing and processing to facilitate electronic filing in ULS;
- Proposing to consolidate these services under Part 101;
- Tentatively concluding that MDS and ITFS licensees should receive a six-month transition period after application processing in ULS begins before requiring mandatory electronic filing in ULS;
- Suspending the acceptance and processing of applications in this band, with certain exceptions, until the completion of this rulemaking proceeding;
- Suspending the current August 16, 2003 construction deadline for BTA authorization holders; and
- Proposing to assign ITFS licenses through competitive bidding.

13. The FCC believes that its proposals will encourage the enhancement of existing services using this band and the development of new innovative services to the public such as providing wireless broadband services, including high-speed Internet access and mobile services. The FCC also believes that its proposals will allow licensees to adapt quickly to changing market conditions and the marketplace, rather than the government, to determine how this band will best be used.

Legal Basis

14. The proposed action is authorized under sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms, ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. The definition of ''small governmental jurisdiction'' is one with a population of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on how many of these entities have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, the FCC estimates that 96 percent, or about 81,600, are small entities that may be affected by the FCC's rules.

16. Nationwide, there are 4.44 million small business firms, according to SBA reporting data. In this section, the FCC further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the FCC publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the FCC discusses the total estimated numbers of small businesses that might be affected by its actions.

17. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the FCC established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the

definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the FCC estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the FCC tentatively concludes that at least 1,932 licensees are small businesses.

18. In connection with the 1996 MDS auction, the FCC defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The FCC established this small business definition in the context of this particular service and with the approval of SBA. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. At this time, the FCC estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the FCC finds that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the FCC's rules. Some of those 440 small business licensees may be affected by the proposals in this *NPRM.*

19. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services that includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, the FCC finds that there are approximately 892 small MDS providers as defined by the SBA and the FCC's auction rules, and some of these providers may take advantage of the FCC's amended rules to provide two-way MDS.

20. There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. ITFS is a non-profit non-broadcast service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. However, the FCC does not collect, nor is the FCC aware of other collections of, annual revenue data for ITFS licensees. Thus, the FCC finds that up to 1932 of these educational institutions are small entities that may take advantage of the FCC's amended rules to provide additional flexibility to ITFS.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. As noted previously, applicants for MDS or ITFS licenses would be required to apply through the Universal Licensing System using FCC Form 601, and other appropriate forms. Licensees will also be required to apply for an individual station license by filing FCC Form 601 for those individual stations that (1) require submission of an Environmental Assessment of the facilities under § 1.1307 of the FCC's rules; (2) require international coordination of the application; or (3) require coordination with the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). While these requirements are new with respect to potential licensees in the ITFS and MDS bands, the FCC has applied these requirements to licensees in other bands. Moreover, the FCC is also proposing to eliminate many burdensome filing requirements that have previously been applied to MDS and ITFS.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

23. In this *NPRM,* the FCC seeks comment on a number of proposals and alternatives regarding the use of the 2500–2690 MHz band. This *NPRM* seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. It opens up economic opportunities to a variety of spectrum users, including small businesses. The FCC considers various proposals and alternatives partly because the FCC seeks to minimize, to the extent possible, the economic impact on small businesses.

24. The FCC has reduced the burdens wherever possible. To minimize any further negative impact, however, the FCC proposes certain exclusive incentives for small entities that will redound to their benefit. The FCC proposes the use of bidding credits for small entities that participate in auctions of licenses that are conducted pursuant to the rules proposed in this *NPRM.* The FCC proposes to define a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, a ''very small business'' as an entity with average gross revenues for the preceding three years not exceeding $15 million, and an ''entrepreneur'' as an entity with average annual gross revenues for the preceding three years not exceeding $3 million. The FCC proposes that entities qualifying as small businesses will receive a 15% bidding credit, that entities qualifying as very small businesses will receive a 25% bidding credit, and that entities qualifying as entrepreneurs will receive a 35% bidding credit. Qualifying small businesses, very small businesses, and entrepreneurs can reduce their winning bids by the amount of their bidding credits. The FCC believes that these bidding credits will help small entities

compete in the FCC's auctions and acquire licenses. The FCC seeks comment on its proposed small business definitions and bidding credits, including information on factors that may affect the capital requirements of the type of services a licensee may seek to provide.

25. The regulatory burdens contained in the *NPRM,* such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The FCC will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The FCC seeks comment on significant alternatives commenters believe the FCC should adopt.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

26. None.

III. Ordering Clauses

27. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this Notice of Proposed Rulemaking is hereby *adopted.*

It is further ordered that the FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedures, and Reporting and recordkeeping requirements.

47 CFR Parts 74 and 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 21, 74 and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.933 is amended by adding paragraphs (c)(8) and (9) to read as follows:

§ 1.933 Public notices.

* * * * *

(c) * * *

(8) Multipoint Distribution Service.

(9) Instructional Television Fixed Service.

* * * * *

3. Section 1.1102 is amended by revising entry 20 to the table to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

* * * * *

Action	FCC Form No.	Fee amount	Payment type code	Address
* *	*	*	*	* *
20. Multipoint Distribution Service (including Multi-channel MDS)				
a. Conditional License	304 & 159 or 331 & 159.	$220.00	CJM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
b. Major Modification of Conditional Licenses or License Authorization.	304 & 159 or 331 &159.	220.00	CJM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358994, Pittsburgh, PA 15251–5155.
c. Certification of Completion of Construction.	304–A & 159	645.00	CPM*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
d. License Renewal	405 & 159	220.00	CJM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
e. Assignment or Transfer:				
(i) First Station on Application	702 & 159 or 704 & 159.	80.00	CCM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Each Additional Station	702 & 159 or 704 & 159.	50.00	CAM	
f. Extension of Construction Authorization	701 & 159	185.00	CHM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization.	Corres & 159	100.00	CEM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
h. Signal Booster.				
(i) Application	304 & 159, 331 & 159.	75.00	CSB	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Certification of Completion of Construction (Electronic Filing Only).	304A & 159	80.00	CCB	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.

Action	FCC Form No.	Fee amount	Payment type code	Address
* * * * * * *				

PART 21 [REMOVED]

4. Part 21 is removed.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

5. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

6. Section 74.1 is amended by revising paragraph (b) to read as follows:

§ 74.1 Scope.

* * * * *

(b) Rules in part 74 which apply exclusively to a particular service are contained in that service subpart, as follows: Experimental Broadcast Stations, subpart A; Remote Pickup Broadcast Stations, subpart D; Aural Broadcast STL and Intercity Relay Stations, subpart E; TV Auxiliary Broadcast Stations, subpart F; Low Power TV, TV Translator and TV Booster Stations, subpart G; Low Power Auxiliary Stations, subpart H; FM Broadcast Translator Stations and FM Broadcast Booster Stations, subpart L.

Subpart I [Removed and Reserved]

7. Subpart I of part 74 is removed and reserved.

PART 101—FIXED MICROWAVE SERVICES

8. The authority citation for part 101 continues to read as follows:

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

9. Section 101.3 is amended by adding the following definitions in alphabetical order to read as follows:

§ 101.3 Definitions.

* * * * *

Instructional Television Fixed Service. A fixed or mobile service intended primarily for video, data, or voice transmissions of instructional, cultural, and other types of educational material to one or more receiving locations.

* * * * *

Multipoint Distribution Service. A domestic public radio service rendered on microwave frequencies from one or more stations transmitting to multiple receiving facilities.

* * * * *

10. Section 101.101 is amended by revising the following entries to the table to read as follows:

§ 101.101 Frequency availability.

Radio service					
Frequency band (MHz)	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 22, 24, 25, 74, 78 & 100)	Notes
* *	*	*	*	*	*
2450–2500	LTTS	OFS	TV BAS	ISM	F/M/TF
2500–2650	ITFS MDS	ITFS MDS			
2650–2690	ITFS MDS	OFS MDS/ITFS			
* *	*	*	*	*	*

* * * * *

ITFS: Instructional Television Fixed Service—(part 101, subpart P)

* * * * *

MDS: Multipoint Distribution Service—(part 101, subpart Q)

* * * * *

11. Add subpart Q to part 101 to read as follows:

Subpart Q—Instructional Television Fixed Service

Sec.

§ 101.1501 Purpose and permissible service.

(a)(1) Instructional television fixed stations are intended primarily through video, data, or voice transmissions to further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students. Authorized instructional television fixed station channels must be used to further the educational mission of accredited schools offering formal educational courses to enrolled students.

(2) In furtherance of the educational mission of accredited schools, instructional television fixed station channels may be used for:

(i) In-service training and instruction in special skills and safety programs, extension of professional training, informing persons and groups engaged in professional and technical activities of current developments in their particular fields, and other similar endeavors;

(ii) Transmission of material directly related to the administrative activities of the licensee, such as the holding of conferences with personnel, distribution of reports and assignments, exchange of data and statistics, and other similar uses; and

(iii) Response channels transmitting information associated with formal educational courses offered to enrolled

students, including uses described in paragraphs (a)(2)(i) and (ii) of this section, from ITFS response stations to response station hubs.

(b) Stations may be licensed in this service as originating or relay stations to interconnect instructional television fixed stations in adjacent areas, to deliver instructional and cultural material to, and obtain such material from, commercial and noncommercial educational television broadcast stations for use on the instructional television fixed system, and to deliver instructional and cultural material to, and obtain such material from, nearby terminals or connection points of closed circuit educational television systems employing wired distribution systems or radio facilities authorized under other parts of this chapter, or to deliver instructional and cultural material to any CATV system serving a receiving site or sites which would be eligible for direct reception of ITFS signals under the provisions of paragraph (a) of this section.

(c) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(1) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee.

(2) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

§ 101.1502 BTA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization in each market and frequency block.

(b) Blanket licenses are granted for each market and frequency block. Blanket licenses cover all mobile and response stations. Blanket licenses also cover all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

§ 101.1503 Service areas.

Most ITFS service areas are Basic Trading Areas (BTAs). BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The following are additional ITFS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

§ 101.1504 Conversion of incumbent ITFS stations to geographic area licensing.

(a) Any ITFS station licensed by the Commission prior to date to be decided as well as assignments and transfers approved by the Commission and consummated as of [date to be decided] shall be considered incumbent and grandfathered (may continue to operate under their licensed parameters).

(b) As of [date to be decided], all incumbent ITFS licenses shall be converted to a blanket license. Pursuant to that geographic area license, such incumbent licensees may modify their systems provided the signal level [specific level to be decided] does not increase outside their pre-existing protected service area. The blanket license covers all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

Incumbent operators and geographic area licensees may negotiate alternative criteria.

(c) The frequencies associated with incumbent authorizations that have been cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable BTA licensee.

§ 101.1505 Performance requirements.

(a) Incumbent site-based licensees are subject to the construction requirements set forth in § 101.63.

(b) All ITFS BTA licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which it holds a license, in each BTA or portion of a BTA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of ''substantial.''

(1) A description of the ITFS licensee's current service in terms of geographic coverage;

(2) Copies of all orders or other adjudications that the licensee has violated the Communications Act or the Commission's rules or policies;

(3) A description of the ITFS band licensee's current service in terms of population served, as well as any additional service provided during the license term;

(4) A description of the ITFS licensee's investments in its system(s) (type of facilities constructed and their operational status is required); and

(b) Any ITFS licensees adjudged not to be providing substantial service will not have their licenses renewed.

§ 101.1506 Partitioning and disaggregation.

(a) *Eligibility* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of license. Geographic area licensees may participate in aggregation, disaggregation, and partitioning within

the bands licensed on a geographic area basis.

(2) Eligible ITFS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to determine the portion of their service areas to be partitioned. Eligible ITFS licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

(b) *Technical standards* (1) There is no limitation on the amount of spectrum that an ITFS licensee may aggregate.

(2) Spectrum may be disaggregated in any amount. A licensee need not retain a minimum amount of spectrum.

(3) In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83).

(4) Combined partitioning and disaggregation. The Commission will consider requests from geographic area licensees for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Construction requirements.*—(1) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and Disaggregate would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 101.1506 for the geographic service area. If parties choose this option and either party fails to demonstrate substantial service, both licenses would be subject to forfeiture at renewal. The second option allows the parties to agree that either the disaggregator or disaggregate would be responsible for meeting the requirements in § 101.1505 for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to forfeiture at renewal.

(2) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently provide substantial service for their respective partitioned areas. If either licensee fails to meet its requirement in § 101.1505, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the requirement in § 101.1505 for the entire market. If the partitionor fails to meet the requirement in § 101.1505, however, only its license would be subject to forfeiture at renewal.

(3) All applications requesting partial assignments of license for partitioning or disaggregation must certify in the appropriate portion of the application which construction option is selected.

(4) Responsible parties must submit supporting documents as required by § 101.1505.

(d) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term.

(e) *Remote Control Operation.* Licensed ITFS stations may be operated by remote control without further authority.

§ 101.1508 Unattended operation.

Unattended operation of licensed ITFS stations is permitted without further authority. An unattended relay station may be employed to receive and retransmit signals of another station provided that the transmitter is equipped with circuits which permit it to radiate only when the signal intended to be retransmitted is present at the receiver input terminals.

§ 101.1509 License term.

(a) Incumbent ITFS licenses shall be issued for a period of 10 years beginning with the date of grant.

(b) A BTA authorization shall be issued for a period of ten years from the date the Commission declared bidding closed in the ITFS auction.

12. Add subpart R to part 101 to read as follows:

Subpart R—Multipoint Distribution Service

Sec.

§ 101.1601 Purpose and permissible service.

Multipoint Distribution Service stations may provide any fixed or mobile services for which its frequency bands are allocated, subject to the technical and other rules contained in this part and subpart.

§ 101.1602 BTA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization in each market and frequency block.

(b) Blanket licenses are granted for each market and frequency block. Blanket licenses cover all mobile and response stations. Blanket licenses also cover all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

§ 101.1603 Service areas.

Most MDS service areas are Basic Trading Areas (BTAs). BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The following are additional MDS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

§ 101.1604 Conversion of incumbent MDS stations to geographic area licensing.

(a) Any MDS station licensed by the Commission prior to [date to be decided] as well as assignments and transfers approved by the Commission and consummated as of [date to be decided] shall be considered incumbent and grandfathered (may continue to

operate under their licensed parameters).

(b) As of [date to be decided], all incumbent MDS licenses shall be converted to a blanket license. Pursuant to that geographic area license, such incumbent licensees may modify their systems provided the signal level [specific level to be decided] does not increase outside their pre-existing protected service area. The blanket license covers all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(c) The frequencies associated with incumbent authorizations that have been cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable BTA licensee.

§ 101.1605 Performance requirements.

(a) Incumbent site-based licensees are subject to the construction requirements set forth in § 101.63.

(b) All MDS BTA licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which it holds a license, in each BTA or portion of a BTA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of ''substantial.''

(1) A description of the MDS licensee's current service in terms of geographic coverage;

(2) Copies of all orders or other adjudications that the licensee has violated the Communications Act or the Commission's rules or policies;

(3) A description of the MDS licensee's current service in terms of population served, as well as any additional service provided during the license term;

(4) A description of the MDS licensee's investments in its system(s) (type of facilities constructed and their operational status is required);

(5) Any MDS licensees adjudged not to be providing substantial service will not have their licenses renewed.

§ 101.1606 Partitioning and disaggregation.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of license. Geographic area licensees may participate in aggregation, disaggregation, and partitioning within the bands licensed on a geographic area basis.

(2) Eligible MDS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to determine the portion of their service areas to be partitioned. Eligible MDS licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

(b) *Technical standards.* (1) There is no limitation on the amount of spectrum that an MDS licensee may aggregate.

(2) Spectrum may be disaggregated in any amount. A licensee need not retain a minimum amount of spectrum.

(3) In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83).

(4) Combined partitioning and disaggregation. The Commission will consider requests from geographic area licensees for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Construction requirements.* (1) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregate would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 101.1605 for the geographic service area. If parties choose this option and either party fails to demonstrate substantial service, both licenses would be subject to forfeiture at renewal. The second option allows the parties to agree that either the disaggregator or disaggregate would be responsible for meeting the requirements in § 101.1605 for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to forfeiture at renewal.

(2) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently provide substantial service for their respective partitioned areas. If either licensee fails to meet its requirement in § 101.1605, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the requirement in § 101.1605 for the entire market. If the partitionor fails to meet the requirement in § 101.1605, however, only its license would be subject to forfeiture at renewal.

(3) All applications requesting partial assignments of license for partitioning or disaggregation must certify in the appropriate portion of the application which construction option is selected.

(4) Responsible parties must submit supporting documents as required by § 101.1505.

(d) License term. The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term.

§ 101.1607 Remote control operation.

MDS stations may be operated by remote control without further authority.

§ 101.1608 Unattended operation.

Unattended operation of licensed MDS stations is permitted without further authority. An unattended relay station may be employed to receive and retransmit signals of another station provided that the transmitter is equipped with circuits which permit it to radiate only when the signal intended to be retransmitted is present at the receiver input terminals.

§ 101.1609 License term.

(a) Incumbent MDS licenses shall be issued for a period of 10 years beginning with the date of grant.

(b) A BTA authorization shall be issued for a period of ten years from the date the Commission declared bidding closed in the MDS auction.

[FR Doc. 03–14222 Filed 6–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH59

Endangered and Threatened Wildlife and Plants; Reclassification of *Lesquerella filiformis* (Missouri Bladderpod) from Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify *Lesquerella filiformis* (Missouri bladderpod) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). We are proposing this reclassification because the endangered designation no longer correctly reflects the current status of this plant based on the plant's significant progress toward recovery, and in response to a petition from the Missouri Department of Conservation (MDC) to reclassify this species. Since the time of listing, the number of known populations of the plant has substantially increased and the threats to some of the larger populations have decreased because of land acquisition, landowner contact programs, and beneficial management initiatives. This proposal, if made final, would extend the Federal protection and recovery provisions for threatened plants provided by the Act to the Missouri bladderpod.

DATES: Comments from all interested parties must be received by August 11, 2003 so they can be considered in our final decision. Public hearing requests must be received by July 25, 2003.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Field Supervisor, U.S. Fish and Wildlife Service, 608 E. Cherry Street, Room 200, Columbia, MO 65201–7712. Comments may also be submitted by electronic mail to *bladderpod@fws.gov* or by facsimile to 573/876–1914. The subject line should be ''Bladderpod Comments.'' Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address following the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Paul McKenzie, Ph.D., Columbia Field Office (*see* **ADDRESSES** section) (telephone: 573/876–1911, ext. 107; facsimile: 573/876–1914). Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800/877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Lesquerella filiformis (Missouri bladderpod) is an annual plant with erect, hairy stems approximately 20 centimeters (cm) (8 inches (in)) in height that branch from the plant's base. Basal leaves are hairy on both surfaces, 1.0–2.25 cm (0.4–0.9 in) long, 0.3–1.0 cm (0.1–0.4 in) wide, broadly rounded, and tapering to a narrow petiole. Stem leaves are densely hairy with stellate hairs on both surfaces, 1.0–3.2 cm (0.4–1.3 in) long and 1.6–16 millimeters (mm) (0.06–0.6 in) wide, and have a silvery appearance. Bright yellow flowers with 4 petals occur at the top of the stems in late April or early May (Morgan 1980). Missouri bladderpod is restricted to shallow soils of limestone glades in southwestern Missouri (Hickey 1988; Thomas 1996) and northwestern Arkansas and, occasionally, dolomite glades in north-central Arkansas (John Logan, Missouri Department of Natural Resources (MDNR), pers. comm. 2000).

Lesquerella filiformis Rollins, a member of the mustard family (Brassicaceae), was first collected in 1887 in southwestern Missouri. Payson (1921), however, misapplied the name *Lesquerella angustifolia* (Nutt.) S. Wats. to these early collections. Rollins (1956) formally described *Lesquerella filiformis* as a distinct species, and its taxonomic validity was further supported in a subsequent monograph on the genus *Lesquerella* in North America by Rollins and Shaw (1973).

Historically, Missouri bladderpod was believed to be a State endemic plant known solely from a few sites in two counties in southwestern Missouri (Morgan 1980; U.S. Fish and Wildlife Service 1988). In 1980, a total of 550 individual plants were estimated at 4 sites, and at the time of listing as endangered in 1987, an estimated 5,000 plants were determined to occur at 9 sites (Morgan 1980; 52 FR 679, January 8, 1987). At the time of the completion of the Missouri Bladderpod Recovery Plan in 1988, the species was known from 11 sites in Christian, Dade, and Greene Counties, MO (U.S. Fish and Wildlife Service 1988). During that same year, the Service funded a four-county survey for the species in Missouri, and an additional 45 sites were located (Hickey 1988). A followup survey in 1989 yielded an additional 13 sites (Thurman and Hickey 1989). Further botanical explorations led to the discovery of 16 additional sites, including locations in an additional county in Missouri (Lawrence County) and one site each in Izard and Washington Counties, AR (Theo Witsell, Arkansas Natural Heritage Commission, *in litt.* 2002). In the spring of 1997, MDC botanist Bill Summers (while working on the Flora of Missouri project) discovered the species at a limestone/dolomite quarry in Izard County, northcentral Arkansas (Theo Witsell *in litt.* 2002). Subsequent investigations following this find led to documentation of an additional site in Washington County, northwestern Arkansas, discovered in 1992 (Theo Witsell *in litt.* 2002). In the spring of 1998, surveys were expanded in Arkansas, and, although no new sites were discovered in the State, a more extensive population of Missouri bladderpod was found at the Izard County site than had been originally discovered in 1997 (John Logan, Arkansas Natural Heritage Commission, pers. comm. 1998). The population at the Washington County site had not been observed since 1992 until it was rediscovered on May 1, 2002, when approximately 500 flowering and fruiting plants were discovered on a small glade opening at the original 1992 site (Theo Witsell, *in litt.* 2002). Currently, Missouri bladderpod is known to occur at a total of 61 sites in 4 counties in Missouri and 2 sites in 2 counties in Arkansas.

Population levels of Missouri bladderpod fluctuate widely as is typical of winter annuals, depending on edaphic (soil components) and climatic conditions, and factors such as seed crop from the preceding season, seed survival in the seed bank, recruitment from the seed bank, and the survival of growing plants (Thomas 1998). Annual monitoring data have been collected for a minimum of 11 consecutive years at two Missouri sites, and irregular monitoring has occurred at numerous other sites. Thomas (1998) and Boetsch (*in litt.* 2002) reported changes in population status of *Lesquerella filiformis* between 1988 and 2001 on National Park Service (NPS) property at Bloody Hill Glade, Wilson's Creek National Battlefield, and observed that the population ranged between 0 and 303,446 plants, with an average annual population of 63,170 plants (Table 1). The MDC monitored 21 permanent plots within one population at the Rocky Barrens Conservation Area between 1992 and 2001 and noted that the number of individual plants varied between 2 and 3,584 (Tim Smith, MDC, *in litt.* 2002, Table 1). Monitoring of a population at Cave Springs Outcrop Glade in Dade County in 1980, 1984,

1988, 1990, and 1993 yielded 500, 545, 50, 0, and 0 plants, respectively (MDC 2002a). To date, the maximum population estimate at the Izard County, AR, site has been ''tens of thousands of plants,'' in 1997, while in 1999 only a few plants were found at the same site (Theo Witsell, *in litt.* 2002). Irregular monitoring (a minimum of 4 years of data between 1993 and 1999) at seven Nature Conservancy registry sites yielded similar fluctuations in population numbers as described elsewhere, with estimates ranging from 0 to 47 plants at the smallest population and 3 to 3,448 plants at the largest (Susanne Greenlee, TNC, *in litt.* 1999, MDC 2002a).

TABLE 1.—ANNUAL POPULATION ESTIMATES OF MISSOURI BLADDERPOD ON BLOODY HILL GLADE (WILSON'S CREEK NATIONAL BATTLEFIELD) AND IN 21 PLOTS AT ROCKY BARRENS CONSERVATION AREA, GREENE COUNTY, MO, 1988–2001

[From Thomas 1998; Tim Smith, *in litt.* 2002; John Boetsch, *in litt.* 2002]

Year	Estimated population size (number of plants)	
	Bloody Hill Glade	Rocky Barrens Conservation Area (21 plots)
1988	58,351	—
1989	31,911	—
1990	10,154	—
1991	303,446	—
1992	24,611	110
1993	0	1,211
1994	0	200
1995	18,514	2,295
1996	88,166	224
1997	33,873	3,584
1998	30,475	1,283
1999	66,650	320
2000	72,623	143
2001	145,604	2
Average	63,170	[1] 937

[1] Average within 21 permanent plots—total population size at this site is much larger.

An examination of the status of most extant sites following the procedures established by Hickey (1988) was conducted in the spring of 2000. Hickey visited 52 extant sites between April and May and noted that: (1) Populations of the species were found in the same terrace or rock shelf as they were in 1988–1990, and (2) some sites exhibited lower numbers than in 1988–1990, apparently attributable to the drought conditions, increase in cedar density or encroachment of other woody vegetation, or competition from exotic species of brome grasses (*Bromus spp.*). Increases in population density at some locations apparently resulted from tree removal and maintained grazing (Hickey 2000). Continued long-term monitoring of some larger sites in Missouri and the site in Izard County, AR, is also planned.

In years when germination, overwinter survival, seedling establishment, and plant growth are ideal, *Lesquerella filiformis* populations can be so large as to make rangewide population estimates extremely difficult. Despite the difficulty, estimates made by Hickey (1988) at 55 sites in Missouri yielded approximately 400,000 plants. Had rangewide estimates been taken in 1991 when 303,446 plants were estimated at Bloody Hill Glade, Wilson's Creek National Battlefield (Table 1, Thomas 1998), the population that year likely would have exceeded 500,000 plants. However, given the extreme annual fluctuations in population size, only long-term monitoring efforts patterned similarly to the protocol developed for the Wilson's Creek National Battlefield (Kelrick 2001a, 2001b) can accurately reflect the true population status and trend of this species and effectively evaluate the efficacy of management regimes on bladderpod habitat (Thomas 1998).

The current 63 extant sites have the following Natural Community rankings by The Nature Conservancy (TNC): (1) 11 (10 in Missouri and 1 in Arkansas) are graded A (*i.e.*, are relatively stable and undisturbed natural communities with a high diversity of conservative species); (2) 18 (all in Missouri) are graded B (*i.e.*, late successional or lightly disturbed communities, or recently lightly disturbed or moderately disturbed in the past but now recovered, and the biological diversity has not been greatly reduced); (3) 1 in Arkansas is graded AB (*i.e.*, intermediate between A and B); (4) 17 in Missouri are graded C (*i.e.*, midsuccessional, moderately to heavily disturbed communities, or moderate recent disturbance or heavy past disturbance with decreased recent disturbance); and (5) 16 in Missouri are graded D (*i.e.*, early successional or severely disturbed communities where the structure and composition of the community has been severely altered with few characteristic native species present) (MDC 2002a, Theo Witsell, *in litt.* 2002).

Threats identified by the Service at the time of listing (52 FR 679, January 8, 1987) were: (1) Vulnerability of small populations to overcollecting and human disturbance, (2) lack of research on proper management techniques necessary to maintain and promote populations of the species, (3) potential impacts of annual maintenance activities to populations located on highway rights-of-way, (4) seed destruction by insects and fungal infections, and (5) inadequate protection or management on public and private property necessary for the species' continued existence. Subsequently, the Service (1988) documented the presence of exotic plant species, such as *Bromus tectorum* (a cheat grass), in bladderpod habitat as a significant threat, and this was further supported by observations by Hickey (1988, 2000) and Thomas (1996, 1998). Additionally, Hickey (1988, 2000) and Thomas (1996) identified development, especially land-use changes resulting from urban expansion, as a major threat to the species, and Hickey (1988) noted an increase in grazing pressure at some of the sites discovered during a four-county survey.

Although no specific reclassification (endangered to threatened) criteria were provided in the Recovery Plan, the following recovery (delisting) criteria were given: 30 self-sustaining populations, 15 of which are in secure ownership, must be at least one-half acre in size each and show self-sustaining populations for at least 7 years (U.S. Fish and Wildlife Service 1988). We indicated that these recovery goals could be accomplished through the following actions: (1) An inventory of suitable habitat for new populations, (2) the protection and management of existing populations, (3) the continued monitoring of populations and initiation of research on the species, (4) the development and initiation of management programs on protected sites, (5) the establishment of new populations on public land, and (6) the development of public awareness and support to further the conservation of the species.

Although some information gaps concerning the life history requirements of *Lesquerella filiformis* remain, research conducted since the species was listed in 1987 has significantly improved our understanding of the ecological needs of this species. Dr. Michael Kelrick (Truman State University, MO) has conducted and supervised graduate student work on demographics, seed bank ecology, matrix population dynamics used in the development of a population model and protocol for long-term monitoring, analyses of the effectiveness of various management prescriptions utilized to restore and enhance bladderpod habitat, reproductive success, fecundity, and factors influencing germination, seedling establishment and vegetative

growth, metapopulation dynamics, and genetic diversity within and between populations (*e.g.*, Harms 1992; Graham 1994). Lisa Potter Thomas of the NPS at Wilson's Creek National Battlefield has also conducted extensive research on the species involving life history ecology (*e.g.*, factors influencing survivorship, plant vigor, and reproduction); the potential impacts of human foot trampling on the species; techniques useful in controlling exotic plants in bladderpod habitat; an examination of microhabitat parameters; and demographic studies that centered on germination, density of flowering stems, survivorship, and fecundity (Thomas and Jackson 1990; Thomas and Willson 1992; Thomas 1996, 1998).

Other recommended research and recovery activities include: (1) Investigating the pollination ecology of the species; (2) revising the Recovery Plan objective established in 1988 to reflect the current knowledge of the species; (3) securing funding to provide necessary information essential to complete recovery and to facilitate the removal of the species from the list of federally protected species; (4) evaluating the efficacy of different management techniques; and (5) assuring that threats such as urban development and competition from exotic plants, both of which result from rapid population growth and urbanization, do not increase (The Nature Conservancy 2002; Hickey 1988; U.S. Fish and Wildlife Service 1988; Thomas and Jackson 1990; Thomas 1996).

Previous Federal Actions

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report, within 1 year after passage of the Act, on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director of the Service published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of his intention thereby to review the status of the plant taxa named within. *Lesquerella filiformis* was named in the Smithsonian report as endangered and was included in the Service's 1975 notice of review. A subsequent notice of review published in the December 15, 1980, **Federal Register** (45 FR 82480) included *L. filiformis* as a Category 1 species, indicating that we believed there was sufficient biological information to support a proposal to list the species as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions, including the report of the Smithsonian Institution, still pending as of October 13, 1982, be treated as received on that date. Section 4(b)(3) of the Act, as amended, requires that, within 12 months of the receipt of such a petition, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other higher priority activities involving additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants. Therefore, on October 13, 1983; October 12, 1984; and again on October 11, 1985, the Service made the finding that listing of *Lesquerella filiformis* was warranted but precluded by other pending listing activities. The proposed rule to list *L. filiformis* as endangered was published on April 7, 1986 (51 FR 11874), and the final rule was published on January 8, 1987 (52 FR 679). The Recovery Plan was approved on April 7, 1988 (U.S. Fish and Wildlife Service 1988).

In letters dated January 26 and February 17, 1998, the Service received a petition from the MDC to reclassify *Lesquerella filiformis* from endangered to threatened. On March 18, 1998, we responded and indicated that, based on our Listing Priority Guidance issued on October 23, 1997, we could not address the petition until we completed other higher priority listing actions. The Act requires us to make certain findings on petitions to add species to the List of Endangered and Threatened Plants, remove species from the List, or change their designation on the List. This proposed rule constitutes both our 90-day finding that the petitioned action may be warranted and our 12-month finding that the action is warranted.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for determining whether to add, reclassify, or remove a species from the List of Endangered and Threatened Plants using five factors described in section 4(a)(1). These factors and their application to *Lesquerella filiformis* Rollins (Missouri bladderpod) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

At the time of listing, *Lesquerella filiformis* was known to occur at only nine locations in Dade, Greene, and Christian Counties, MO. As described in the BACKGROUND section, surveys and research since that time have documented 63 extant sites. Currently, this species is known to occur at a total of 61 sites in 4 counties in Missouri and 2 sites in 2 counties in Arkansas. Of these, 30 have a TNC Nature Community Rank of A, B, or AB.

Taking into consideration annual fluctuations in population, the estimated total number of plants known in Missouri has increased from approximately 550 plants in 1980 (Morgan 1980) to a potential maximum of 400,000–500,000 plants when climatic and edaphic conditions are ideal for germination, overwinter survival, seedling establishment, growth, and seed production. Additionally, a maximum of ''tens of thousands'' of plants have been reported at the Izard County, AR, site (Theo Witsell, *in litt.* 2002). Given that the 2 sites in Arkansas are separated by approximately 150 miles and are about 85–100 miles from the nearest location in southwestern Missouri, the possibility exists that additional populations of *Lesquerella filiformis* are yet to be discovered in southern Missouri and northern Arkansas, especially because the Izard County, AR, site is partially dolomitic, a geological feature previously not targeted for surveys in Missouri.

In addition, the threat of habitat loss has been reduced by the acquisition and management of occupied sites by public land management agencies and TNC (Table 2). The MDC and TNC successfully protected one of the largest known sites, Rocky Barrens in Greene County, MO, by purchasing a total of 281 acres of occupied habitat between 1988 and 1993. Another five sites in Missouri are under public ownership or a long-term conservation agreement, including approximately 29 acres at the Wilson's Creek National Battlefield in Christian and Greene Counties; 3 acres at the Nathan Boone State Historic Site in Greene County; and approximately 40 acres at the Bois D'Arc Conservation Area in Greene County, an MDC property. Additionally, TNC has secured a 100-year lease to manage 47 acres of bladderpod habitat at South Greenfield Glade in Dade County, MO (Beth Churchwell, TNC, pers. comm. 2000).

TABLE 2.—BENEFICIAL ACTIVITIES TO ENHANCE MISSOURI BLADDERPOD SITES UNDER PUBLIC OWNERSHIP OR A LONG-TERM EASEMENT AGREEMENT

Site	Managing agency	Acreage	Management activities	Other conservation activities
Wilson's Creek National Battlefield.	National Park Service.	4 sites, ~29 acres.	Control of woody vegetation, exotic grasses, and sericea lespedeza using a variety of methods, including prescribed burning, mechanical removal, and reducing foot traffic impacts.	Ongoing monitoring and demographics; life history and micro-habitat studies; public outreach and education.
Rocky Barrens Conservation Area.	Missouri Department of Conservation.	191 acres	Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal.	Ongoing monitoring; public outreach and education; support of various research projects.
Rocky Barrens	The Nature Conservancy.	90 acres ...	Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal.	Ongoing monitoring; public outreach and education; support of various research projects.
Bois D'Arc Conservation Area.	Missouri Department of Conservation.	40 acres ...	Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal.	Ongoing monitoring; public outreach and education.
Nathan Boone State Historic Site.	Missouri Department of Natural Resources.	3 acres	Control of woody vegetation and exotic grasses using prescribed burning; fencing to eliminate cattle from occupied habitat.	Ongoing monitoring; planned development of interpretative program.
South Greenfield	The Nature Conservancy.	47 acres ...	Control of woody vegetation and exotic grasses using prescribed burning and mechanical removal.	Ongoing monitoring and floristic inventories of associated species.

The MDNR, MDC, TNC, and Wilson's Creek National Battlefield have undertaken various management activities to further the conservation of the species (Table 2). Management techniques that have been effective in enhancing bladderpod habitat include prescribed burning, chainsawing, and bulldozing to control the encroachment of woody vegetation such as red cedar (*Juniperus virginiana*) and exotic plants such as annual brome grasses (*Bromus* spp.) and sericea lespedeza (*Lespedeza cuneata*), rerouting hiking trails to reduce potential impact from foot traffic, and installing fencing to exclude cattle from occupied habitat (Table 2).

In particular, prescribed burning is a highly beneficial technique to improve bladderpod habitat. In 1988, an estimated 1,500 plants were counted at Rocky Barrens Conservation Area (Hickey 1988), and 2,000 plants were determined to occur on the same site in 1992 (MDC 2002a). In August 1993, MDC conducted a controlled burn on the area (Figg and Priddy 1994), and over 50,000 plants were estimated in May 1994 (MDC 2002a). The species responded similarly at the same site in the spring of 1997 and 1998, following controlled burns in August 1996 (Figg and Davit 1997) and 1997. MDC botanist Tim Smith estimated that the population at the site in May 1998 contained ''tens of thousands'' of plants (MDC 2002a).

Additional protection and management of bladderpod habitat has occurred through TNC's Registry Program. Between 1986 and 1996, nine sites in Christian, Dade, and Greene Counties were added to the organization's Registry Program. Under this program, private landowners have an agreement with TNC to protect Missouri bladderpod sites to the best of their ability and to notify TNC regarding any new threats to the species or its habitat or if the landowner plans to sell the property. Additionally, TNC personnel assist private landowners by providing management suggestions, including the development of site-specific plans, and by notifying them of various landowner incentive programs that promote Best Management Practices. Best Management Practices developed by MDC (2000) include surveys for bladderpod and bladderpod habitat, controlling the encroachment of eastern red cedars and exotic species onto glade habitat through mechanical cutting and prescribed fire, avoiding the use of nonspecific herbicides between October and July in occupied bladderpod habitat, and avoiding heavy grazing or grazing during flowering and fruiting periods (March-July) (Susanne Greenlee, TNC, pers. comm. 1998).

In 1998, the Service provided funding to TNC to enhance 90 acres of degraded bladderpod habitat on Rocky Barrens Conservation Area in Greene County. Missouri bladderpod habitat was improved by prescribed fire and cutting of invasive eastern red cedar trees. Although a thorough estimate of Missouri bladderpod plants has not yet been possible on the managed area since these restoration efforts were conducted in 1998, flowering plants were observed at the location in 1999 (Doug Ladd, TNC, pers. comm. 2000).

Potential impacts to populations of *Lesquerella filiformis* on rights-of-way maintained by the Missouri Department of Transportation (MODOT) was another threat identified at the time of listing (52 FR 679, January 8, 1987) and also when the Recovery Plan was completed for the species (U.S. Fish and Wildlife Service 1988). Education programs within the MODOT have significantly reduced the potential impact of mowing or chemical treatment of highway rights-of-way. Maintenance supervisors who work within the range of Missouri bladderpod in Missouri have been alerted to the location of extant populations and have been trained in the identification and habitat needs of the species. Consequently, most maintenance activities that may impact the species are avoided. In situations where potential impacts are unavoidable, MODOT, as a designated representative for the Federal Highway Administration, initiates consultation with the Service and further discusses such activities with the MDC to minimize these impacts (Gene Gardner, MODOT, pers. comm. 2000).

The expansion of the exotic brome grasses *Bromus tectorum* L. and *B. sterilis* L. has been identified by some as a potential threat to the Missouri bladderpod (The Nature Conservancy 2002; Hickey 1988; U.S. Fish and Wildlife Service 1988; Thomas and

Jackson 1990; Thomas 1996; Hickey 2000). Thomas and Jackson (1990), however, indicated that exotic species of *Bromus* spp. can be controlled with a combination of management techniques. While such management is undoubtedly labor-intensive, and continued monitoring of this threat is warranted, there is no solid evidence to date that these exotic grasses have eliminated populations of *Lesquerella filiformis,* especially in areas that are regularly managed by techniques such as prescribed fire. Nonetheless, further research on the potential adverse impacts of brome grasses to Missouri bladderpod is clearly warranted.

The glade and other rocky habitats where *Lesquerella filiformis* is found were probably maintained historically by fires. The cessation or significant reduction in the number of fires occurring on glades in the last few centuries has enabled woody vegetation, such as red cedar, to encroach onto bladderpod habitat. The encroachment of such woody vegetation onto glades occupied by *Lesquerella filiformis* has been frequently listed as a threat to this species' continued existence (Hickey 1988; Thomas and Jackson 1990; Thomas 1996; The Nature Conservancy 2002). Recent research by MDC and TNC at the Rocky Barrens Conservation Area and Preserve in Greene County, MO, has provided strong evidence that this species responds well on glades that have been cleared of woody vegetation by the combination of cedar tree removal and the use of controlled fires (Figg and Davit 1997). Prescribed burns have been conducted on six sites under public ownership with positive results (Table 2). This management tool may be used at additional bladderpod sites.

Grazing and haying are potential threats to Missouri bladderpod populations under private ownership (U.S. Fish and Wildlife Service 1988). Overgrazing may impact small populations of the plant, but minor grazing actually enhances these populations (MDC 1997). Presently, there are no known incidents where haying has been a threat to existing Missouri bladderpod populations.

The poor, rocky, thin soils over bedrock make bladderpod habitat nonconducive to increases in agricultural development within the species' range in Missouri. Hickey (2000) reported that one population was destroyed by construction of a putting green on a golf course and another was destroyed as a result of residential construction. Thus, as discussed by Hickey (1988, 2000) and Thomas (1996), the species' habitat is threatened most by urban/suburban expansion and development.

The Service, TNC, and all public land management agencies with extant sites on lands under their jurisdiction have been actively involved in various aspects of public outreach and education associated with Missouri bladderpod. These include developing landowner contact programs, producing educational brochures, and holding identification and ecology workshops on the species. In 1995, MDC published a new brochure for the Rocky Barrens Conservation Area that highlighted Missouri bladderpod. In the same year, MDC conducted an identification workshop for employees of the National Resources Conservation Service (NRCS) and the Williams Pipeline Company in Springfield, MO. This workshop was extremely productive as it led to the discovery of a previously unknown site of Missouri bladderpods along a powerline right-of-way in Greene County. In February 1997, MDC published an Endangered Species Guide Sheet for Missouri bladderpod and distributed it to private individuals and public agency employees through MDC, TNC, NRCS, and the University of Missouri Extension Service. The brochure provided information on identification, life history requirements, habitat, distribution, causes of historic decline, current threats to the species, and management guidelines that would contribute to bladderpod recovery.

Public outreach materials developed for Missouri bladderpod include a Best Management Practice Guide Sheet distributed by MDC (2000) that outlines suggested management practices for projects that could potentially impact the species identified by MDC during environmental reviews. A public information endangered species card was published by the Conservation Commission of the State of Missouri (1999). The species was also highlighted in two separate issues of MDC's *Missouri Conservationist* (June 1995 and February 1999) involving endangered species.

In 1992, MDC and the Service cooperated in a landowner contact program involving 25 private landowners with extant populations of *Lesquerella filiformis* in an approximately 5-square-mile area in Greene County, MO. The purpose of the program was to educate the landowners on the habitat needs of Missouri bladderpod and to suggest compatible land management techniques that would benefit the species. Over 80 percent of the people contacted responded favorably to the protection and management of the bladderpod and its habitat (Amy Salveter, U.S. Fish and Wildlife Service, pers. comm. 2000).

Although great progress has been made toward the recovery of *Lesquerella filiformis,* the species is still threatened by urban/suburban expansion and development and encroachment of invasive woody plants and exotic pasture grasses. The recent discoveries in northeastern Arkansas indicate that additional surveys in southern Missouri and northern Arkansas are warranted. Additionally, population estimates at all extant sites in Missouri in one year have not been undertaken since observations made by Hickey (1988). Extended demographic analyses conducted by Thomas (1996), Kelrick (2001a, 2001b), and Smith (*in litt.* 2002) strongly suggest that a well-established long-term monitoring program is necessary to accurately detect population trends.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

At the time of listing, overcollecting by botanists and flower garden enthusiasts was considered a threat to the species' continued existence. Although Steyermark (1963) indicated that Missouri bladderpod is a desirable addition to rock gardens, and the Service postulated that the species may be vulnerable to overcollection at the time of listing (52 FR 679, January 8, 1987), there is no evidence to date that such activities have taken place. Additionally, given the large number of currently known extant sites (61 in Missouri and 2 in Arkansas), adverse impacts from overcollecting by wildflower enthusiasts or botanical collectors is extremely unlikely, even during years when the number of flowering individuals is low. Overutilization is no longer believed to pose a distinct threat to this species.

C. Disease or Predation

Morgan (1983) studied one population of *Lesquerella filiformis* at Wilson's Creek National Battlefield in Greene County, MO, and determined that insect predation and fungal infection damaged seed set. Although there may be a concern for such impacts during low population levels, it is likely that Missouri bladderpod has adapted to such natural influences and the species is probably well buffered against these natural occurrences at more robust population levels. To date, there is no evidence that these agents are exotic to the species' habitat, or that naturally occurring incidents of disease or predation have contributed to a recent decline in any of the known extant populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The MDC recently adopted the conservation status ranking system developed by NatureServe, TNC, and the Natural Heritage Network for global (G ranks) and State (S ranks) rankings for all State- and federally-listed species in Missouri (Missouri Natural Heritage Program 2001). *Lesquerella filiformis* is officially listed in Missouri as rare and uncommon, with a ranking of S3 (rare and uncommon in the State; 21 to 100 occurrences), and G2 (imperiled globally because of extreme rarity or because of some factor(s) making it especially vulnerable to extinction; typically 5 or fewer occurrences or very few remaining individuals or acres). This species is also listed in the Wildlife Code of Missouri (MDC 2002b). Species listed in the Wildlife Code of Missouri under 3CSR10–4.111 are protected by State Endangered Species Law 252.240. Missouri regulations prohibit the exportation, transportation, or sale of plants on the State or Federal lists. A small percentage of Missouri's populations of Missouri bladderpod occur on lands either administered by MDC, MDNR, NPS, or TNC. These agencies prohibit the removal of this plant from their properties without a collector's permit.

Currently, *Lesquerella filiformis* is State-listed in Arkansas as S1 (critically imperiled in the State because of extreme rarity or because of some factor(s) making it especially vulnerable to extirpation from the State; typically 5 or fewer occurrences or very few remaining individuals; Theo Witsell, *in litt.* 2002) but receives no additional protection other than those specified under the Act (John Logan, pers. comm. 1998).

E. Other Natural or Manmade Factors Affecting its Continued Existence

Various human disturbances were considered as threats to the species at the time *Lesquerella filiformis* was listed in 1987 (52 FR 679, January 8, 1987). Thomas and Willson (1992) examined the potential impact of trampling on a population at Wilson's Creek National Battlefield and noted that the species' survival decreased by 42 percent when subjected to the highest level of trampling intensity. Although the number of populations of *L. filiformis* on public areas that receive high levels of trampling are few in number, precautions will need to be taken in the future to protect Missouri bladderpod habitat at such locations. Other studies and observations, however, suggest that this species actually benefits from low to moderate levels of human-induced disturbance that reduce woody encroachment and stimulate seed bank germination through soil disturbance (MDC 1997; Jerry Conley, MDC, *in litt.* 1998). Excessive disturbance from trampling, overgrazing by livestock, and significant alterations of glade habitat through the use of ground-moving equipment could become increased threats to the species in the future and should be closely monitored.

Summary of Status

Under the Act, an endangered species is defined as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Given that (1) *Lesquerella filiformis* now occurs at 61 sites in Missouri and 2 sites in Arkansas (an increase of 54 sites since listing); (2) 6 sites in Missouri are under public ownership or under a long-term conservation agreement and are managed to benefit the species; (3) 9 additional sites in Missouri receive some degree of protection as part of TNC's Registry Program; (4) the species responds well to the proper management of its habitat, especially cedar tree removal and controlled burning; (5) minor levels of disturbance may actually benefit rather than hinder the species; and (6) significant knowledge has been gained regarding the life history requirements and population dynamics of the species, we no longer believe that this species meets the definition of an endangered species.

Although there has been a considerable increase in the number of known populations, an expansion of the known range of the species, and a sizeable increase in the number of known individual plants, the Missouri bladderpod has not recovered to the point that it can be removed (delisted) from the Federal List of Endangered and Threatened Plants. These numerical increases are encouraging, and they provide evidence suggesting the species has exceeded the first delisting criterion, which requires 30 self-sustaining populations. However, the delisting criteria also require that 15 of the populations must be in secure ownership, be at least one-half acre in size, and show self-sustaining populations for at least 7 years. At this time, fewer than 10 populations can be considered to be in secure ownership, and only 3 of these populations have been monitored for at least 7 years. Although acreage of these secured populations is large, because of the year-to-year population fluctuations demonstrated by this species, at this time we can document that only one of these three populations is viable and self-sustaining for at least 7 years. Therefore, we believe delisting this species would be premature.

Consequently, on the basis of our review of the best available scientific and commercial data, we propose to reclassify the Missouri bladderpod from endangered to threatened under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. With respect to *Lesquerella filiformis,* all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits

malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, or in the course of violating State criminal trespass law. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purpose of the Act. We anticipate that few trade permits would ever be sought or issued for *Lesquerella filiformis* because the plant is not in cultivation or common in the wild.

This rule proposes to change the status of *Lesquerella filiformis* at 50 CFR 17.12 from endangered to threatened. If made final, this rule would formally recognize that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. Collection, damage, or destruction of threatened plants on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands would constitute a violation of section 9, if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. Section 7 of the Act would still continue to protect this species from Federal actions that would jeopardize its continued existence. We are not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by application of section 9 to this listing.

Finalization of this rule will not be an irreversible action on the part of the Service. Reclassifying *Lesquerella filiformis* to endangered may be considered if changes occur in management, habitat, or other factors that negatively alter the species' status or increase threats to its survival.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Columbia Field Office (*see* the **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and issuance of permits under the Act may be addressed to the U.S. Fish and Wildlife Service, BHW Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 (phone 612/713–5350, facsimile 612/713–5292).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. In some circumstances, we will withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish for us to withhold your name or address, you must state this request prominently at the beginning of your comment. We will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety (*see* **ADDRESSES** section). Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject range and their possible impacts on the species.

In promulgating a final regulation on this species, we will take into consideration the comments and additional information we receive. Such communications may lead to a final regulation that differs from this proposal.

Public Hearing

The Act provides for a public hearing on this proposal, if requested. Requests must be filed by the date specified in the **DATES** section above. Such requests must be made in writing and addressed to the Field Supervisor (*see* **ADDRESSES** section).

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed reclassification of *Lesquerella filiformis.*

Required Determinations

Executive Order 12866

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

Send a copy of any comments that concern how we could make this proposal easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also send the comments by e-mail to *Exsec@ios.doi.gov.*

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. Implementation of this rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. For additional information concerning permit and associated requirements for threatened species, *see* 50 CFR 17.72.

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as

amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Service's Columbia, MO, Field Office (*see* **ADDRESSES** section).

Author

The primary author of this proposed rule is Paul M. McKenzie, Ph.D. (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. Section 17.12(h) is amended by revising the entry for ''*Lesquerella filiformis*'' under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Lesquerella filiformis	Missouri bladderpod	U.S.A. (AR, MO)	Brassicaceae	T	253,__	NA	NA
*	*	*	*	*	*	*	

Dated: April 16, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–14355 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 111
Tuesday, June 10, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Pilot-Testing of WIC Staffing Administrative Data Collection Process

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) invites the general public and other interested parties to comment on a proposed pilot test of a potential new administrative data collection system for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The proposed pilot-testing described in this notice is part of FNS' larger effort to address the long term staffing challenges confronting the WIC Program's ability to provide quality nutrition services. This effort by FNS is in response to a General Accounting Office (GAO) recommendation that resulted in part from the concerns expressed by WIC state and local agencies and other program stakeholders that Nutrition Services and Administration (NSA) funding has not kept pace with the challenges and costs of program operations and administration.

DATES: To be assured of consideration, comments must be received on or before August 11, 2003.

ADDRESSES: Comments may be sent to Ed Herzog, Office of Analysis, Nutrition, and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Mr. Herzog at 703–305–2576. The Internet address is: *edward.herzog@fns.usda.gov.*

We are soliciting comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1006.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

All submitted comments should refer to the title of this proposal.

FOR FURTHER INFORMATION CONTACT: Edward Herzog at 703–305–2137.

SUPPLEMENTARY INFORMATION:

Title: Pilot-testing of WIC Staffing Administrative Data Collection Process.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: The William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) directed GAO to assess various aspects of NSA funding of the WIC program. The request was motivated by the concerns of WIC state and local agencies and other program stakeholders that the NSA funding had not kept pace with the challenges and costs of program operations and administration.

In December 2001, GAO released their fifth and final report on this subject, Food Assistance: WIC Faces Challenges in Providing Nutrition Services (GAO–02–142). One of the key challenges noted in the report concerned the recruitment and retention of skilled staff.

In the report, GAO confirmed a widely recognized concern in the WIC community that many local WIC agencies are reporting a shortfall in the number of professional staff available to the Program and difficulty acquiring professional staff members. For example, the 1998 WIC Participant and Program Characteristics report found that 30 percent of local WIC agencies serving over 40 percent of WIC participants reported having too few professional staff members. About half of the agencies reported having difficulty recruiting and hiring staff. GAO estimated that in Federal Fiscal Year 1998, between 5 to 15 percent of local WIC agencies did not have a nutritionist or dietitian on staff. The GAO report cites one WIC Director who suggested that the problem might worsen because WIC's workforce is aging and large numbers of WIC professionals are expected to retire in the next few years.

The WIC Program community, at the national and state level, and the professional nutrition community have also registered concern about the staffing issues currently facing the WIC program and interest in identifying staffing characteristics in greater detail. The National WIC Association (NWA) local agency section has also identified a need to better understand the issues affecting local agency staffing, and has identified a number of items of interest to the WIC community.

As noted by GAO and by FNS, a key obstacle in formulating strategies to address staffing needs in the WIC Program is the lack of data regarding issues such as staffing patterns, vacancies, turnover, and salaries at the local level. Without such data, identifying the exact nature of the staffing problems is difficult, and developing strategies to address these issues is an even greater challenge. Moreover, the lack of data can by itself be a contributing factor to the problems in recruiting and maintaining skilled staff. Until there is data documenting agencies' inability to meet demand, it is difficult to develop the infrastructure necessary to produce more professional staff and provide a greater level of support for them.

In order to address the lack of WIC staffing data, GAO recommended that FNS work with the Economic Research Service and the National Association of WIC Directors (now NWA) to conduct an assessment of the staffing needs of

state and local agencies. FNS has determined that additional data collection is required to adequately respond to the GAO recommendation and to the staffing concerns currently facing the WIC program. FNS is interested in eventually developing a data collection system that all WIC local agencies would respond to on a periodic basis. Before proceeding with such a data collection system, however, FNS needs to better understand the burden associated with such a system. As a first step, FNS is planning to pilot-test a paper and an electronic version of the data collection system with volunteer local WIC agencies.

Methods: As a first step towards developing a draft data collection instrument, FNS, in consultation with the National WIC Association (NWA), established an eleven member advisory board consisting of local and state WIC agency representatives and a representative from the academic nutrition community. FNS thus assured that expert opinion and dialogue with the WIC stakeholder community was utilized in the process of developing the instrument. The diverse membership of the advisory board includes administrators and nutritionists from large and small geographic states and one Native American agency, representing all seven FNS regions.

FNS believes that the use of an electronic data collection instrument would help minimize the burden of the data collection process. However, according to NWA, only half of their member agencies currently have internet access. For this reason, FNS will pilot both an electronic and a paper version of the data collection instrument in order to test the effectiveness of both systems.

The draft data collection instrument was designed to collect information on the following areas:

1. Number and type of staff;
2. Functional responsibilities, by category of staff;
3. Salary and benefit levels by category of staff;
4. Factors affecting recruitment and retention of staff;
5. Changes in staffing levels over time;
6. Local agency characteristics.

FNS plans for pilot testing to be performed in selected local WIC agencies. The selected local WIC agencies are to be identified in consultation with the advisory board. Participation in the pilot-test will be voluntary; no local agency will be required to participate.

The pilot-test of the data collection system will serve three purposes. It will allow FNS to: (1) Make further refinements to the data collection instrument; (2) better understand the burden on local agencies to report staffing data; and (3) decide whether to go forward with a national periodic administrative data collection of staffing data from all local WIC agencies.

A copy of the proposed data collection instrument (paper version) can be obtained from the contact person identified at the beginning of this notice. The electronic version will not be available for review but will have the same questions, in the same order, as the paper version.

Estimate of Burden: The estimate of the reporting burden is based on the assumption that the information being requested should be available somewhere within each local agency; however, it may require some effort to collect and compile the information for the pilot-test. Furthermore, while there is a relatively fixed amount of time needed to fill out the pilot-test data collection instrument, agencies with more employees will likely need more time to collect and compile the requested information.

Respondents: Local WIC Agencies.

Estimated Number of Respondents: The pilot test will be conducted in one hundred local agencies, fifty of which will test the paper data collection instrument and fifty of which will test the electronic instrument. In addition, one day follow-up visits will be conducted at twelve of the original one hundred agencies for the purpose of verifying the accuracy of their responses and further understanding the process necessary to collect and compile the information.

Number of Responses per Respondent: Each local agency in the pilot test will complete the data collection instrument once. Each agency will also complete a second, shorter survey indicating how difficult the information was to collect, how much time it took to complete the data collection instrument, and which questions were particularly difficult to respond to. The twelve agencies selected for the follow-up will have one visit from a project team member.

Estimated Time per Response: The estimated time required for local agencies to compile and report the information will likely vary based on the size of the agency, as measured by the number of employees. Nationally, the size of local agencies ranges from one or two employees to the largest agency which employees approximately 350 staff. The agencies in the pilot will represent this diversity of size to the extent that appropriate volunteers can be identified. Estimates were developed for various ranges of agency size. These are:

(a) 1–20 employees: 30 minutes to read and understand the instructions, 120 minutes to collect the information, 40 minutes to complete the data collection instrument, and 30 minutes to complete the second survey for a total of 220 minutes.

(b) 21–100 employees: 30 minutes to read and understand the instructions, 240 minutes to collect the information, 40 minutes to complete the data collection instrument, and 30 minutes to complete the second survey for a total of 340 minutes.

(c) Over 100 employees: 30 minutes to read and understand the instructions, 360 minutes to collect the information, 40 minutes to complete the data collection instrument, and 30 minutes to complete the second survey for a total of 460 minutes.

All agencies, follow-up visits: Approximately six hours, regardless of agency size, for the follow-up visit and interviews.

There is no source of information regarding the number of employees in each of the local agencies across the country. However, from the oversite and monitoring of states and their local agencies over several years, FNS believes that the majority of local agencies probably fall within the middle size group. Accordingly, the pilot will include approximately twenty-five agencies from the first and third size groups and fifty agencies from the middle size groups for both versions of the pilot (paper and electronic). A slightly larger number of volunteer agencies will initially be identified to allow for a non-response rate and still have the desired number of responses.

Estimated Total Burden on Respondents in the Pilot: The total burden is calculated as follows:

25 local agencies × 220 minutes = 5,500 minutes or 91.7 hours.

50 local agencies × 340 minutes = 17,000 minutes or 283.3 hours.

25 local agencies × 460 minutes = 11,500 minutes or 191.7 hours.

12 local agencies × 6 hours = 72 hours.

Total respondent time: 638.7 hours.

Dated: June 2, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–14540 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, June 16, 2003. The meeting will include routine business and discussion, review, and recommendation of submitted project proposals.

DATES: The meeting will be held June 16, 2003, from 4 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 3, 2003.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 03–14520 Filed 6–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–885, A-533–834, A-428–838]

Notice of Initiation of Antidumping Duty Investigations: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from Germany, India, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371, AD/CVD Enforcement Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations:

The Petitions

On May 14, 2003, the Department received petitions filed in proper form by Ciba Specialty Chemicals Corporation (Ciba or petitioner). The Department received supplemental information to the petitions from Ciba on May 27, 2003 and May 30, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of 4,4'-Diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA) from Germany, India, and the People's Republic of China (PRC) are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from Germany, India, and the PRC are materially injuring, or are threatening to materially injure an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that it is requesting the Department to initiate. *See infra*, ''Determination of Industry Support for the Petitions.''

Period of Investigation

The anticipated period of investigation (POI) for Germany and India is April 1, 2002, through March 31, 2003; and October 1, 2002, through March 31, 2003 for the PRC.

Scope of Investigations

These investigations cover 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA). DAS is a chemical compound used to produce SFWA. SFWA are synthetic organic products normally used as fluorescent brightening agents in the production of certain textiles, paper, and detergent. These investigations cover all DAS and SFWA regardless of end use.

DAS is currently classifiable under subheading 2921.59.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification only covers DAS. SFWA is currently classifiable under subheading 3204.20.80 of the HTSUS. This tariff classification represents a basket category which includes SFWA and other synthetic organic coloring matter. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we sought additional information from the petitioner concerning the scope of the investigations. As a result of this supplemental information, we modified the scope language proposed by the petitioner with regard to the name of the subject merchandise and the description of the products covered.[1]

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a

[1] *See* Memorandum to the File Re: Change to Scope Description (June 3, 2003).

domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petitions cover a single class or kind of merchandise, DAS and its commercial agent SFWA as defined in the ''Scope of Investigations'' section, above. The petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Thus, based on our analysis of the information presented to the Department by the petitioner and interested parties, we have determined that there is a single domestic like product which is consistent with the definition of the ''Scope of the Investigation'' section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support and, therefore, polling is unnecessary. *See* Office of AD Enforcement, Initiation Checklist: 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA) from Germany, India, and the People's Republic of China (June 3, 2003) (the Initiation Checklist) at attachment II (on file in the Central Records Unit, Room B-099 of the Department of Commerce).

On May 30, 2003, Bayer Chemicals Corporation (Bayer) submitted an argument in opposition to the petition, and on June 3, 2003, 3V Inc. also submitted an argument in opposition to the petition. However, neither party provided sufficient evidence that would call into question the sufficiency of the petitioner's industry support. *See* Initiation Checklist at attachment II for further details. Therefore, the Department has determined, based on information provided in the petition, that the petitioner represents over 50 percent of total production of the domestic like product. The petitioner is the only U.S. producer of DAS and accounts for over 50 percent of U.S. production of SFWA; thus, Ciba satisfies the requirements of section 732(c)(4)(A)(i) of the Act because it accounts for at least 25 percent of the total production of the domestic like product. Furthermore, the requirements of section 732(c)(4)(A)(ii) of the act are also met. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the ''Injury Allegation'' section in the Initiation Checklist.

Initiation Standard for Cost Investigations

Pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of India were made at prices below the cost of production (COP) and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with this investigation. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act (URAA), states that an allegation of sales below COP need not be specific to individual exporters or producers. The SAA states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.'' SAA, H.R. Doc. No. 103–316 at 833 (1994).Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that before initiating such an investigation the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. We have analyzed the country-specific allegation as described below for India. Based on our analysis, we found reasonable grounds to believe or suspect that sales of DAS and SFWA in India were made at prices below cost. *See* the ''Normal Value'' section for India, below.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and home market prices, and constructed value (CV) are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Germany

Export Price

The petitioner based export price (EP) on average unit values of DAS imports from Germany during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000. *See* Initiation Checklist for further information.

Normal Value

With respect to normal value (NV), the petitioner calculated COM based on the production costs of a German DAS manufacturer, Ciba Spezialitatenschemie Grenzach GmbH, that is affiliated with the petitioner, because home market prices and information related to third country sales were unavailable during the fiscal year 2002. To calculate selling, general and administrative expenses (SG&A) and profit, the petitioner relied on amounts reported in the consolidated financial statements for the 2002 fiscal year of Bayer AG, a German producer of DAS. We relied on the cost data contained in the petition except in the following instances.

1. We recalculated the selling, general and administrative (SG&A) expenses amount per pound of DAS exclusive of

[2] See Algoma Steel Corp. Ltd., v. United States, 688 F. Supp. 639, 642-44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380-81 (July 16, 1991).

movement and import duty expenses. First, we calculated the SG&A rate based on the amounts reported in the unconsolidated financial statements for the 2002 fiscal year of Bayer AG. Second, we applied this SG&A rate to the reported cost of manufacture (COM). Finally, we deducted the amounts contained in the petition for shipping cost from German port to U.S. port, and U.S. import duty from the calculated SG&A amount per pound of DAS because the selling amount contained in the unconsolidated financial statements may include the movement and duty expenses.

2. We recalculated the financial expense amount per pound of DAS. We calculated the financial expense rate based on the amounts reported in the consolidated financial statements for the 2002 fiscal year of Bayer AG. and applied this financial expense rate to the reported COM.

3. We calculated the profit amount per pound of DAS. We calculated the profit rate as a percentage of cost of goods sold and SG&A amounts reported in the unconsolidated financial statements for the 2002 fiscal year of Bayer AG because these unconsolidated financial statements did not itemize the financial expenses, but included them in the basket of non-operating expenses. Therefore, we applied this profit rate to the reported COM and the SG&A expense amount inclusive of shipping cost from German port to U.S. port, and U.S. import duty.

4.We recalculated the CV by adding the reported COM to the calculated SG&A, financial expense, and profit amounts as discussed above.

The estimated dumping margins for subject merchandise from Germany, based on a comparison between the U.S. prices and adjusted CV is 194.9 percent.

India

Export Price

The petitioner based EP on average unit values of DAS imports from India during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000.

Normal Value

With respect to NV, the petitioner provided a home market price for DAS using a price quote obtained from its joint venture in India. This price was quoted in U.S. dollars, FOB Hyderabad.

The petitioner has provided information demonstrating reasonable grounds to believe or suspect that sales of DAS in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, financial expenses, and packing expenses.

The petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce DAS in the United States and in India using publicly available data. For one particular raw material, oleum, we noted that the cost was based on amounts purchased from two countries. In order to be conservative in using this estimated cost, we recalculated the oleum costs based on the lower per-unit purchase price. In addition, we also corrected a mathematical error for the cost of another raw material element.

To calculate overhead and SG&A expenses, the petitioner relied upon amounts reported in the 2001–2002 financial statements of an Indian chemical producer. The petitioner did not include packing costs in the CV calculation. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based NV for sales in India on CV. The petitioner calculated CV using the same COM, overhead, and SG&A, and profit expense figures used to compute the Indian home market costs. Consistent with 773(e)(2) of the Act, the petitioner included in CV an amount for profit.

The estimated dumping margin for subject merchandise from India, based on a comparison of EP and home market price, is 35.7 percent. The estimated dumping margin for India based on a comparison between EP and CV is 139.61 percent.

PRC

Export Price

The petitioner based EP on average unit values of DAS imports from the PRC during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 2921.59.2000.

Normal Value

With respect to NV, the petitioner provided CV based on Indian surrogate values and the petitioner's own experience producing DAS (its factors of production), adjusted for any known differences between the petitioner's production process and the Chinese DAS production process. Where the petitioner was unable to obtain Indian surrogate values for material inputs, it used a value of zero for such inputs. We also adjusted the value of high pressure steam to zero due to the lack of an appropriate Indian surrogate value. Indian values were converted to U.S. dollars using the exchange rates from the Department's website. Where surrogate values were not contemporaneous with the POI, the petitioner adjusted such values using wholesale price indices from India. For SG&A expenses and profit, the petitioner relied upon amounts reported in the 2001 financial reports of Atul Ltd. (India) and Daurala Organics (India). The petitioner claims that said companies have similar costs to those of a producer of the subject merchandise because said companies produce chemicals similar to the subject merchandise.

The estimated dumping margin for the PRC, based on a comparison of EP and CV, is 156.69 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of DAS and SFWA from Germany, India, and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the cumulated imports from Germany, India, and the PRC of the subject merchandise sold at less than NV.

The petitioner contends that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

Initiation of Antidumping Investigations

Based upon our examination of the petitions covering DAS and SFWA, we have found that they meet the requirements of section 732 of the Act. *See* the Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of DAS and SFWA from Germany, India and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Germany, India, and the PRC. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than June 30, 2003, whether there is a reasonable indication that imports of DAS and SFWA from Germany, India, and the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to thatcountry; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 3, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14592 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533–835]

Notice of Initiation of Countervailing Duty Investigation: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein at (202) 482–1391, or Sean Carey (202) 482–3964; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation

The Petition

On May 14, 2003, the Department of Commerce (the Department) received a petition filed in proper form by Ciba Specialty Chemicals Corp. (Ciba) (petitioner). *See 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemsitry from the PRC, India, and Germany (Petition).* The Department received information supplementing the petition, on May 27 and May 29, 2003. *See Response to the Department's Supplemental Questions Regarding the Countervailing Duty Investigations of Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemsitry from the PRC, India, and Germany* (May 27, 2003) (*CVD Supplemental*) and, *Response to Department's Supplemental Questions Regarding the Scope, Standing and Injury Portions of the Petition Regarding Certain 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) Chemsitry from India* (May 29, 2003) (*Scope, Standing and Injury Supplemental*).

In accordance with section 702(b)(1) of the Act, petitioner alleges that manufacturers, producers, or exporters of DAS and SFWA in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping and countervailing duty investigations that it is requesting the Department to initiate. *See Determination of Industry Support for the Petition*, below.

Period of Investigation

In accordance with 19 CFR 351.204 (b)(2), the anticipated period of investigation (POI) is January 1, 2002, through December 31, 2002.

Scope of Investigation

This investigation covers, 4,4'-diamino-2,2'-stilbenedisulfonic acid (DAS) and stilbenic fluorescent whitening agents (SFWA). DAS is a chemical compound used to produce SFWA. SFWA are synthetic organic products normally used as fluorescent brightening agents in the production of certain textiles, paper and detergent. This investigation covers all DAS and SFWA regardless of end use.

DAS is currently classifiable under subheading 2921.59.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). This tariff classification only covers DAS. SFWA is currently classifiable under subheading 3204.20.80 of the HTSUS. This tariff classification represents a basket category which includes SFWA and other synthetic organic coloring matter. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we sought additional information from the petitioner concerning the scope of the investigation. As a result of this supplemental information, we modified the scope language proposed by the petitioner with regard to the name of the subject merchandise and the description of the products covered.[1]

As discussed in the preamble to the Department's regulations, we are setting aside a time period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323* (May 19, 1997). The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

[1] *See* Memorandum to the File Re: Change to Scope Description (June 3, 2003).

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Tariff Act of 1930, we held consultations with the Government of India (≥GOI'') regarding this petition on May 29, 2003. *See Memorandum to the File from Sean Carey: Consultations with the Government of India Regarding the Countervailing Duty Petition on 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and DAS Applicators commonly identified as Stilbenic Fluorescent Whitening Agents (SFWA) from India*, dated May 30, 2003.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. *See* section 702(c)(4)(A). Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petitions cover a single class or kind of merchandise, DAS and its commercial agent SFWA as defined in the *Scope of Investigations* section, above. The petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Thus, based on our analysis of the information presented to the Department by the petitioner and interested parties, we have determined that there is a single domestic like product which is consistent with the definition of the Scope of the Investigation section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See Countervailing Duty Investigation Initiation Checklist: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid and Stilbenic Fluorescent Whitening Agents (DAS and SFWA) from India*, (June 3, 2003) (*CVD Initiation Checklist*), on file in the Central Records Unit, room B-099 of the main Department of Commerce building.

For each country, the Department has determined, based on information provided in the petition, that the petitioner represents over 50 percent of total production of the domestic like product. The petitioner is the only U.S. producer of DAS and accounts for over 50 percent of U.S. production of SFWA. Thus, Ciba satisfies the requirements of section 732(c)(4)(A)(i) of the Act because it accounts for at least 25 percent of the total production of the domestic like product. Furthermore, the requirements of section 702(c)(4)(A)(ii) of the act are also met. Although, on May 30, 2003, Bayer Chemicals Corporation (Bayer) submitted an argument in opposition to the petition, and on June 3, 2003, 3V Inc. also submitted an argument in opposition to the petition, they did not provide evidence that would call into question the sufficiency of Ciba's industry support. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See CVD Initiation Checklist* at Attachment II for further details.

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that; (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *CVD Initiation Checklist*):

1. The Duty Entitlement Passbook Scheme (DEPB)/ Post-Export Credits
2. Pre-Shipment and Post-Shipment Export Financing
3. Export Promotion Capital Goods Scheme (EPCGS)
4. Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC)
5. Exemption of Export Credit from Interest Taxes
6. Export Processing Zones/ Export-Oriented Units Programs
7. Market Development Assistance (MDA)
8. Special Imprest Licenses

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in

[2] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

India. The full discussion of our bases for not initiating on these programs is set forth in the *CVD Initiation Checklist*:

1. Import Mechanisms (Sale of Import Licenses)
2. Duty Drawback on Excise Taxes

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of subsidized imports from India of the subject merchandise. Petitioner contends that the industry's injured condition is evident in the reduced levels of production and capacity utilization, decline in profits, decline in research and development, decreased U.S. market share, lost sales and revenue, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See CVD Initiation Checklist.*

Initiation of Countervailing Duty Investigation

Based on our examination of the petition on DAS and SFWA, and petitioner's responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of DAS and SFWA from India receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determination no later than 65 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

International Trade Commission Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation.

Preliminary Determination by the ITC

The ITC will determine, no later than June 28, 2003, whether there is a reasonable indication that imports of subject merchandise from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 3, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14591 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 050103A]

Notice of Intent To Conduct Public Scoping and Prepare an Environmental Impact Statement Related to the King County, WA, Habitat Conservation Plan

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (USFWS), Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and in accordance with the Washington State Environmental Policy Act, this notice advises the public that the USFWS and NMFS (collectively, the Services) intend to gather information necessary to prepare an Environmental Impact Statement (EIS). The EIS is for the potential approval of a Habitat Conservation Plan (HCP) and issuance of two incidental take permits (from NMFS and from the USFWS) to take seven endangered and threatened species and 22 unlisted species in accordance with the Endangered Species Act, as amended (ESA). The permit applicant is King County, WA, Department of Natural Resources and Parks, Wastewater Treatment Division (King County). The application is related to construction, operation, and maintenance activities associated with a regional wastewater conveyance and treatment system in western King, Snohomish, and Pierce Counties, WA (permit activities).

The Services provide this notice to: (1) advise other agencies and the public of our intentions; and (2) obtain suggestions and information on the scope of issues to include in the EIS.

DATES: Written comments are encouraged, and should be received on or before August 11, 2003. The Services will jointly hold public scoping meetings on the following dates:

Date	Time	Location
June 17, 2003 ..	3 - 6 p.m.	King Street Center, 201 S. Jackson Street, 8th Floor Conference Center, Seattle, WA
June 24, 2003 ..	6 - 8 p.m.	Kohlwes Education Center, 300 SW 7th Street, Renton, WA
June 26, 2003 ..	6 - 8 p.m.	Northshore Utility District, 6830 NE 185th Street, Kenmore, WA

ADDRESSES: Address comments and requests for information related to preparation of the EIS, or requests to be added to the mailing list for this project, to Jon Avery, USFWS, 510 Desmond Drive S.E., Suite 102, Lacey, WA 98503–1273; facsimile 360–753–9518; or to Phyllis Meyers, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–6349.

FOR FURTHER INFORMATION CONTACT: Jon Avery, USFWS, 360–753–5824; or Phyllis Meyers, NMFS, 206–526–4506.

SUPPLEMENTARY INFORMATION:

Background

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on ESA section 10(a)(1)(B) permit applications anticipated from the King County Wastewater Treatment Division. Therefore, the Services are seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and implementing regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532 (19)). Harm is defined by the USFWS to include significant habitat modification or

degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). NMFS' definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

Section 10 of the ESA contains provisions for the issuance of incidental take permits to non-Federal landowners for the take of endangered and threatened species, provided that all permit issuance criteria are met, including the requirement that the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval, an HCP containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the HCP will be provided.

King County needs permits because some its activities have the potential to take listed species. Therefore, King County intends to request permits from NMFS and FWS for Chinook salmon (*Oncorhynchus tshawytscha*), bull trout (*Salvelinus confluentus*), and five other listed species (see table below). King County also plans to seek coverage for approximately 22 currently unlisted fish and wildlife species including Dolly Varden (*Salvelinus malma*), proposed for listing under the ESA's similarity of appearance provisions, and the Western yellow-billed cuckoo (*Coccyzus americanus*), a candidate for listing under the ESA under specific provisions of the proposed incidental take permits, should these species be listed in the future.

FEDERALLY LISTED SPECIES PROPOSED FOR COVERAGE

Common Name	Scientific Name	Status	Responsible Agency
Chinook salmon	*Oncorhynchus tshawytscha*	Threatened	NMFS
Bull trout	*Salvelinus confluentus*	Threatened	USFWS
Leatherback sea turtle	*Dermochelys coriacea*	Endangered	USFWS/NMFS
Marbled murrelet	*Brachyramphus marmoratus*	Threatened	USFWS
Bald eagle	*Haliaeetus leucocephalus*	Threatened	USFWS
Steller's sea lion	*Eumetopias jubatus*	Endangered	NMFS
Humpback whale	*Megaptera novaeangliae*	Endangered	NMFS

King County owns and operates a regional wastewater conveyance and treatment system that serves 1.3 million people in the greater Seattle area. The system receives wastewater from a 420–square-mile area in King County and parts of Snohomish and Pierce Counties. Using an extensive network of pipes and pumps, King County currently conveys wastewater collected from local sewer districts to one of two regional treatment plants, where it undergoes both primary and secondary treatment before it is discharged into Puget Sound through outfalls located offshore of West Point and Duwamish Head.

In response to projected population growth within the Puget Sound region, King County has developed the Regional Wastewater Services Plan (RWSP), which enumerates the new and expanded facilities that King County will need throughout its three-county service area to meet increased demand for its wastewater conveyance and treatment services over the next 40 years. The RWSP is the subject of a Washington State Environmental Policy Act document entitled ''Final Environmental Impact Statement for the Regional Wastewater Services Plan, April 1998,'' prepared by the Wastewater Treatment Division of the King County Department of Natural Resources. Construction, operation, and maintenance activities associated with some new or expanded facilities called for in the RWSP, as well as those same activities associated with some existing King County facilities, have the potential to impact species subject to protection under Section 9 of the ESA.

King County has initiated discussions with the Services regarding the possibility of receiving permits that would cover take of listed species incidental to the following otherwise lawful activities:

(1) King County's existing and proposed secondary treated effluent discharges permitted under the National Pollutant Discharge Elimination System;

(2) Construction, operation, and maintenance activities associated with King County's existing and proposed effluent discharge outfalls;

(3) Construction, operation, and maintenance activities associated with King County's existing and proposed wastewater treatment facilities;

(4) Construction, operation, and maintenance activities associated with King County's existing and proposed conveyance facilities;

(5)King County habitat restoration projects, water quality improvement projects, water quality and fish habitat monitoring programs, and adaptive management activities intended to avoid, minimize, and mitigate the impacts of King County activities (1)- (4) on the proposed covered species, to the maximum extent practicable.

The King County Wastewater Treatment Division is currently considering the following types of conservation measures for the proposed Habitat Conservation Plan:

(a) A program of land conservation for the preservation, enhancement, or creation of suitable habitats for species addressed in the HCP to mitigate impacts associated with proposed construction activities;

(b) Development of new construction best management practices to avoid or minimize construction impacts on species addressed in the HCP;

(c) Commitment to continuing certain wastewater source control activities that are currently voluntary, targeted at reducing potential environmental risks by removing wastes before they are discharged into the sewer system;

(d) Implementation of an adaptive management program with ongoing monitoring and adjustment of covered activities.

Under NEPA, a reasonable range of alternatives to a proposed project must be developed and considered in the Services' environmental review. At a minimum, the alternatives developed must include: (1) A No Action alternative, and (2) the Proposed Action, with thorough descriptions of its management features and anticipated resource conservation benefits and potential impacts. For the present environmental review, the Services

intend to review the HCP and to prepare an EIS. The environmental review will analyze King County's proposed HCP, a ''No Action'' alternative reflecting the baseline conditions in King, Pierce, and Snohomish Counties under current wastewater treatment practices, as well as a full range of reasonable alternatives and the associated impacts of each. The Services are currently in the process of developing alternatives for analysis. Additional project alternatives may be developed based on input received from this and future scoping notices during development of the EIS.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all significant issues are identified. The Services request that comments be as specific as possible. In particular, we request information regarding: the direct, indirect, and cumulative impacts that implementation of the proposed HCP could have on endangered and threatened and other covered species and their communities and habitats; other possible alternatives; potential adaptive management and/or monitoring provisions; funding issues; baseline environmental conditions in King, Pierce, and Snohomish Counties; other plans or projects that might be relevant to this proposed project; and minimization and mitigation efforts.

In addition to considering potential impacts on listed and other covered species and their habitats, the EIS could include information on potential impacts resulting from alternatives on other components of the human environment. These other components could include air quality, water quality and quantity, geology and soils, cultural resources, social resources, economic resources, and environmental justice.

Comments or questions concerning this proposed action and the environmental review should be directed to the U.S. Fish and Wildlife Service or NMFS at the address or telephone numbers provided above. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 USC 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Dated: May 5, 2003.

David Wesley,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon

Dated: June 4, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14580 Filed 6–9–03; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–22

DEPARTMENT OF COMMERECE

National Oceanic and Atmospheric Administration

[Docket No. 030528135–3135–01; I.D. 050103F]

Financial Assistance for Submerged Aquatic Vegetation (SAV) Culture and Large Scale Restoration Activities in Chesapeake Bay

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

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this notice is to invite the public to submit proposals for available funding toward research and development projects that address various aspects of Chesapeake Bay Submerged Aquatic Vegetation (SAV) culture and large scale restoration projects. Funds are available to State, local and Indian tribal governments, institutions of higher education, other non-profit organizations and commercial organizations. This notice describes the conditions under which project proposals will be accepted and criteria under which proposals will be evaluated for funding consideration. Depending upon the level of Federal involvement in individual projects, selected recipients will enter into either a cooperative agreement or a grant.

DATES: Applications must be received by 5 p.m. eastern daylight savings time on July 10, 2003. Applications received after that time will not be considered for funding.

Statements of Intent (*see* **SUPPLEMENTARY INFORMATION**) should be submitted by June 30, 2003.

ADDRESSES: You can obtain an application package from, and send completed proposals to: Peter Bergstrom, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the application package from the NOAA Chesapeake Bay Office Home Page *http://noaa.chesapeakebay.net/*. Applications will not be accepted electronically nor by facsimile machine submission. The statement of intent (*see* **SUPPLEMENTARY INFORMATION**) should be sent to Peter Bergstrom (*peter.bergstrom@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: Peter Bergstrom, NOAA Chesapeake Bay Office, telephone: (410) 267–5660, or e-mail: *peter.bergstrom@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A statement of intent to submit a full proposal is requested although not required and will assist the NOAA Chesapeake Bay Office in setting up technical reviewers. It is requested that this statement provide a project title, associated investigators and approximate budget.

A. Authority

The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of fisheries, resources thereof, and for fisheries habitat restoration.

B. Catalog of Federal Domestic Assistance (CFDA)

The projects to be funded are in support of the Chesapeake Bay Studies Program (CFDA 11.457).

C. Program Description

The Chesapeake Bay Studies Submerged Aquatic Vegetation Program is a new program initiated this year in response to language in the House Report (H.R. Rep. No. 108–10, at 712 (2003)). The main purpose of the program is to enhance and increase this important fisheries habitat in Chesapeake Bay and its tidal tributaries. Funding will be directed to complement existing and future efforts in this area by Federal, State, and local agencies, and community watershed associations.

Principle investigators will be expected to prepare for and attend one

or two workshops with other NCBO supported researchers to encourage interdisciplinary dialogue and collaboration, and presentation of results of supported work.

II. Areas of Interest

Proposals should exhibit familiarity with related work that is completed or ongoing. When appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple eligible applicants or individuals are encouraged. Proposals must address one of the areas of interest listed here. If the proposal addresses more than one area of interest, it should list first on the application the area of interest that most closely reflects the objective of the proposal. Proposals should follow and refer to the guidance in the Chesapeake Bay Program's ''Strategy to Accelerate the Protection and Restoration of Submerged Aquatic Vegetation in the Chesapeake Bay'' which is available at: *http://www.chesapeakebay.net/* or via Peter Bergstrom (*see* **ADDRESSES**).

All proposals should address the manner in which the applicant will obtain the necessary permits (if applicable) for collecting plant materials from tidal waters and bottom disturbance or putting structures in tidal waters. For collecting permit requirements in Maryland, see: *http://mddnr.chesapeakebay.net/savrrc/index.html.* For permit information for Virginia tidal waters, see: *http://www.mrc.state.va.us/page3.htm.*

These areas of interest are not listed in any particular order of importance: *A. Enhance supply of SAV propagules for restoration, especially seeds.* Propagate seeds, rooted cuttings, and/or whole plants of SAV species native to Chesapeake Bay to use in restoration projects. Priority will be given to proposals to produce seeds of species that are known to grow well from seed, especially eelgrass (*Zostera marina*) and wild celery (*Vallisneria americana*). Proposals for other propagation techniques that will minimize the ongoing need to harvest plant materials from the field are also encouraged. Source materials should come from the Chesapeake Bay watershed if possible, and the applicant must have all required collecting permits before collecting any source material from tidal waters. If a proposal is solely for propagation, the application should list organizations that are interested in using the plant materials they produce in restoration projects in Chesapeake Bay. If the propagules produced will be sold, the applicant must explain in his or her proposal how this income will be used to promote program objectives.

B. Applied research to increase the success of planting SAV directly from seeds. Investigate factors directly related to improving the large-scale cultivation and planting of SAV from seeds in Chesapeake Bay. These factors may include the following: optimal conditions for seed production and maturation, seed viability and germination; seed harvest and storage methods; natural modes of seed transport and fates of seeds that disperse naturally; distribution and viability of seed banks; and other factors. Collecting information useful to the direct planting of seeds of wild celery and/or redhead grass (*Potamogeton perfoliatus*) is encouraged. Proposals that would increase our knowledge of the seed ecology of eelgrass are also encouraged.

C. Large-scale SAV planting in 2003 and/or 2004. Conduct large-scale SAV restoration, including one or more projects that can be done in fall 2003 and/or in 2004. Proposed projects may be expansions of projects already planned, especially if done in 2003. Projects should use native species that have grown well when planted in past Chesapeake Bay projects and sites that have been assessed and shown to have a good chance of SAV survival and include regular evaluation of success for at least 2 years from date of planting. Projects that involve harvesting whole plants from donor beds and transplanting them are discouraged.

D. Site assessments needed to choose SAV planting sites for 2005. Conduct site assessments in 2003 and 2004 of potential sites for large-scale planting projects to be done in 2005 or later. Sites that are assessed should be pre-screened for good SAV growth potential using a GIS targeting tool that uses existing monitoring data. Site assessments may include measuring light availability (water clarity), salinity, temperature, bottom substrate characteristics, water depth, waves and currents, and epiphyte occurrence; mapping current and historical SAV presence by species; conducting small test plantings or other bioassays; and measuring other pertinent water chemistry and environmental parameters.

III. Funding

A. Funding Availability

This solicitation announces that approximately $425,000 will be made available through the NCBO for SAV culture and large scale restoration projects in FY 2003. This document describes how interested persons can apply for funding and how funding decisions will be made.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

B. Award Limits

There are no specified award limits for proposals submitted under this solicitation.

C. Funding Instrument

Whether the funding instrument is a grant or a cooperative agreement will be determined by the degree of NOAA's involvement in the project. A cooperative agreement will be used if NOAA shares responsibility for management, control, direction, or performance of the project with the recipient. Specific terms regarding substantial involvement will be contained in special award conditions.

D. Cost-sharing Requirements

The NOAA strongly encourages applicants applying for either area of interest to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the final selection process. Priority selection will be given to proposals that propose cash rather than in-kind contributions.

IV. Instructions for Application

A. Eligible Applicants

Eligible applicants include state, local and Indian tribal governments, institutions of higher education, other non-profit organizations and commercial organizations.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. The NOAA

encourages proposals involving any of the above institutions.

B. Project Award Period

Under this solicitation, NCBO will fund SAV related projects as 12-month cooperative agreements or grants. Proposals may be submitted for up to a 2-year project period. However, funds will be made available for only a 12-month award period, and any continuation of the award period will be subject to an approved scope of work, satisfactory progress, a panel review, and available funding to continue the award. No assurances for a funding continuation exists; funding will be at the complete discretion of NOAA.

All proposals must include a full description of the activities and budget for the first year as described in this announcement, a summary description of the proposed work for each subsequent year, and an estimated budget by line item (without supporting budget detail pages) for review and analysis. If selected for funding, the applicant will be required to submit a full proposal for the second year by the deadline announced in the following year's competitive cycle. Proposals will be evaluated through a review panel process, but will not be subject to competition with new proposals. Projects should not be scheduled to begin before September 1, 2003.

C. Format and Requirements

Proposals must be complete and must follow the format described in this notice. Potential recipients may submit separate proposals for each area of interest. Applicants should not assume prior knowledge on the part of the NOAA as to the relative merits of the project described in the application.

1. *Proposal format.* Applicants are required to submit one signed original and two copies of the full proposal (submission of five additional hard copies is encouraged to expedite the review process, but it is not required). Proposals must be written in at least a 10-point font, double-spaced, unbound, and one-sided. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are not included in the 15-page limitation. Appendices may be included but must not exceed a total of 10 pages in length. Appendices may include information such as curriculum, resumes, and/or letters of endorsement. Additional informational material will be disregarded. Proposals must include the following information:

a. *Project summary (1-page limit).* It is recommended that each proposal contain a summary of no more than one page that provides the following:

(1) Organization title.

(2) Address, telephone number, and email address of applicant.

(3) Area of interest for which you are applying (see section II).

(4) Project title.

(5) Project duration (1-year project period, starting on the first of the month and ending on the last day of the month).

(6) Principal Investigator(s) (PI).

(7) Project objectives.

(8) Summary of work to be performed.

(9) Total Federal funds requested.

(10) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are cash or in-kind.

(11) Total project cost.

b. *Project description (15-page limit).* Each project must be completely and accurately described. The main body of the proposal should be a clear statement of the work to be undertaken and should include specific objectives and performance measures for the period of the proposed work and the expected significance; relation to longer-term goals of the PI's project; and relation to other work planned, anticipated, or in progress under Federal Assistance. Each project must be described as follows:

(1) *Identification of problem(s):* Describe the specific problem or area of interest to be addressed (see section II, above).

(2) *Project objectives:* Objectives should be simple and understandable; as specific and quantitative as possible; clear as to the ''what and when,'' but should avoid the ''how and why''; and attainable within the time, money, and human resources available. Projects should be accomplishment oriented and identify specific performance measures.

(3) *Project narrative:* The project narrative is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project or job activity, proposed for accomplishing the proposal's objective(s).

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. The project narrative must include a milestone table that summarizes the procedures/objectives that are to be attained in each project month covered. Table format should follow sequential month rather than calendar month (*i.e.,* Project period Month 1, Month 2 * * * versus October, November * * *).

(4) *Benefits or results expected:* Identify and document the results or benefits to be derived from the proposed activities.

(5) *Need for Government financial assistance:* Demonstrate the need for assistance. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are already in place or have been sought for the project.

(6) *Federal, state and local government activities:* List any program (Federal, State, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, NOAA Oyster Disease Research Program, the State/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and this plan or activity.

(7) *Project management:* Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(8) *Results from prior NOAA Chesapeake Bay Office support:* If any PI or co-PI identified on the project has received support from the NCBO in the past 5 years, information on the prior award(s) is required. The following information should be provided:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Summary of the results of the completed work, including, or a research project, any contribution to the development of human resources in science/biology;

(d) Publications resulting from the award (applicable reprints are requested for documentation);

(e) Brief description of available data, samples, physical collections and other related research products not described elsewhere; and

(f) If the proposal is for renewed support, a description of the relation of the completed work to the proposed work.

(9) *Monitoring of project performance:* Identify who will participate in monitoring the project.

(10) *Project impacts:* Describe how these products or services will be made available to the fisheries and management communities.

(11) *Education and outreach:* Describe how this project would provide a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

(12) *Evaluation of project:* Provide an evaluation of project accomplishments and progress toward the project objectives and performance measures at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility or to quantify the results of the project in promoting increased production, product quality and safety, plant survival, or other measurable factors.

c. *Total project costs and budget narrative.* Total project costs are the amount of funds required, contributions and donations included, to accomplish what is proposed in the Project Description.

Explain the calculations and provide a narrative to support specific items or activities, such as personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. The budget detail and narrative submitted with the application should match the dollar amounts on all required forms. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness.

2. *Funding restrictions.* Please note the following:

a. The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal Government, see Administrative Requirements, section VI, C.

b. Funds for salaries and fringe benefits may be required only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. NOAA strongly encourages applicants to request reasonable amounts of funding for salaries and fringe benefits to ensure that their proposals are competitive.

3. *Supporting documentation.* Provide any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented should be clearly referenced in the project description.

D. Federal forms

Applicants may obtain required Federal forms from the NOAA Chesapeake Bay Office Web site (*see* **ADDRESSES**) or from the NOAA Grants Web site: *http://www.rdc.noaa.gov/~grants/index.html.*

1. *Cover sheet.* All applicants must use Office of Management and Budget (OMB) Standard Form 424 (revised 7/97) as the cover sheet for each project.

2. *Budget form.* All applicants must use a Standard Budget Form (SF–424A) required for all Federal grants.

3. *Form CD–511.* All applicants must submit a CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying''.

4. *SF–424B.* All applicants must submit a SF–424B, ''Assurances of Non-Construction Programs''.

5. *CD–346 ''Applicant for Funding Assistance.''* Required for the following individuals—Sole Proprietorship, Partnerships, Corporations, Joint Venture, Non-profit Organizations.

E. Evaluation Criteria

1. *Project Design/Conceptual Approach.* Projects will be evaluated on your conceptual approach and how you have integrated this into the project design. (25 points)

2. *Project evaluation.* Projects will be evaluated based on your explanation of how you will ensure that you are meeting the goals and objectives of your project, as required in Section IV.C.1.b.12, so that results may be reported in performance reports. (10 points)

3. *Project Management.* Projects will be evaluated based on the management, experience and qualifications of personnel with respect to the applicants being capable of conducting the scope and scale of the proposed work (*i.e.*, education, experience, training, facility, and administrative resources/capabilities). (5 points)

4. *Justification and allocation of the proposed budget.* Proposals will be evaluated on the reasonableness, allowability, and allocability of the proposed budget, as set forth in Section IV.C.1.c. (10 points)

V. Selection Procedures

A. Initial Evaluation of the Applications

NCBO will review all applications to assure that they meet all the requirements of this announcement, including eligibility and relevance to the NCBO. Proposals that do not support the areas of interest of the Chesapeake Bay, as defined in section II of this document above, will not be considered for funding.

B. Technical Review

Applications meeting the requirements of this solicitation will undergo an external technical review. This review will normally involve individuals in the field of SAV and habitat restoration from both NOAA and non-NOAA organizations. Proposals will be scored based on the evaluation criteria as defined in section IV. D. of this document. Reviewers will be asked to review independently and to provide a score and comments on each proposal. All comments submitted to NCBO will be taken into consideration in the evaluation of projects. No consensus advice will be given by the technical reviewers.

C. Funding Decision

Scores for each proposal will then be averaged and the proposals will be ranked numerically for funding based upon the technical review scores. After the proposals have been ranked, the Chief of the NOAA Chesapeake Bay Office, in consultation with Program staff, will determine which projects will be recommended for funding.

Although numerical ranking will be the primary method used for deciding which of the proposals will be selected for funding, it will not be the sole selection factor. Duplication with other projects, geographic diversity, program goals, inter-jurisdictional and inter-institutional collaboration and duplication, and the nature and the amount of any cost share contribution may also be considered in making the final selections. A written justification will be prepared for any recommendation for funding that falls outside the ranking order. The exact amount of funds awarded to each project will be determined in pre-award negotiations among the applicant, the Grants Office, and the Program staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document

signed by an authorized NOAA official has been received.

Unsuccessful applications will be kept on file in the Program office for a period of at least 12 months, then destroyed.

VI. Administrative Requirements

A. Pre-Award Notification Requirements

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 the **Federal Register** notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

B. Indirect Cost Rates

Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

C. Allowable Costs

Funds awarded cannot necessarily pay all the costs that the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the Office of Management and Budget Circulars A–122, ''Cost Principles for Nonprofit Organizations''; A–21, ''Cost Principles for Education Institutions''; and A–87, ''Cost Principles for State, Local and Indian Tribal Governments.'' Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are ''necessary and reasonable.'' Funds cannot be used for construction activities beyond minor facility upgrades, *e.g.*, adding tanks or plumbing.

Classification

This action has been determined to be ''not significant'' for purposes of Executive Order 12866. Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Under 5 U.S.C. 553(a)(2), prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits and contracts. Because notice and an opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* are inapplicable.

Under section 553(a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for the purposes of the Regulatory Flexibility Act.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and CD–346 has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0605–0001.

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 displays a currently valid OMB control number.

Dated: June 4, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–14577 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060303C]

Marine Mammals; File No. 981–1707

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

ACTION: Issuance of permit and availability of environmental assessment.

SUMMARY: Notice is hereby given that Dr. Peter L. Tyack, Biology Department, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts, 02543, has been issued a permit to take various cetacean species for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard, Tammy Adams, or Steve Leathery, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 23, 2003, notice was published in the **Federal Register** (68 FR 19974) that a request for a scientific research permit to take cetacean species, including endangered whales, had been submitted by the above-named individual and that a draft environmental assessment had been prepared on the proposed research. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226). The environmental assessment has been finalized and is available for review.

The permit authorizes takes of various cetacean species, including endangered whales, in the North Atlantic, including the Gulf of Mexico, and Mediterranean Sea. The research is divided into three projects which use as their principle sampling technique the short-term tagging (via suction cup mounted instruments) of marine mammals with an advanced digital sound recording tag (DTAG) that can record the acoustic stimuli an animal hears, while also measuring the animal's vocal, behavioral, and physiological responses to sound. Takes include harassment during close approaches for behavior observation and photo-identification, attachment of tags, focal follows (i.e.,

following a tagged whale to observe its behavior), and controlled exposure to playbacks of a whale-finding sonar, airgun sounds, and/or sperm whale (*Physeter macrocephalus*) social vocalizations (codas). When the DTAGs are retrieved after release, small fragments of sloughed skin are often found in the suction cup. These tissue samples will be exported from field sites and imported for genetic analyses.

Project 1 will involve applying DTAGs to a variety of whale and dolphin species to study the baseline behavior of animals tagged throughout the North Atlantic. There are three main goals of Project 1: (1) to obtain continuous sampling of marine mammal vocal and motor behavior, (2) to determine correction factors that can be applied to visual sighting data to better estimate population and stock abundance, and (3) to serve as a control group for Projects 2 and 3, described below.

For Project 2, tagged whales and dolphins in the Mediterranean Sea will be used as test subjects in controlled tests of a whale-finding sonar developed by a North Atlantic Treaty Organization (NATO) undersea research lab in Italy. Maximum received level will be 160 dB re 1 μPa rms. Playbacks of sperm whale codas will be used as a control stimulus. The goal of Project 2 is to validate the effectiveness of a whale-finding sonar, to calibrate measurements of the target strength of marine mammals as a function of aspect, and to assess the received levels at which animals that can hear the sonar may start to show changes in behavior.

For Project 3 the responses of tagged sperm whales to short impulses from airgun arrays at received levels no higher than 180 dB re 1 μPa rms will be studied in the Gulf of Mexico. Playbacks of sperm whale codas will be used as a control stimulus. These studies will involve visual observations of surfacing sperm whales, passive acoustic tracking of diving sperm whales, and tagging sperm whales with DTAGs. The primary research objective of the Project 3 airgun playbacks is to determine what characteristics of exposure to specific sounds evoke behavioral responses in marine mammals.

The purpose of the research, as stated in the application, is to study the biology, foraging ecology, communication, and behavior of cetacean species, with a focus on their responses to anthropogenic sounds in the marine environment. The permit will be valid for a period of five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 4, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–14578 Filed 6–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

[Docket No. EA–236–A]

Application To Export Electric Energy; American Electric Power Service Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: American Electric Power Service Corporation (AEPSC), on behalf of its public utility operating companies, has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 25, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 5, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from AEPSC, on behalf of its public utility operating companies, to transmit electric energy from the United States to Mexico. Notice of the export application was placed in the **Federal Register** on April 18, 2001, and an order authorizing exports to Mexico was issued on June 15, 2001. That order will expire on June 15, 2003.

On May 21, 2003, AEPSC applied for an extension of its authorization. This application was again filed by AEPSC on behalf of its public utility affiliates, namely: Appalachian Power Company; AEP Texas Central Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Ohio Power Company; Public Service Company of Oklahoma; Southwestern Electric Power Company; and AEP Texas North Company (collectively, the ''AEP Operating Companies'' or the ''Applicants''). AEPSC is incorporated under the laws of the State of New York and has its principal place of business in Columbus, Ohio. The electric energy which the applicants propose to export to Mexico would be either from surplus generation of the AEP Operating Companies or from purchases made on the wholesale market.

The applicants propose to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. The construction of each of the international transmission facilities to be utilized by the applicants, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the AEPSC application to export electric energy to Mexico should be clearly marked with Docket EA–236–A. Additional copies are to be filed directly with F. Mitchell Dutton, Esq., American Electric Power Service Corporation, 1 Riverside Plaza, 15th Floor, Columbus, Ohio 43215–2373 and John R. Lilyestrom, Esq., Hogan & Hartson, LLP, 555 13th Street, NW., Washington, DC 20004.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on June 5, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–14606 Filed 6–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–332–005]

ANR Pipeline Company; Notice of Compliance Filing

June 2, 2003.

Take notice that on May 28, 2003, ANR Pipeline Company, (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets in Appendix A to the filing, with an effective date of July 1, 2003.

ANR states that these tariff sheets are being filed in compliance with Article 5 of the Stipulation and Agreement submitted in the above-referenced docket on July 10, 2001 (the Settlement), and the Commission's April 9 Order issued in the above-referenced docket. ANR Pipeline Company, 101 FERC § 61,022 (2003).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14501 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–319–001]

ANR Pipeline Company; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 29, 2003, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sub Fifth Revised Sheet No. 161A.02, with an effective date of May 1, 2003.

ANR states that the tariff sheet is being filed in compliance with the Commission's April 29, 2003, order accepting ANR's proposal, subject to the conditions in the order, to clarify ANR's right to allow contractual Rights of First Refusal pursuant to section 22.2 of the General Terms and Conditions of ANR's Tariff when contracts might otherwise not be eligible for such rights.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14504 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–491–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2003.

Take notice that on May 30, 2003, Columbia Gas Transmission Corporation (Columbia) as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 2003:

Fifth Revised Sheet No. 101
Fifth Revised Sheet No. 108
Fourth Revised Sheet No. 117
Fourth Revised Sheet No. 133
Sixth Revised Sheet No. 171
Eleventh Revised Sheet No. 262
Fourth Revised Sheet No. 466
First Revised Sheet No. 467
Original Sheet No. 468
Fifth Revised Sheet No. 501
Second Revised Sheet No. 502A
Fifth Revised Sheet No. 503
Fourth Revised Sheet No. 511

Columbia states that it is making this filing to add a new General Terms and Conditions (GTC) section to its Tariff, and to make conforming revisions to related Tariff provisions. In particular, Columbia is proposing to include in new section 42 of the GTC of its Tariff a provision that will permit Columbia and eligible shippers to mutually agree to include in their service agreements regulatory unbundling contract demand reduction rights under specified circumstances.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Dated: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14512 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–493–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2003.

Take notice that on May 30, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 2003:

Eighth Revised Sheet No. 280
Original Sheet No. 280A
Third Revised Sheet No. 485
Fourth Revised Sheet No. 501
Original Sheet No. 501A
First Revised Sheet No. 502A
Fourth Revised Sheet 503
Original Sheet No. 503A
First Revised Sheet No. 505A
Third Revised Sheet No. 511

Columbia states that it is submitting this filing to include in its Tariff new provisions permitting Columbia to agree with its shippers, on a not unduly discriminatory basis, to a contractual right of first refusal (ROFR), equivalent to the ROFR right set forth from time to time in section 4 of the General Terms and Conditions of its Tariff, for service agreements that have a term of 12 or more consecutive months of service but bear a rate that is either discounted or negotiated.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14514 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–492–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2003.

Take notice that on May 30, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No.1, the following revised tariff sheets, a proposed effective date of July 1, 2003:

Fifth Revised Sheet No. 55A
Sixth Revised Sheet No. 63A
Second Revised Sheet No. 88
Seventh Revised Sheet No. 125
Third Revised Sheet No. 272
Original Sheet No. 273
Fifth Revised Sheet No. 318

Columbia Gulf states that it is making this filing to add a new General Terms and Conditions (GTC) section to its Tariff, and to make conforming revisions to related Tariff provisions. In particular, Columbia Gulf states that it is proposing to include in new Section 34 of the GTC of its Tariff a provision that will permit Columbia Gulf and eligible shippers to mutually agree to include in their service agreements regulatory unbundling contract demand reduction rights under specified circumstances.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14513 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–305–000]

Distrigas of Massachusetts LLC; Notice of Application

June 2, 2003.

Take notice that on May 22, 2003, Distrigas of Massachusetts LLC (DOMAC), One Liberty Square, 10th Floor, Boston, Massachusetts 02109, filed in Docket No. CP03–305–000, an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's regulations for authorization to construct, install, operate, and maintain facilities (DOMAC Connection) at DOMAC's liquefied natural gas (LNG) plant in Everett, Massachusetts in order to connect to and deliver regasified LNG into the system of Algonquin Gas Transmission Company (Algonquin), as more fully described in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

DOMAC states that its application is related to Algonquin's pending HubLine Phase II (or Everett Extension) proceeding, filed on February 5, 2003, in Docket No. CP01–5–003. DOMAC explains that, in the HubLine Phase II proceeding, Algonquin proposes to construct the Everett Extension, in part, to provide 50,000 Dth/d of firm transportation service for DOMAC, and that the DOMAC Connection facilities are necessary to allow such regasified LNG to be delivered into Algonquin's Everett Extension. DOMAC states that the DOMAC Connection represents a new avenue for the delivery of regasified LNG to the New England gas market, while mitigating take-away constraints on its regasified LNG.

Specifically, DOMAC proposes to construct a new 300-foot send-out line, odorant system, and metering system, and to reconfigure existing vaporization equipment to allow higher pressure deliveries into Algonquin's Everett Extension. The proposed facilities will be built entirely on the LNG plant's existing property, and will cost approximately $2.4 million.

DOMAC requests that the Commission issue a final certificate by December 1, 2003, in order to allow DOMAC time to meet its contractual obligation to complete the project by June 1, 2005.

Any questions regarding this application should be directed to Mr. Robert A. Nailling, Vice President and General Counsel, Distrigas of Massachusetts LLC, One Liberty Square, 10th Floor, Boston, Massachusetts 02109, or call (617)526–8300 or FAX (617)526–8356.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: June 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14494 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–494–000]

Eastern Shore Natural Gas Company; Notice of Fuel Adjustment

June 3, 2003.

Take notice that on May 30, 2003, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its annual Fuel Retention Adjustment filing pursuant to section 31 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Eastern Shore states that Section 31, ''Fuel Retention Adjustment'', specifies that with no less than thirty (30) days prior notice, Eastern Shore shall file with the Commission revised tariff sheets containing a re-determined Fuel Retention Percentage (FRP) for affected transportation rate schedules to be effective July 1 of each year. Such FRP is designed to reimburse Eastern Shore for the cost of its Gas Required for Operations (''GRO'') which consists of (a) gas used for compressor fuel and (b) gas otherwise used, lost or unaccounted for, in its operations. Eastern Shore states that its FRP is calculated by determining the GRO quantities attributable to system-wide operations for the affected transportation rate schedules using the last twelve (12) month period for which actual data is available and then dividing such quantity by the transportation quantities received by Eastern Shore for the corresponding twelve (12) month period.

Eastern Shore states that as shown in its filing, Eastern Shore's calculated FRP is .64 %, an increase of .34 % from the current FRP in effect.

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14515 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–202–001]

Enbridge Pipelines (KPC); Notice of Compliance Filing

June 3, 2003.

Take notice that on May 29, 2003, Enbridge Pipelines (KPC) (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be made effective January 1, 2003, subject to the extension granted by Commission order dated November 12, 2002, and the May 6, 2003, notice in FERC Docket Nos. RP02–488–002 and RP00–318–003:

First Revised Sheet No. 101
First Revised Sheet No. 102
Substitute Original Sheet No. 103
Substitute Original Sheet No. 104
Substitute Fourth Revised Sheet No.
Substitute First Revised Sheet No. 132

KPC states that the purpose of this filing is to comply with the Commission's order issued April 30, 2003, which required KPC to delete certain language from section 8.1(d) of the General Terms and Conditions (GT&C) and to also clarify certain language in sections 8.1(d) and 11.2. KPC states that the instant filing complies with the Commission's Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14503 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–487–000]

Equitrans, L.P.; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 30, 2003, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed on the filing, to become effective on July 1, 2003.

Equitrans states that the purpose of this tariff filing is to comply with Commission Order No. 587-R , issued March 12, 2003, which required interstate natural gas pipelines to incorporate into their tariffs Version 1.6 of the consensus standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board and the WGQ standards governing partial day recalls.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to

become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14508 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–833–000]

Global Common Greenport, LLC; Notice of Issuance of Order

June 3, 2003.

Global Common Greenport, LLC (GCG) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates. GCG also requested waiver of various Commission regulations. In particular, GCG requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by GCG.

On May 23, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by GCG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 23, 2003.

Absent a request to be heard in opposition by the deadline above, GCG is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of GCG, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of GCG's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14498 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–47–001]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 30, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2003.

Substitute First Revised Sheet No. 902
Substitute Original Sheet No. 903
Sheet Nos. 904—999
Substitute Third Revised Sheet No. 1709
Second Sub. Second Rev. Sheet No. 1710
First Revised Sheet No. 1711
Sheet Nos. 1712—1799

Gulf South states that this filing establishes a minimum volume threshold for the connection of new receipt and delivery points and requires certain gas quality control equipment be installed at certain receipt points. Gulf South states that this filing is submitted in compliance with the Commission's Order dated May 1, 2003, in Docket No. RP03–47–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14505 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–490–000]

Gulf South Pipeline Company, LP; Notice of Cash-In/Cash-Out Report

June 3, 2003.

Take notice that on May 30, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing its report of the net revenues attributable to the operation of its cash-in/cash-out program for an annual period beginning April 1, 2002, and ending March 31, 2003.

Gulf South states that this filing reflects its annual report of the activities attributable to the operation of its cash-in/cash out program. Gulf South states that the report shows a negative cumulative position that will continue to be carried forward and applied to the

next cash-in/cash-out reporting period as provided in Gulf South's tariff, section 20.1(E)(i) of the General Terms and Conditions.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14511 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–485–000]

Honeoye Storage Corporation; Notice of Compliance Filing

June 2, 2003.

Take notice that on May 28, 2003, Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, the revised tariff sheets listed on Appendix A to the filing, to be effective April 1, 2003.

Honeoye states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's Order 587–R issued on March 12, 2003, which established certain business practices for interstate natural gas pipelines.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14506 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–411–009 and RP03–326–001]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 30, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Fifth Revised Sheet No. 38, Proposed Effective Date November 1, 2002
Seventh Revised Sheet No. 57A, Proposed Effective Date May 15, 2003

Iroquois states that the instant tariff filing corrects inadvertent omissions of language from the above noted tariff sheets currently on file with the Commission and corrects the pagination of one of those tariff sheets. Iroquois' states that these omissions were discovered as part of an on-going internal review of Iroquois' FERC Gas Tariff. Iroquois also states that the proposed corrections are necessary to provide Iroquois' shippers with uniform tariff provisions and to avoid confusion.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14502 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–130–000]

MidAmerican Energy Company, Complainant, v. Mid-Continent Area Power Pool, Respondent; Notice of Complaint

June 2, 2003.

Take notice that on May 30, 2003, MidAmerican Energy Company (MidAmerican) filed with the Federal Energy Regulatory Commission (Commission) a Complaint against the Mid-Continent Area Power Pool (MAPP) pursuant to section 206 of the Federal Power Act and rule 206 of the Commission's rules of practice and procedure, 18 CFR 385.206. According to the Complaint, MAPP is implementing a business practice that is inconsistent with its tariff and the Commission's pro forma tariff.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14496 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–496–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

June 3, 2003.

Take notice that on May 30, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty Fifth Revised Sheet No. 9, to become effective June 1, 2003.

National states that the filing is made pursuant to a settlement approved by Commission Letter Order issued on February 16, 1996, in the proceedings in Docket Nos. RP94–367–000, *et al.* National explains that the settlement was revised in a subsequent Letter Order issued by the Commission on February 7, 2001.

National states that under Article II, section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, National states that it is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of Article II. National asserts that the recalculation produced an IG rate of $1.21 per dth. National states that in addition, Article III, section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14517 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP99–518–044]

Federal Energy Regulatory Commission

June 2, 2003.

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

Take notice that on May 29, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Thirteenth Revised Sheet No. 15, with an effective date of May 29, 2003.

GTN states that this filing is being filed to reflect the implementation of one new negotiated rate agreement on GTN's system in accordance with the Commission's October 28, 1999, order in Docket No. RP99–518, (PG&E Gas Transmission, Northwest Corporation, 89 FERC ¶ 61,114 (1999).

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public

Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14519 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5–063]

PPL Montana, LLC and Confederated Salish and Kootenai Tribes of the Flathead Nation; Notice of Effective Date of Withdrawal of Petition for Declaratory Order

June 2, 2003.

On June 19, 2001, PPL Montana, LLC (PPL Montana) filed a petition for declaratory order to clarify its obligations as co-licensee of the Kerr Project No. 5, located on the Flathead River in Lake and Flathead Counties, Montana, and partially on lands within the Flathead Indian Reservation. On April 17, 2003, PPL Montana filed a notice of withdrawal of its petition.

No motion to the notice of withdrawal was filed, and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to rule 216 of the Commission's rules of practice and procedure,[1] the withdrawal became effective on May 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14500 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.216(b) (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–131–000]

San Diego Gas & Electric Company Complainant, v. California Independent System Operator Corporation Respondent; Notice of Complaint

June 3, 2003.

Take notice that on June 2, 2003, San Diego Gas & Electric (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Complaint against the California Independent System Operator Corporation (ISO). The Complaint alleges that the ISO has improperly levied certain grid management charges on SDG&E, in violation of the ISO's filed rate.

SDG&E states that a copy of this filing was served upon the California Independent System Operator Corporation.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14497 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–495–000]

Total Peaking Services, L.L.C.; Notice of Compliance Filing

June 3, 2003.

Take notice that on May 30, 2003, Total Peaking Services, L.L.C. (TPS), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing with an effective date of July 1, 2003.

TPS states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's orders in Docket No. RM96–1 incorporating the business practice standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) through Version 1.6, together with the WGQ-recommended standards R02002 and R02002–2 governing partial day recalls and to change the name of the contact individual. In addition, TPS requests an extension of time for implementing certain standards and related electronic Data Sets until 180 days after a person first requests use thereof.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14516 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–486–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

June 3, 2003.

Take notice that on May 29, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 292, Eighth Revised Sheet No. 296, and Ninth Revised Sheet No. 303. The proposed effective date of the tariff sheets is May 1, 2003.

Transco states that the purpose of the instant filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of section 19.1(f) of the General Terms and Conditions of Transco's Third Revised Volume No. 1 tariff. Transco states that specifically, such tariff sheets have been revised to reflect the increase in capacity associated with the May 1, 2003, in-service date of Phase 1 of the Momentum Expansion Project.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14507 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–016]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

June 3, 2003.

Take notice that on May 29, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a copy of the executed service agreement amendment that contains a negotiated delivery point facilities surcharge (facilities surcharge) under Transco's Rate Schedule FT for the costs of the Westmore Road Meter Stations, a delivery point to Washington Gas Light Company (WGL). The effective date of this facilities surcharge is June 1, 2003, which is the anticipated in-service date of the Westmore Road Meter Stations.

Transco states that Transco and WGL are parties to a service agreement, dated January 1, 1996, under Transco's Rate Schedule FT for firm transportation service on Transco's pipeline system. Transco further states that it has agreed to construct the Westmore Road Meter Stations, a new delivery point to WGL located on Transco's main line in Montgomery County, Maryland. Transco asserts that pursuant to section 20.7 of the General Terms and Conditions of Transco's FERC Gas Tariff, Transco and WGL have executed an amendment to the service agreement to add Exhibit C thereto to include a facilities surcharge for the Westmore Road Meter Stations in addition to the applicable rates and charges for WGL's firm transportation service under Rate Schedule FT.

Transco states that the effective date of this facilities surcharge is June 1, 2003, which is the anticipated in-service date of the Westmore Road Meter Stations.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14518 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–489–000]

Vector Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

June 3, 2003.

Take notice that on May 30, 2003, Vector Pipeline L.P. tendered for filing to become part of its FERC Gas Tariff, Volume No. 1, the tariff sheets listed on Appendices A–D to the filing, to be effective July 1, 2003. In addition, Vector is proposing to add two new firm transportation services to its tariff.

Vector states that the purpose of this filing is to fulfill its obligation under Ordering Paragraph (I) of the certificate order issued May 27, 1999, in Docket Nos. CP98–131–000, *et al.* Ordering Paragraph (I) required Vector to make a Natural Gas Act (NGA) section 4 rate filing within three years from its in-

service date either justifying the existing rates or proposing alternative rates.

Vector's in-service date was December 1, 2000. Vector states that its filing satisfies that requirement.

Vector is requesting an increase in the recourse rates for service under Rate Schedules FT–1, IT–1, and PALS, based on a cost of service of $134,911,668. Vector states that the presently pending rate for Rate Schedule TTS service in Docket No. RP02–479–002 and the existing rate for Rate Schedule MBA service are unchanged by this filing. Vector also is proposing recourse rates for two new firm transportation services, limited firm in Rate Schedule FT–L and hourly firm in Rate Schedule FT–H.

In addition to the rate change, Vector states that it is submitting various revised tariff sheets for the purpose of correcting and cleaning-up minor errors, making editorial corrections, clarifying certain tariff provisions, and deleting a section of the General Terms and Conditions (section 39) which is no longer applicable. Vector states that it also is electing to modify the terms of its Management of Balancing Agreement service to accommodate the requests of customers for a more broad-based service that could be used by customers who take interruptible service in addition to those who use firm transportation service.

Vector states that copies of its filing have been mailed to all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14510 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–488–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 3, 2003.

Take notice that on May 30, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 2003:

Eighth Revised Sheet No. 203
Fifth Revised Sheet No. 236
Sixth Revised Sheet No. 376
Fourth Revised Sheet No. 503
Fifth Revised Sheet No. 508
Fourth Revised Sheet No. 509
Tenth Revised Sheet No. 510
Fourth Revised Sheet No. 553
Fifth Revised Sheet No. 558
Fourth Revised Sheet No. 559
Tenth Revised Sheet No. 560

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff to reflect a change in the Company's current procedures for identifying, adding and/or deleting alternate points and/or pooling points to a shipper's firm transportation contract(s).

Williston Basin states that copies of the filing are being served upon those listed on the mailing list attached to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 11, 2003.

Magalie R. Salas,

Secretary

[FR Doc. 03–14509 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–94–000, et al.] ITC Holdings Corp., et al.; Electric Rate and Corporate Filings

June 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. ITC Holdings Corp., International Transmission Holdings Limited Partnership International Transmission Company

[Docket No. EC03–94–000]

Take notice that on May 27, 2003, ITC Holdings Corp., International Transmission Holdings Limited Partnership and International Transmission Company submitted an application pursuant to section 203 of the Federal Power Act seeking all authorizations and approvals necessary for the indirect disposition of jurisdictional facilities that may result from a change in upstream ownership interests, as more fully described in the application.

Comment Date: June 17, 2003.

2. United States Department of Energy—Western Area Power Administration

[Docket No. EF03–5031–000]

Take notice that on May 16, 2003, the Secretary of the Department of Energy by Rate Order No. WAPA–102, did confirm and approve on an interim basis, to be effective on October 1, 2003, the Western Area Power Administration

(Western) Rate Schedules P–SED–F6 and P–SED–FPG for firm power service and firm peaking power through September 30, 2003.

The rates in Rate Schedules P–SED–F6 and P–SED–FPG will be in effect pending the Federal Energy Regulatory Commission's (Commission) approval of these rates on a final basis, ending September 30, 2003.

Comment Date: June 23, 2003.

3. United States Department of Energy—Western Area Power Administration

[Docket No. EF03–5181–000]

Take notice that on May 16, 2003, the Secretary of the Department of Energy by Rate Order No. WAPA–103, did confirm and approve on an interim basis, to be effective on October 1, 2003, the Western Area Power Administration's (Western) Rate Schedule L–F4 for firm electric service through September 30, 2003.

The rate in Rate Schedule L–F4 will be in effect pending the Federal Energy Regulatory Commission's (Commission) approval of this rate on a final basis, ending September 30, 2003.

Comment Date: June 23, 2003.

4. Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Southern California Edison Company

[Docket No. ER03–889–000]

Take notice that on May 29, 2003, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company tendered for filing an Interconnection and Operating Agreement necessary to interconnect the Rudd Transmission Line to the ANPP High Voltage Switchyard between the Rudd Line Participants and the ANPP Switchyard Participants.

Comment Date: June 19, 2003.

5. Innovative Technical Services, L.L.C.

[Docket No. ER03–890–000]

Take notice that on May 29, 2003, Innovative Technical Services, L.L.C. (InTech-LLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a letter requesting the Commission to amend the Western Systems Power Pool (WSPP) Agreement to include InTech-LLC as a participant. InTech-LLC respectfully requests that the Commission allow the amendment to the WSPP Agreement to become effective on May 29, 2003.

InTech-LLC states that a copy of this filing has been served upon the WSPP Executive Committee Chair, WSPP Operating Committee Chair, WSPP General Counsel, and Arizona Public Service Company.

Comment Date: June 19, 2003.

6. Gulf States Energy Investments L.P.

[Docket No. ER03–891–000]

Take notice that on May 29, 2003, Gulf States Energy Investments L.P. (Gulf States Energy Investments L.P.) petitioned the Commission for acceptance of its Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Gulf States Energy Investments L.P. states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Gulf States Energy Investments L.P. states that it is not in the business of generating or transmitting electric power. Gulf States Energy Investments L.P. asserts that it is a Texas Limited Partnership with its principal place of business and office in Dallas, Texas. Gulf States Energy Investments L.P. further states that it is involved in consulting of electricity and marketing of wholesale power. Gulf States Energy Investments L.P. explains that it is not associated with any utilities, investor owned or otherwise and is privately owned by Gulf States Energy, Inc., which is the General Partner, and several individuals from Fort Worth Texas, which act as the Limited Partners.

Comment Date: June 19, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14495 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–131–000]

Natural Gas Pipeline Company of America; Notice of Intent to Prepare an Environmental Assessment for the Proposed North Lansing Storage Field Abandonment and Request for Comments on Environmental Issues

June 3, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed North Lansing Storage Field Abandonment Project proposed by Natural Gas Pipeline Company of America (Natural) in Harrison County, Texas.[1] The facilities to be abandoned include an inactive injection/withdrawal well, about 2,380 feet of 8-inch-diameter lateral pipeline, and the associated 6-inch meter facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

The proposed abandonment is responsive to a Commission Order issued December 24, 2002, in FERC Docket No. CP02–391–000, involving the expansion of Natural's North Lansing storage field. An environmental condition of the Order required Natural to identify any currently unused aboveground facilities and pipelines on the property of S.J. Keasler, a landowner on the North Lansing storage field, and provide a timetable for filing an abandonment application with the

[1] Natural's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

Commission for removal of these facilities.

Natural identified an injection/withdrawal well, lateral pipeline and meter facility, all located on S.J. Keasler's property. The facilities were constructed under the FERC Docket No. CP89–2081–000 to increase withdrawal capabilities at the North Lansing storage field. Natural states that the injection/withdrawal well was plugged in 1997 after a leak was detected in the production tubing and has since been inactive. The surface wellhead equipment was subsequently removed. The associated meter facilities and lateral pipeline have been inactive since the well was plugged and are not located in an area of the storage field conducive for future connections to other possible wells. Due to the potential for corrosion from condensate and water to occur and cause future problems at the North Lansing storage field, Natural proposes to abandon the injection/withdrawal well and lateral pipeline in place and remove the meter facilities.

Natural seeks authority to:

- Abandon in place the injection/withdrawal well (ODA3-W, Emma Keasler #103);
- Cut, fill, cap, and abandon in place approximately 2,380 feet of 8-inch-diameter lateral pipeline (G–7 lateral); and
- Abandon by removal all aboveground portions of the 6-inch meter facility; and the belowground portions to three feet below grade.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Abandonment of the proposed facilities would require disturbance of about 0.01 acre of land. Natural proposes that following abandonment, it would continue the existing easement agreement and retain ownership of the abandoned lateral pipeline. The 0.01 acre of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety.

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed abandonment.

- Fisheries and wetlands;
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section, beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Natural. This preliminary list of issues may be changed based on your comments and our analysis.

- Two federally listed endangered or threatened species may occur in the proposed project area.
- In comments submitted under Docket No. CP02–391–000, S.J. Keasler, an affected landowner, expressed desires to have Natural remove all aboveground facilities and the pipeline associated with the inactive injection/withdrawal well (ODA3-W, Emma Keasler #103). However, Natural proposes to abandon the well and lateral pipeline in place.
- An unnamed intermittent tributary of the Moccasin Creek is crossed by the G–7 lateral pipeline. If the G–7 lateral pipeline were removed, the tributary would be subject to disturbance.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative means of abandonment), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP03–131–000.
- Mail your comments so that they will be received in Washington, DC on or before July 3, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''FERRIS'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you might want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified right-of-way grantors. By this notice we are also asking governmental agencies to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov)*using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnLineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to*http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14493 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Recreation Plan Amendment and Soliciting Motions to Intervene, Protests, and Comments

June 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Recreation plan amendment.

b. *Project No.:* P–2149–102 and 103.

c. *Date filed:* December 30, 2002, and February 19, 2003, respectively.

d. *Applicant:* Public Utility District No. 1 of Douglas County.

e. *Name and Location of Project:* The project is located on the Columbia River, in Douglas, Chelan, and Okanogan Counties, Washington. This amendment will affect project lands contained within the previously proposed Chief Joseph State Park area.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Gordon Brett, Property Supervisor, Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* June 30, 2003.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Amendment:* Licensee has submitted its recreation action plan 2002 update. Licensee has been contributing monies to a fund for the development of a park on land owned by the State and known as Chief Joseph State Park. Licensee indicates that because it has been determined that the development of the State park is not feasible at its present location, licensee proposes to purchase from the State the land that would have been developed as Chief Joseph State Park and also provide to the state the money that has been paid into a fund so that the State can purchase land elsewhere on the project. Licensee subsequently filed a Memorandum of Understanding (MOU) covering the sale of the State Park to the licensee.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802.

l. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

m. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

n. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–14499 Filed 6–9–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7508–2]

Clean Air Act Operating Permit Program; Petition for Objection to the Operating Permit for Georgia Pacific Corporation, Port Hudson Operations in East Baton Rouge Parish, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to State operating permit.

SUMMARY: This notice announces that the EPA Administrator has partially granted and partially denied the petition to object to a State operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) for the Port Hudson Operations of Georgia Pacific Corporation in East Baton Rouge, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of this response to the extent the petition has been denied, in the United States Court of Appeals for the Fifth Circuit. Any petition must be filed within 60 days of the date this notice appears in the **Federal Register**, pursuant to section 307(d) of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Braganza, Air Permitting Section, Multimedia Planning and Permitting Division, EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7340, or electronic mail at *braganza.bonnie@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

The Louisiana Environmental Action Network and Ms. Juanita Stewart (''Petitioners'') submitted a petition requesting that the Administrator object to the title V operating permit issued to Georgia Pacific Corporation by the LDEQ, for the Port Hudson plant operations. The petition requests the Administrator object to the Georgia Pacific permit based on the following broad assertions:

1. Invalid emission reductions were used to avoid Nonattainment New Source Review (NNSR) for emissions increases from projects occurring from 1986 through 1992.

2. Invalid emission reductions were used to avoid NNSR and Prevention of Significant Deterioration (PSD) requirements for emissions increases associated with a new towel machine project.

3. Specific conditions in the new towel machine permit should require Georgia-Pacific to undergo additional PSD review if emissions exceed certain limits.

4. No Emission Reduction Credits (ERC) are available because the Louisiana ERC bank is mismanaged and fails to require that credits be ''surplus'' when used.

5. ERCs were not identified specifically enough to inform the public.

6. The Title V permit incorporates an emission limit from an invalid State permit.

7. The Title V permit fails to provide for sufficient monitoring of particulate emissions from some units.

8. The LDEQ failed to provide an adequate statement of basis in the Title V permit.

On May 9, 2003, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons for EPA's conclusion that LDEQ must reopen the permit to: (1) Reconsider whether NNSR is an applicable requirement for the 1986–1992 projects, and determine the appropriate volatile organic compound emission limit based on this determination; (2) provide an adequate explanation of the periodic monitoring at issue; and (3) provide an adequate statement of basis on these particular NNSR and periodic monitoring issues. The order also explains the reasons for denying the remaining claims.

Dated: May 23, 2003.

Carl E. Edlund,

Acting Regional Administrator, Region 6.

[FR Doc. 03–14574 Filed 6–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7510–5]

Government-Owned Inventions: Available for Licensing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions named below are co-owned by the U.S. Government

and are available for licensing in the United States in accordance with 35 U.S.C. 207 and 37 CFR part 404. Pursuant to 37 CFR 404.7, beginning three months after the date of this notice the Government may grant exclusive or partially exclusive licenses on the inventions.

Copies of the patents and 37 CFR part 404 can be obtained from Alan Ehrlich, Patent Counsel, U.S. Environmental Protection Agency (EPA) at the address indicated below. Requests for copies of the patents must include the patent numbers listed in this notice.

A party that is interested in obtaining a license must apply to EPA at the contact address below. The license application must contain the information set forth in 37 CFR 404.8, including the license applicant's plan for development or marketing of the inventions.

EPA intends to license these patents in cooperation with the co-owner, the University of Kentucky Research Foundation. Prior to granting an exclusive or partially exclusive license on these inventions, EPA, pursuant to 37 CFR 404.7, will publish in the **Federal Register** an additional notice identifying the specific inventions and the prospective licensees.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (2377A), Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–5457.

Patents

U.S. Patent No. 6,544,419, Method of preparing a composite polymer and silica-based membrane, issued April 8, 2003;

U.S. Patent No. 6,544,418, Preparing and regenerating a composite polymer and silica-based membrane, issued April 8, 2003;

U.S. Patent No. 6,306,301, Silica-based membrane sorbent for heavy metal sequestration, issued October 23, 2001;

U.S. Patent No. 6,139,742, Membrane-based sorbent for heavy metal sequestration, issued October 30, 2000;

U.S. Patent No. 6,103,121, Membrane-based sorbent for heavy metal sequestration, issued August 15, 2000.

Dated: June 1, 2003.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 03–14575 Filed 6–9–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Expert-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: Tuesday, June 24, 2003 at 1:30 p.m. to 5 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: This meeting will focus on the Bank's business development efforts in Africa, specifically including sub-Saharan Africa. The meeting will discuss pending Bank initiatives to allow U.S. companies to become more competitive in the marketplace as well as interagency cooperative efforts focused on the region, while seeking the advice of committee members in the implementation of the ongoing business development strategy.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 24, 2003, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3525 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

Peter B. Saba,

General Counsel.

[FR Doc. 03–14484 Filed 6–9–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission, Comments Requested

June 3, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 11, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov* .

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–1004.

Title: Wireless Telecommunications Bureau Standardizes Carrier Reporting on Wireless E911 Implementation.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 251 respondents, 303 responses.

Estimated Time Per Response: 5 hours (Tier II Reports), 4 hours (Tier III Reports).

Frequency of Response: Quarterly, semi-annual and one-time reporting requirements, recordkeeping requirement.

Total Annual Burden: 1,282 hours.

Total Annual Cost: N/A.

Needs and Uses: Nationwide wireless carriers (Tier I) generally must file quarterly reports with the Commission on February 1, May 1, August 1 and November 1 of each year. Mid-sized wireless carriers (Tier II) also are required to file quarterly reports under this same time schedule. A format for the submission of the quarterly reports is being established to require that beginning with the August 1, 2003 filing, Tier I and II carriers must include with their quarterly reports an Excel spreadsheet detailing certain elements related to E911 implementation status at requesting Public Service Answering Points (PSAPs). Small wireless carriers (Tier III) are not required to submit the spreadsheet with their E911 interim reports, which are due on August 1, 2003, as a one-time filing.

The quarterly reports will continue to be used by the Commission to monitor carrier progress in transition to E911. The Bureau is establishing the format of the data to be submitted in order to permit the Commission to track wireless E911 deployment in a more uniform and consistent manner, as well as to assist E911 stakeholders in coordinating their deployment efforts.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–14481 Filed 6–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

ADDRESSES: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer –Cindy Ayouch–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Joseph Lackey–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final Approval Under OMB Delegated Authority of the Extension For Three Years, Without Revision, of the Following Report:

Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending)

Agency form number: Reg Z

OMB Control number: 7100–0199

Frequency: Event–generated

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations

Annual reporting hours: Open–end credit–initial disclosure 28,463 hours; open–end credit–change in terms notice, 41,250 hours; periodic statement, 125,952 hours; error resolution–credit cards, 22,260 hours; error resolution–other open–end credit, 1,312 hours; credit & charge card accounts–advance disclosure, 29,952 hours; home equity plans–advance disclosure, 13,983 hours; home equity plans–change in terms notice, 354 hours; closed–end credit disclosures, 351,354 hours; advertising, 2,733 hours; and HOEPA pre–closing disclosures, 425 hours.

Estimated average hours per response: Open–end credit–initial isclosure, 1.5 minutes; open–end credit–change in terms notice, 1 minute; periodic statement, 8 hours; error resolution–credit cards, 30 minutes; error resolution–other open–end credit, 30 minutes; credit & charge card accounts–advance disclosure, 8 hours; home equity plans–advance disclosure, 1.5 minutes; home equity plans–change in terms notice, 3 minutes; closed–end credit disclosures, 6.5 minutes; advertising, 25 minutes; and HOEPA pre–closing disclosures, 3 minutes.

Number of respondents: State member banks, 947; branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), 287; commercial lending companies owned or controlled by foreign banks, 3; and Edge and agreement corporations, 75.

Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 1601, 1604(a)). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Transaction– or account–specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. General disclosures of credit terms that appear in advertisements or take–one applications are available to the public.

Abstract: TILA and Regulation Z require disclosure of the costs and terms of credit to consumers. For open–end credit (revolving credit accounts) creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. There are special disclosure requirements for credit and charge card applications and solicitations, as well as for home equity plans. For closed–end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required of certain products, such as reverse mortgages, certain variable rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising.

Recently, the Federal Reserve reevaluated the methodology used to estimate the paperwork burden associated with consumer regulations. As a result of this change, the estimated burden declined.

Final Approval Under OMB Delegated Authority to Conduct Following Survey:

Report title: 2004 Survey of Consumer Finance

Agency form number: FR 3059

OMB Control number: 7100–0287

Frequency: One–time survey

Reporters: U.S. families

Annual reporting hours: 7,500 hours

Estimated average hours per response: Pretest and survey, 75 minutes each

Number of respondents: Pretest, 400 families; Survey, 5,600 families Small businesses are not affected.

General description of report: This information collection is voluntary. The Federal Reserve's statutory basis for collecting this information is section 2A of the Federal Reserve Act (12 U.S.C. 225a); the Bank Merger Act (12 U.S.C. 1828(c)); and sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. 1842 and 1843) and 12 U.S.C. 353 and 461. The names and other characteristics that would permit identification of respondents are deemed confidential by the Board and are exempt from disclosure pursuant to exemption 6 in the Freedom of Information Act (5 U.S.C. 552(b)(6)).

Abstract: For many years, the Board has sponsored consumer surveys to obtain information on the financial behavior of households. The 2004 Survey of Consumer Finance (SCF) will be the latest in a triennial series, which began in 1983, that provides comprehensive data for U.S. families on the distribution of assets and debts, along with related information and other data items necessary for analyzing behavior. These are the only surveys conducted in the United States that provide such financial data for a representative sample of households. Data for the SCF are collected by interviewers using a computer program. While some questions may be deleted and others modified, only minimal changes will be made to the questionnaire in order to preserve the time series properties of the data. The pretest will be conducted during 2003 and survey would be conducted between May and December 2004.

Board of Governors of the Federal Reserve System, June 4, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–14536 Filed 6–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 24, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Voting Trust Agreement, Apple Valley, Minnesota and its trustee, John Finch Woodhead, Minneapolis, Minnesota; to acquire voting shares of Financial Services of St. Croix Falls, Inc., St. Croix Falls, Wisconsin, and thereby indirectly acquire voting shares of Eagle Valley Bank, National Association, St. Croix, Falls, Wisconsin.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert S. Moran, Jr., Testamentary Trust and Sue Jean Bernard Byrd, Trustee of the Robert S. Moran, Jr., Testamentary Trust, both of Hollis, Oklahoma, to retain control of the outstanding common stock of Great Plains Bancshares, Inc., Hollis, Oklahoma, and thereby indirectly retain voting shares of Great Plains National Bank, Elk City, Oklahoma.

Board of Governors of the Federal Reserve System, June 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14539 Filed 6–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. SAS rue la Boetie, Paris, France; to become a bank holding company by indirectly retaining, through its 70 percent owned bank subsidiary, Credit Agricole, S.A., Paris, France, control of Espirito Santo Bank, Miami, Florida.

B. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. NHB Financial, Inc., Newell, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Northern Hancock Bank and Trust Company, Newell, West Virginia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Independence Bancorp, New Albany, Indiana. and Harrodsburg First Financial Bancorp, Inc., Harrodsburg, Kentucky; to acquire 100 percent of the voting shares of I–Bank, Louisville, Kentucky (in organization).

D. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bank Vest, Inc., Denver, Colorado; to become a bank holding company by acquiring 76.5 percent of the voting shares BW Holdings, Inc., Castle Rock, Colorado, and thereby indirectly acquire voting shares of Bankwest, Castle Rock, Colorado.

Board of Governors of the Federal Reserve System, June 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14537 Filed 6–9–03; 8:45 am]

BILLING CODE 6210–01–S

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 Web site at *http://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 June 24, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. The Union National Financial Corporation, Mount Joy, Pennsylvania; to acquire Plane Street Housing, L.P., Columbia, Pennsylvania, and thereby engage in community development acticities, pursuant to section 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–14538 Filed 6–9–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/CB–2003–01]

Announcement of the Availability of Financial Assistance and Request for Applications to Support Adoption Opportunities Demonstration Activities, Child Abuse and Neglect Discretionary Activities, Child Welfare Training Project Activities, Promoting Safe and Stable Families Activities

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice.

Statutory Authority and Catalog of Federal Domestic Assistance (CFDA) Numbers

Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, (42 U.S.C. 5111) CFDA: 93.652.

Child Abuse and Neglect: Section 104 of the Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5101 *et seq.*) CFDA: 93.670.

Child Welfare Training: Section 426 in title IV–B, subpart 1, of the Social Security Act, as amended, (42 U.S.C. 626) CFDA: 93.648.

Promoting Safe and Stable Families: Section 430 in title IV–B, subpart 2, of the Social Security Act, as amended, (42 U.S.C. 629) CFDA: 93.556.

SUMMARY: The Children's Bureau (CB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of fiscal year (FY) 2003 funds for competing new activities under the Adoption Opportunities Program, the Child Abuse Prevention and Treatment Act (CAPTA), the Child Welfare Training Program, and the Promoting Safe and Stable Families Program. Funds from the Adoption Opportunities Program are designed to provide, among other things, support for demonstration projects that facilitate the elimination of barriers to adoption and provide permanent loving homes for children who would benefit from adoption, particularly children with special needs. Funds from CAPTA support research and demonstration projects on the causes, prevention, and treatment of child abuse and neglect. Funds from the Child Welfare Training Program support grants to public or other non-profit institutions of higher learning for special projects for training personnel for work in the field of child welfare. The Promoting Safe and Stable Families program is intended to prevent the unnecessary separation of children from their families by funding family support, family preservation, time-limited family reunification and adoption promotion and support services as well as research, evaluation and technical assistance relating to such services.

DATES: The closing date for submission of applications is July 25, 2003. Items postmarked after the stated due date will be classified as late. Private, non-profit organizations that apply for funds available through this announcement are encouraged to submit with their applications the optional survey located under ''Grant Manuals and Forms'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Note: The complete program announcement, including all necessary forms, can be downloaded and printed from the Children's Bureau Web site at *http://www.acf.dhhs.gov/programs/cb.* Hard copies of the complete program announcement may be requested by calling the National Adoption Information Clearinghouse at 1–888–251–0075. The complete program announcement is necessary for any potential applicant.

FOR FURTHER INFORMATION CONTACT: Patricia Campiglia, Children's Bureau, 202–205–8060.

SUPPLEMENTARY INFORMATION:

Priority Areas

2003A. Adoption Opportunities Activities

2003A.1 Adoptive Placements for Children in Foster Care

Eligible Applicants: Eligibility is limited to State social service agencies. In order to support the broadest range of issues and approaches, priority will be given to applicants who have not been funded under this priority in previous years. However, applicants previously funded under this priority area will not be precluded from receiving grants.

Project Duration: The projects will be awarded for a project period of 60

months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $350,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least ten percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $350,000 per budget period must include a match of at least $38,889 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to eight projects will be funded.

2003A.2: Projects To Improve Recruitment of Adoptive Parents in Rural Communities

Eligible Applicants: States, local government entities, public or private non-profit licensed child welfare or adoption agencies, adoptive family groups and nonprofit organizations, including community and faith-based organizations, with experience working with rural populations and with access to children in foster care. Collaborative efforts and interdisciplinary applications are acceptable; however, applications from collaborations must identify a primary applicant responsible for administering the grant.

Project Duration: The projects will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $400,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $400,000 per budget period must include a match of at least $44,444 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to eight projects will be funded.

2003A.3: Developing a National Network of Adoption Advocacy Programs

Eligible Applicants: States, local government entities, public or private nonprofit licensed child welfare or adoption agencies, university (including university-affiliated programs) or adoptive family groups and community-based organizations and nonprofit organizations including community and faith-based organizations with adoption expertise. Eligible applicants must have the capacity to operate and support a national network as well as assist in the development and support of local adoption advocacy programs that are modeled on the One Church, One Child program. Collaborative efforts and interdisciplinary applications are acceptable; however, applications from collaborations must identify a primary applicant responsible for administering the grant.

Project Duration: The project will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $250,000 for the first budget period and $500,000 for each of the subsequent budget periods.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $250,000 for year one and $500,000 per budget period for years two through five must include a match of at least $27,778 in year one and $55,556 per budget period for years two through five. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2003A.4: Administration of the Interstate Compact on Adoption and Medical Assistance (ICAMA)

Eligible Applicants: Any State, local, public and private nonprofit agency or organization, including community and faith-based organizations, or institutions of higher learning with demonstrated expertise in the field of child welfare.

Project Duration: The length of the project period for the grant may not exceed 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The grant amount will not exceed $200,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least ten percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $22,222 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2003B: Child Abuse and Neglect Discretionary Activities

2003B.1: Fellowships for University-Based Doctoral Candidates and Faculty for Investigator-Initiated Research in Child Abuse and Neglect

Eligible Applicants: Public or private non-profit institutions of higher learning on behalf of qualified doctoral candidates in human service disciplines enrolled in the institution and faculty employed by the institution. To be eligible to administer such a grant, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and/or the Council on Post-Secondary Accreditation. While an individual is considered to be the beneficiary of the grant support, awards will be made only to eligible institutions on behalf of their qualified candidates.

Project Duration: The length of the projects may not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $130,000 per academic institution, with a maximum of $25,000 per student and $30,000 for the faculty member. Each application must involve two to four student-candidates and a single faculty member.

Matching or Cost Sharing Requirement: There is no matching requirement. The academic institution, in accepting the award, agrees to waive overhead charges (indirect costs) and pass the entirety of the funds on to students and faculty as fellowships or stipends.

Anticipated Number of Projects to be Funded: It is anticipated that up to seven institutional awards will be funded.

2003B.2: Improving Child Welfare Outcomes Through Systems of Care

Eligible Applicants: State, territory, county or city child welfare agencies and federally recognized Native American Tribes are eligible applicants. No more than one application will be funded from any one State in order to insure geographic distribution of the awards. Collaborative applications are acceptable; however, applications from collaborations must identify a primary applicant responsible for administering the grant.

Project Duration: The projects will be awarded for a period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $500,000.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to 10 awards will be made.

2003C: Child Welfare Training Project Activities

2003C.1: Professional Education for Public Child Welfare Practitioners:

2003C.1A: Professional Education for Prospective MSW Level Public Child Welfare Staff (Awarding MSW Degree)
2003C.1B: Professional Education for Current Public Child Welfare Agency Staff (Awarding BSW and/or MSW Degree)
2003C.1C: Professional Education for Prospective and Current American Indian and/or Alaskan Native Public Child Welfare Staff who are currently enrolled or plan to enroll in BSW or MSW Social Work Programs (Awarding BSW and/or MSW Degree)

Note: In order to be responsive to a number of unique, professional education needs related to public child welfare practice, this priority area is being subdivided into three subcategories as outlined above. An institution may submit only one application under this priority area and must identify the sub-priority area to which it is responding in the abstract and narrative sections of the application.

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs. Priority will be given to applicants with a strong public child welfare agency/university partnership and/or applicants prepared to re-design their curriculum to maximize student learning opportunities for work in public child welfare agencies. Previously funded applicants under this priority area will not be precluded from receiving a grant.

Project Duration: Sub-priority area 2003C.1A will be awarded for a project period not to exceed 48 months. Sub-priorities 2003C.1B and 2003C.1C will be awarded for a project period not to exceed 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 for the 12-month budget period. A traineeship must not exceed $7,500 per student per budget year. A minimum of 75 per cent of the total project funds must be used for traineeships.

Matching or Cost Sharing Requirement: No matching funds are required for the portion of the budget that pays for traineeships. However, grantees must provide a match to equal at least 25 percent of the total cost of grant activities other than traineeships. The total approved cost of these non-traineeship activities is the sum of the ACYF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through a cash contribution. Therefore, a project requesting $75,000 in Federal funds (with $56,250 for traineeships and $18,750 for non-traineeship activities per budget period) must include a match of at least $6,250 (25 percent of the total cost for the non-traineeship activities). Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV–E training funds. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to 27 projects will be funded: eleven in sub-priority area 2003C.1A, twelve in sub-priority area 2003C.1B and four in sub-priority area 2003C.1C.

2003C.2: Training for Effective Child Welfare Practice in Rural Communities

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work programs or other accredited bachelor- or graduate-level programs leading to a degree relevant to work in child welfare. Under this priority area, only those institutions that have knowledge and experience in training professionals for work in rural communities and have child welfare-related experience in serving rural America would be eligible to apply.

Project Duration: Awards will be made for a project period of 60 months. The initial grant will be for a 12-month budget period. The award of continuation funding beyond each 12-month period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding

would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is estimated that up to seven projects will be funded.

2003C.3: Developing Models of Effective Child Welfare Staff Recruitment and Retention Training

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: Awards will be made for a project period of 60 months. The initial grant will be for a 12-month budget period. The award of continuation funding beyond each 12-month period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is estimated that up to 13 projects will be funded.

2003C.4: Training for Healthy Marriage and Family Formation

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work programs or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: Awards will be made for a project period of 60 months. The initial grant will be for a 12-month budget period. The award of continuation funding beyond each 12-month period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is estimated that up to eight projects will be funded.

2003C.5: National Evaluation of Child Welfare Training Grants

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare. To be eligible, the institution must demonstrate knowledge and skills in the areas of child welfare administration, research, evaluation and curriculum development and implementation.

Project Duration: Awards will be made for a project period of 36 months. The initial grant will be for a 12-month budget period. The award of continuation funding beyond each 12-month period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $350,000 per budget year.

Matching or Cost Sharing Requirement: No match required.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2003D: Promoting Safe and Stable Families Activities

2003D.1: Replication of Demonstrated Effective Programs in the Prevention of Child Abuse and Neglect

Eligible Applicants: Public or private non-profit organizations, including community and faith-based organizations, and institutions of higher education. Collaborative efforts and interdisciplinary applications are acceptable; however, applications from collaborations must identify a primary applicant responsible for administering the grant.

Project Duration: The projects will be awarded for a period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is up to $175,000 for the first year and up to $350,000 for each subsequent year.

Matching Requirements: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $175,000 for year one and $350,000 per budget period for years two through five must include a match of at least $19,444 in year one and $38,889 per budget period for years two through five. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to eight projects will be funded.

2003D.2: Evaluations of Existing Child Abuse and Neglect Prevention Programs

Eligible Applicants: Public (State, tribal, or local) or private nonprofit organizations, including community and faith-based organizations, or institutions of higher learning are eligible to apply. Collaborative efforts and interdisciplinary applications are encouraged; however, a primary applicant must be identified.

Project Duration: The projects will be awarded for a period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000 per budget period.

Matching Requirements: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to four projects will be funded.

2003D.3: Evaluations of Existing Family Support, Family Preservation, Reunification, or Adoption Promotion and Support Programs

Eligible Applicants: Public (State, tribal, or local) or private nonprofit organizations, including community and faith-based organizations, or institutions of higher learning are eligible to apply. Collaborative efforts and interdisciplinary applications are encouraged; however, a primary applicant must be identified.

Project Duration: The projects will be awarded for a period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Cost: The maximum Federal share of the project is $200,000 per budget period.

Matching Requirements: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to three projects will be funded.

2003D.4: Projects to Develop Programs to Strengthen Marriages

Eligible Applicants: State child welfare agencies, local (county or community) child welfare or child protective service agencies in partnership with experienced marriage services providers which may be public or nonprofit organizations including community and faith-based organizations. The child welfare agency must be the primary applicant responsible for administering the grant.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000 per budget period.

Matching or Cost Sharing Requirement: No match is required.

Anticipated Number of Projects to be Funded: It is anticipated that up to 10 projects will be funded.

Evaluation Criteria

Reviewers will consider the following factors when scoring applications. Applicants, in order to adequately prepare their applications, must refer to the full program announcement for the specific evaluation criteria for each priority area.

Criterion 1: Objectives and Need for Assistance. Applications will be judged on the extent to which they clearly specify the purposes and/or strategies of the proposed project and their relationship to legislative authority and child welfare outcomes, as appropriate; the quality of their statement regarding the need for the project; and evidence that the applicant understands current issues and recent developments in the field that may have relevance to the implementation of the project. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 2: Approach. Applicants will be judged on the clarity, feasibility, and thoroughness of their description of the approach that they intend to use in implementing proposed projects. The approach sections will be expected to include, as appropriate, information on barriers to implementation and proposed solutions to those barriers; necessary collaborations with other organizations and agencies and their respective roles; evaluation plans; reporting requirements; and staffing plans. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 3: Organizational Profiles. Applicants will be judged on the experience and demonstrated competence of staff who are proposed to implement the project and, as appropriate, the experience of the organization in implementing related projects. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 4: Budget and Budget Justification. Applicants will be judged on the adequacy, reasonableness, and completeness of their budget requests to support their proposed projects, including their management plans to control and account for expenditure of project funds. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications.

The Paperwork Reduction Act of 1995 (Public Law)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB control number 0970–0139 which expires 12/31/2003.

An agency may not conduct or sponsor and a person is not required to respond to, collections of information unless it displays a currently valid OMB control number.

Required Notification of the Single Point of Contact

Most portions of this program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming have elected

to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants to the Adoption Opportunities program are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule. A list of the Single Points of Contact for each State and Territory can be found online at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: May 27, 2003.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–14486 Filed 6–9–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0224]

Premarket Notification for Food Contact Substances; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: FDA Workshop on the Notification Process for Food Contact Substances. The purpose of the meeting is to discuss the food contact notification (FCN) process so that notifiers and/or their representatives, consumer interest groups, and other interested members of the general public can have a better understanding of the FCN process, the information requirements of an FCN, and the common deficiencies to be avoided.

DATES: The meeting will be held on Wednesday, June 25, 2003, from 11:30 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Chicago, 151 East Wacker Dr., Chicago, IL.

FOR FURTHER INFORMATION CONTACT: William J. Trotter, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3088, FAX: 202–418–3131, or e-mail: *wjt@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In November 1997, Congress passed the Food and Drug Administration Modernization Act of 1997 (FDAMA). Section 309 of FDAMA amended section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) to establish a notification process for food contact substances (FCSs). An FCS is defined as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have a technical effect in such food'' (21 U.S.C. 348(h)(6)). The FCN process is used to authorize the marketing of an FCS except where the Secretary determines that submission of a food additive petition is necessary or the Secretary and a manufacturer or supplier agree that a food additive petition may be submitted (21 U.S.C. 348(h)(3)(A)).

Under 21 U.S.C. 348(h), the notification process requires a manufacturer or supplier of an FCS to notify FDA at least 120 days prior to the introduction or delivery for introduction in interstate commerce of an FCS. If FDA does not object to the notification within 120 days, the notification becomes effective (21 U.S.C. 348(h)(2)(A)), and the substance may be legally marketed for the requested use by the notifier (21 U.S.C. 348(a)(3)(B)).

In the **Federal Register** of May 21, 2002 (67 FR 35724), FDA published a final rule amending the food additive regulations regarding the premarket notification process for FCSs. The rule became effective on June 20, 2002, and requires that a notification for an FCS contain sufficient scientific information to demonstrate that the FCS that is the subject of the notification is safe for the intended use (21 CFR 170.101). Since the inception of the FCN process in 1999, FDA has found that FCNs frequently have deficiencies which cause them to be incomplete. FDA is having this public meeting to discuss the data requirements for an FCN and the commonly observed deficiencies and to assist notifiers and/or their representatives in submitting adequate and complete FCNs.

II. Registration and Written Questions

Persons interested in attending the June 25, 2003, meeting should send their registration information (including name, title, business affiliation, address, and telephone and fax number) to the contact person (see **FOR FURTHER INFORMATION CONTACT**). To expedite processing, registration information may also be faxed to 202–418–3131 or e-mailed to *wjt@cfsan.fda.gov*. There will be no registration charges for attending the meeting. If you need special accommodations due to disability, please notify the contact person by June 13, 2003.

III. Availability of Guidance Documents for FCNs

Administrative, chemistry, and toxicology guidance documents for FCNs are available at the following Web site: *http://www.cfsan.fda.gov/~dms/opa-notf.html*.

IV. Agenda and Goals

FDA will present its recommendations for information necessary to make an FCN adequate and complete. Topics to be presented will be broadly divided among the general categories of administrative, chemical, toxicological, and environmental information. The agenda will include the following items:

(1) Administrative: guidance document, an overview of the review process, common FCN deficiencies, Form 3480, confidentiality, one FCS per FCN, and conditions under which a food additive petition should be submitted;

(2) Chemical: guidance document, common FCN deficiencies, approaches for determining migrant levels in food, estimated daily intake, and cumulative estimated daily intake;

(3) Toxicological: guidance document, common FCN deficiencies, acceptable daily intake, risk assessments, structure activity relationships, and recommended testing; and

(4) Environmental: requirements, common FCN deficiencies, categorical

exclusions, and requirements for an environmental assessment.

V. Comments

Written comments regarding the agenda may be submitted and should be identified with the docket number found in brackets in the heading of this document. Comments should be annotated and organized to identify the specific issues to which they refer. These comments should be submitted by June 13, 2003, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments may also be sent to the Dockets Management Branch at the following e-mail address: *fdadockets@oc.fda.gov* or via the FDA Web site at *http://www.fda.gov*.

Dated: June 5, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14607 Filed 6–5–03; 2:50 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Fiscal Year 2003 Competitive Cycle for the Graduate Geropsychology Education Program (GPEP)— CFDA 93.191

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted for the Graduate Geropsychology Education Program (GGEP) for Fiscal Year 2003.

Authorizing Legislation: These applications are solicited under section 755(b)(1)(J) of the Public Health Service Act as amended, and the FY 2003 Appropriations Act, Pub. L. 108–7 which provides $1.5 million to support graduate geropsychology education programs to train clinical geropsychologists in accredited psychology programs.

Purpose: Grants will be awarded to assist eligible entities in meeting the costs to plan, develop, operate, or maintain graduate geropsychology education programs to train clinical geropsychologists to work with underserved elderly populations to foster an integrated approach to health care services and address access for underserved elderly populations. The Graduate Geropsychology Education Program addresses the interrelatedness of behavior and health and the critical need for integrated health care services for the underserved elderly. Funding may be made available to doctoral programs, doctoral internship programs, and post-doctoral residency programs accredited by the American Psychological Association (APA).

Eligible Applicants: Eligible entities: accredited health profession schools, universities, and other public or private nonprofit entities. Applicant programs must be accredited by the American Psychological Association (APA). As provided in section 750, to be eligible to receive assistance, the eligible entity must use such assistance in collaboration with two or more disciplines.

Statutory Funding Preference: A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of applications. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

As provided in section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (1) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. ''High Rate'' refers to a minimum of 20 percent of graduates in academic year 2000–2001 or academic year 2001–2002, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings and that not less than 15% of graduates from the most recent years are working in these settings.

''Significant Increase in the Rate'' means that, between academic years 2000–2001 and 2001–2002, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent.

If the applicant is applying for the Funding Preference as a New Program, please note the following: New programs (*i.e.*, programs that have graduated less than three classes) can qualify for the statutory funding preference if four or more of the following criteria are met:

1. The mission statement of the program identifies a specific purpose of preparing health professionals to serve underserved populations.

2. The curriculum includes content that will help to prepare practitioners to serve underserved populations.

3. Substantial clinical training experience is required in medically underserved communities.

4. A minimum of 20 percent of the faculty spend at least 50 percent of their time providing/supervising care in medically underserved communities.

5. The entire program or a substantial portion of the program, (*i.e.*, the primary, ambulatory education training sites) is physically located in a medically underserved community.

6. Student assistance, which is linked to service in medically underserved communities following graduation, is available to the students in the program.

7. The program provides a placement mechanism for deploying graduates to medically underserved communities.

Administrative Funding Preference: An administrative funding preference will be given to qualified applicants who have an existing clinical geropsychology education program.

Administrative Funding Priority: A funding priority will be given to qualified applicants who educate and train clinical geropsychologists in rural and frontier areas.

Administrative Special Consideration: Special consideration will be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs with the purpose of preparing health professionals and health professional students to deliver quality health care in medically underserved communities.

Estimated Amount of Available Funds: $1,300,000.

Estimated Number of Awards: 6.

Estimated Average Size of Each Award: $225,000–$250,000.

Estimated Funding Period: 3 years.

Application Requests, Availability, Date and Addresses: Application materials will be available for downloading via the Web at *http://bhpr.hrsa.gov/grants/default.htm* on June 10, 2003. Applicants may also request a hardcopy of the application material by contacting the HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland, 20879, by calling at 1–877–477–2123, or by fax at 1–877–477–2345. In order to be considered for competition, applications must be postmarked or submitted to the address listed above by the due date July 11, 2003. Applicants should request a legibly dated U.S. Postal postmark or obtain a legibly dated receipt from a

commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. An application receipt will be provided. Applications submitted after the deadline date will be returned to the applicant and not processed. Applicants should note that HRSA anticipates accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

Projected Award Date: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara Broome, Division of State, Community and Public Health, Bureau of Health Professions, HRSA, Room 8–103, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; or e-mail at *bbroome@hrsa.gov.* Telephone number is (301) 443–6866.

Paperwork Reduction Act: The application for the Graduate Geropsychology Education Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 22, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–14548 Filed 6–9–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Redesignation of Contract Health Service Delivery Area; Rosebud Sioux Tribe of the Rosebud Indian Reservation

AGENCY: Indian Health Service, HHS.

ACTION: Final notice.

SUMMARY: This notice advises the public that the Indian Health Service (IHS) is redesignating the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Rosebud Sioux Tribe (''The Tribe''). The Tribe's CHSDA was comprised of Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, and Tripp, SD counties in South Dakota and Nebraska. These counties were designated as the Tribe's CHSDA when the IHS published its updated list of CHSDAs in the **Federal Register** of January 10, 1984 (49 FR 1291). The redesignated CHSDA is comprised of seven counties in the States of South Dakota and Nebraska, Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, Tripp, SD, Gregory, SD and Lyman, SD. This notice is issued under authority of 43 FR 34654, August 4, 1978.

EFFECTIVE DATE: June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Leslie Morris, Director, Division of Regulatory and Legal Affairs, Office of Management Support, Indian Health Service, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20857, Telephone 301–443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 4, 1978, the IHS published regulations establishing eligibility criteria for receipt of contract health services and for the designation of CHSDAs (43 FR 34654, codified at 42 CFR 136.22, last published in the 2002 version of the Code of Federal Regulations). On September 16, 1987, the IHS published new regulations governing eligibility for IHS services. Congress has repeatedly delayed implementation of the new regulations by imposing annual moratoriums. Section 719(a) of the Indian Health Care Amendments of 1988, Pub. L. 100–713, explicitly provides that during the period of the moratorium placed on implementation of the new eligibility regulations, the IHS will provide services pursuant to the criteria in effect on September 15, 1987. Thus, the IHS contract health services program continues to be governed by the regulations in effect on September 15, 1987. See 42 CFR 136.21, et seq. (2002).

As applicable to the Tribe, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 136.22). The regulations also provide that after consultation with the tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a CHSDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any redesignation of a CHSDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, the IHS published a proposal in 68 FR 12914, March 18, 2003, to redesignate the CHSDA for the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota. No comments were received.

Pursuant to a Tribal Resolution 2000–32, dated March 9, 2000, the Tribe requested the IHS to redesignate their current CHSDA, which incorporates Mellette, Bennett, Todd, Trip and Cherry Counties in the State of South Dakota and Nebraska, to include Gregory and Lyman counties.

In applying the aforementioned CHSDA redesignation criteria required by 42 CFR 136.22, the following findings are made:

(1) The Tribe enrollment and census records identify 519 tribal members residing in Gregory County and 0 tribal members residing in Lyman County.

(2) The Tribe has determined that contract health services would be available to all its members and members of other federally recognized tribes who reside in Gregory County and Lyman County having close social and economic ties with the Tribe.

(3) Gregory County is presently a CHSDA county for the Yankton Sioux Tribe. There are 158 Tribal members, of the 519 total, who are eligible for the Yankton Sioux CHS program because of close economic-social ties. The Yankton Sioux and Rosebud Sioux CHS programs will work together on the eligibility and CHS coverage on a case-by-case basis. Lyman County is presently a CHSDA county for the Lower Brule Sioux Tribe. There are 0 Tribal members who are eligible for the Lower Brule Sioux CHS program. The Lower Brule and Rosebud CHS program will work together on the eligibility and CHS coverage on a case-by-case basis if/when there are Rosebud Sioux residing within Lyman County.

(4) At this time, although Gregory County does not border the Rosebud Sioux's reservation, Gregory County was within the original boundaries of the reservation and continues to have a significant population of Rosebud Sioux. The Tribe chose to include

Lyman County in the expansion even though, at the time of the analysis, there were no Rosebud Sioux tribal members residing in Lyman County. The close proximity to the original boundaries of the reservation was considered because there could be members residing in Lyman County in the future.

(5) The 519 tribal members residing in Gregory County presently utilize the Rosebud Indian Health Service facility's direct care services. Therefore, the clinical work load units will not be impacted. It is estimated that the current eligible contract health service population will be increased by 519 in Gregory County. The Rosebud CHS program has a recurring CHS funding base of $4,233,730. The formula used to determine what impact the additional 519 members, residing in Gregory County, would have on the Rosebud CHS fund is determined by using the Aberdeen Area's type of facility per capita of $327 × 519 = $169,713. The 0 number residing in Lyman County would have no impact at this time. The Rosebud Indian Health Service facility recognizes that there will be no additional CHS funding for this CHSDA expansion but they do not expect a significant impact on their present funding and support the tribe's CHSDA expansion and redesignation. The expansion and redesignation of the CHSDA to include both Gregory County and Lyman County is within the present available resources.

Accordingly, after considering the Tribe's request in light of the criteria specified in the regulations the IHS is redesignating the CHSDA of the Tribe to consist of Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, Tripp, SD, Gregory, SD and Lyman, SD, Counties of South Dakota and Nebraska.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Dated: June 3, 2003.

Charles W. Grim,

Assistant Surgeon General, Interim Director Indian Health Service.

[FR Doc. 03–14549 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement; Program Announcement No. CFDA 93.576; Discretionary Funds for Refugee Family Enrichment Projects

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Request for applications to conduct projects to strengthen refugee families through services promoting healthy marriages and the adjustment of refugee elderly and refugee youth to changing family dynamics.

SUMMARY: ORR invites the submission of applications for assistance that supports activities in three categories aimed at strengthening refugee family life by promoting healthy marriages for refugee couples and support services for adjustment of refugee elderly and refugee youth.[1]

DATES: The closing date for submission of applications is July 10, 2003. ACF will acknowledge receipt of applications. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Daphne Weeden, Grants Management Officer, 370 L'Enfant Promenade SW., 4th Floor West, Washington, DC 20447. *See* Part IV of this announcement for more information on submitting applications.

Announcement Availability: The program announcement and the application materials are available from Irving Jones, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade, SW., 8th Fl., Washington, DC 20447 and from the ORR Web site at: *http://www.acf.hhs.gov/programs/orr.*

[1] Eligibility for refugee social services includes: (1) refugees; (2) asylees; (3) Cuban and Haitian entrants; (4) certain Amerasians from Vietnam, including U.S. citizens; (5) victims of a severe form of trafficking (see 45 CFR 400.43 and ORR State Letter #01–13 *http://www.acf.dhhs.gov/programs/orr/policy/sl01–13.htm* as modified by ORR State Letter 02–01 *http://www.acf.dhhs.gov/programs/orr/policy/sl02–01.htm* on trafficking victims). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons.

FOR FURTHER INFORMATION CONTACT: For all categories, contact Irving Jones, Division of Community Resettlement (DCR), ORR, Administration for Children and Families (ACF), (202) 401–6533; Fax (202) 401–0981; E-mail: *ijones@acf.hhs.gov* or Daphne Weeden, Office of Grants Management (OGM), (ACF), (202) 401–4577; E-mail: *dweeden@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: The Program—legislative authority, funding availability, CFDA Number, eligible applicants, project and budget periods, background, program purpose and objectives, allowable activities, non-allowable activities, and review criteria.

Part II: The Review Process—intergovernmental review, initial ACF screening, and competitive review.

Part III: The Application—application forms, application submission and deadlines, certifications, assurances, and disclosure required for non-construction programs, general instructions for preparing a full project description, and length of application.

Part IV: Post-award—applicable regulations, treatment of program income, and reporting requirements.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): The public reporting burden for this collection of information, for preparing the application, is estimated to average 15 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. Information collection is included in the following program announcement: OMB Approval No. 0970–0139, ACF Uniform Project Description (UPD) attached as Appendix A, which expires 12/30/03. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I: The Program

Legislative Authority

This program is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522 (c)(1)(A), as amended, the Director of ORR recognizes that refugees have specific needs for services that are authorized under section 412(c)(1)(A) iii, as follows:

to make grants to, and enter into contracts with, public or private non-profit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional

refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.

Funding Availability

This program announcement governs the availability of, and award procedures for, the Refugee Family Enrichment Program, which will be funded using FY 2003 discretionary social service funds.

Category 1—Refugee Marriage Enrichment Projects through one cooperative agreement for approximately $1 million to one public or private non-profit agency with extensive knowledge of and comprehensive experience in working with refugees through reception and placement services and ongoing resettlement activities.

Category 2—Refugee Marriage Enrichment Projects through two to four cooperative agreements of approximately $400,000–$750,000 each to two to four public or private non-profit agencies with extensive knowledge of, and comprehensive experience in, working with, refugee community-based organizations.

Category 3—Refugee Family Enrichment Projects for Elderly and Youth through an estimated twenty grants ranging from $75,000 to $100,000 each to faith-based or community organizations and public agencies.

CFDA Number—93.576.

Eligible Applicants

Eligible applicants for these funds include public or private non-profit agencies, including faith-based and community organizations and public agencies. Applicants in all three categories must demonstrate, in detail, their relationship to the refugee communities they seek to serve and how those communities will participate in the proposed services. Also, applicants to category 1 and category 2 of this announcement should demonstrate their knowledge of and relationship to family enrichment activities.

Any non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled, *or* by providing a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, *or* any of the items above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Private, nonprofit organizations are encouraged to submit with their applications the optional survey located under ''Grant Manuals & Forms'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Project and Budget Periods

This announcement is inviting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. No matching or cost sharing is required.

Background

The Administration for Children and Families (ACF) is currently supporting several initiatives that promote and encourage healthy marriages and strengthen families. This program announcement reflects ORR's participation in these initiatives as they relate to refugee populations. The cultures of most refugee populations are built upon successful and stable family life. This strength is worthy of preservation and ORR seeks, through this announcement, to support activities toward that end. ORR believes that refugee couples face unique difficulties because of their flight from persecution and long periods of insecurity and that marriage education is a social service that can help refugees cope with these difficulties. ORR also believes that there are benefits to marriage that extend to children, adults and to all society. Thus ORR is committed to promoting policies and programs that help strengthen marriage as an institution and help refugee parents raise their children in positive and healthy environments.

Many refugee families have endured persecution or torture, trauma, abrupt flight from war, and separation from, or death of, friends and family members. Furthermore, the relationships in refugee families may become strained before arrival because of suffering and deprivation endemic to the refugee condition. Refugees in the U.S. face many challenges. The pressures of their new American environment may weaken the strong, positive family relationships that refugees have brought with them to the United States.

Family relationships may undergo strain and transformation when refugees resettle in the U.S. Strong authoritarian and sometimes patriarchal family structures may provoke conflicts when members take on new roles as they adapt to American culture. For example, school/parent relationships may differ from those in their home countries and may produce miscommunication and tension; refugee parents may have concerns or object to the range of freedom American youth are afforded; and the physical disciplinary practices between a husband and wife or between parents and children may differ from what is the norm or legal in the U.S. The low wages of entry-level jobs may force both adults to work outside the home, thereby disrupting traditional roles. Typically, low incomes force refugee households to locate in neighborhoods with high crime rates. Poor public transportation adds to time spent away from family members and complicates efforts to access services and participate in community activities. The resulting strain from these difficulties may damage refugee marriages, families and communities.

Marriage education can help refugee couples strengthen and adjust relationship skills and help them cope with the difficulties of their new American environment with the result of improving the quality of family life. Along with the skills that enable couples to communicate more effectively, manage conflict and work together as a team, marriage education can also teach the benefits that can be obtained from identifying future challenges in their relationships so that these challenges can be successfully negotiated when they arise.

Research reveals that the benefits of healthy marriages are particularly beneficial for children. On average, children raised by parents in healthy marriages are less likely to fail at school, suffer an emotional or behavioral problem requiring psychiatric treatment, be victims of child abuse and neglect, get into trouble with the law, use illicit drugs, smoke cigarettes, abuse alcohol, engage in early and promiscuous sexual activity, grow up in poverty or attempt suicide. On average, children raised by

parents in healthy marriages are more likely to have a higher sense of self-esteem, form healthy marriages when they marry, attend college and are physically healthier.

In summary, ORR seeks to use this announcement to provide opportunities for refugees to strengthen marital and parenting skills within healthy and supportive relationships. ORR also seeks to expand understanding of the refugees' marriage and family difficulties in the resettlement experience and the factors that contribute to successfully meeting the challenges to the marriage relationship. Despite difficult hurdles such as trauma, cultural adjustment and low wage jobs, refugee families are resilient. Once in the U.S., most envision a bright future for themselves and their children. If the issues faced by refugee families are addressed early through marriage education, the problems they encounter may be reduced or prevented and refugee families can achieve the bright future they seek.

Other Vulnerable Refugee Family Members: Elderly and Youth

ORR is also interested in programs that support services for the elderly and youth, who may be the more vulnerable family members. Refugee elderly and youth have also experienced or witnessed persecution. They also face hardships while resettling and pose unique challenges to their families, communities and the agencies that seek to serve them.

Older refugees face various issues that make them particularly vulnerable: chronic health and emotional problems stemming from the conditions of refugee flight; family loss or separation; an inability to advocate for themselves because of cultural, linguistic, or educational barriers; limited access to appropriate health and social service agencies; limited income due to lack of work history; and barriers to meeting the requirements for naturalization. Many older refugees in the United States, particularly women, live in difficult circumstances in which they may live alone without a caregiver, have low incomes, or may be abused, neglected or exploited. Additionally, some elderly refugees have lost Supplementary Security Income and Medicaid due to expiration of eligibility.

Refugee youth also confront a number of challenges as they integrate into American society. Because youth usually adapt more quickly to their new surroundings than adult refugees, relationships with parents often undergo stress and change. Youth often learn English more quickly and become translators for their parents. This shifts power to the young, disrupting traditional relationships within the family. Refugee youth often face problems in the United States that did not exist in their home countries, depriving them of the wisdom and experience of their parents who never dealt with these problems. Youth also face dilemmas surrounding relationships with the opposite sex, as male/female relationships in the U.S. may differ significantly from those of their home country. In addition, the stress of working while attending school, along with conflicts with students, teachers and school administrators over conduct, dress or diet may impede success at school. Refugee youth may also reject their home culture and desire acceptance from peers in the U.S. This desire for acceptance can lead to discipline problems in school and at home and to problems with local law enforcement agencies.

Through category 3 of this announcement ORR seeks to fund programs that address the particular challenges faced by refugee elderly and youth so that they can meet the challenges in their resettlement experiences.

Category 1—Marriage Enrichment Projects

Category 1 Purposes and Objectives

ORR intends to award funds, under one cooperative agreement, to a public or private non-profit agency with extensive knowledge of and comprehensive experience in working with refugees through (1) reception and placement services and (2) ongoing resettlement activities. Through this cooperative agreement, the grantee will meet the needs of a wide variety of ethnicities among recently arrived refugee populations. To reach these populations and to ensure that the services provided are culturally and linguistically appropriate, the applicant should have local offices or affiliated organizations with an ongoing relationship to, and the trust and respect of each group of refugees. The family enrichment activities proposed in this announcement may be outside the experience of many refugees and may be difficult to implement without a well-established relationship between the refugees and the applicant.

Applicants should describe their efforts to create collaborations, with both national and local marriage education providers who have knowledge or expertise in family strengthening activities. Information about organizations providing marriage enrichment activities can be found on the ORR web site at: *http://www.acf.dhhs.gov/programs/orr/programs,* or applicants may contact Irving Jones, Division of Community Resettlement, ORR, Administration for Children and Families (ACF), (202) 401–6533; E-mail: *ijones@acf.hhs.gov.*

ORR expects that approximately 90 percent of the funding will be expended at the local level, and that the applicant should budget for no more than one full-time staff person at the national level. Through this cooperative agreement, ORR intends to review and approve: (1) A plan for sub-grants, including plans for geographical distribution and technical assistance; (2) a plan for implementation, which should include the building of coalitions and client outreach; (3) all written materials developed and proposed for dissemination; (4) timelines and major program outcomes; and (5) a reporting format that outlines the difficulties refugee couples face, a description of the proposed intervention and the impact of the intervention on the refugee family.

Category 1—Allowable Activities—Projects may be designed to translate and adapt contemporary American approaches to traditional refugee practices and cultural settings, in coalition with marriage enrichment organizations, at both the national and local levels. ORR supports creative and unique approaches that address the needs of refugee families as well as the development of strategies for partnerships with marriage enrichment organizations. Applicants may propose activities that include, but are not limited to, the following:

- Award 10–20 sub-grants to local organizations to conduct marriage enrichment activities with refugees.
- Develop culturally and linguistically appropriate marriage enrichment and family strengthening materials to be used in training local refugee communities.
- Assist sub-grantees, in coalition with marriage enrichment organizations, to provide culturally and linguistically appropriate communication and conflict resolution skills training to refugee couples to help them improve their relationships and enrich their marriages.
- Assist sub-grantees to train refugee couples to act as mentors in their ethnic community. Newly married refugee couples should be considered a priority group for mentoring.
- Conduct local workshops on marriage and relationship skills for refugees that may include coping with the customs of a new community,

conflict resolution, financial management and job and career advancement.

• Conduct customized pre-marital education and marriage enrichment programs for refugee youth and young adults.

• Develop refugee resource centers to help enhance the relationships in refugee families.

• Teach effective child-rearing techniques, including positive and culturally-acceptable child disciplinary practices and parenting skills for refugees.

• Provide information about U.S. cultural and legal issues as they affect gender, parenting roles and intergenerational family relationships.

Category 1 Review Criteria—Category 1 applications will be reviewed and rated based on the following criteria:

1. *Organizational Profiles (30 points)*—Application demonstrates an extensive knowledge of and comprehensive experience in working with refugees through reception and placement services and ongoing resettlement activities. Application includes letters of support that demonstrate the organization's strong relationship with the local refugee resettlement community; experience in providing refugee resettlement services; and relationship with marriage enrichment programs. Individual staff position descriptions, volunteer positions, consultants and coalition organizations are appropriate to the goals of the project. The administrative and management features of the project, including a monitoring and technical assistance plan for program and fiscal activities, are adequately described. The applicant provides a copy of its most recent audit report.

2. *Objectives and Need for Assistance (20 points)*—Applicant (a) fully and clearly describes the need for activities to support and strengthen refugee marriages, (b) demonstrates a comprehensive understanding of the refugees' experiences in resettlement services in local U.S. communities and demonstrates access to agencies that provide reception and placement services (c) clearly understands the marriage enrichment concept and can effectively integrate it with refugee resettlement activities, and (d) proposes establishing a coalition with marriage enrichment organizations at the local level for purposes of providing marriage education services to the refugee community.

3. *Approach (20 points)*—The proposed approach for the cooperative agreement and awarding of sub-grants is fully and clearly described. The strategy and plan demonstrate the ability to achieve the proposed results. The proposed communities and the resident refugee groups along with strategies for recruiting them into the program are described in detail. Timeframes are reasonable and feasible. The proposed activities are likely to lead to the desired results, *i.e.*, healthy marriages among refugee communities.

4. *Results or Benefits Expected (20 points)*—Applicant describes outcomes that are consistent with the goals of marriage enrichment programs for refugee families. The outcomes are likely to be reached through the activities proposed. Proposed outcomes are measurable and achievable within the grant project period.

5. *Budget and Budget Justification (10 points)*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. Approximately 90 percent of the funding is expended at the local level. The budget contains no more than one full-time staff position at the national level.

Category 2—Refugee Marriage Enrichment

Category 2 Purpose and Objectives

ORR is interested in funding, under cooperative agreements, two to four public or private non-profit agencies with extensive knowledge of, and comprehensive experience in, working with refugee community-based organizations. Through this category, ORR plans to meet the needs of more targeted populations of refugees who may have been in the country for a longer period of time. To reach this population and to ensure that the services provided are culturally and linguistically appropriate, the applicant should have an ongoing relationship with and the trust and respect of refugees within the community. Unlike Category 1, Category 2 applicants need not be conducting ongoing reception and placement activities. The successful applicants for Category 2 will provide funds and training to five to ten agencies including faith-based and community organizations, which may include (1) local affiliates of the applicant or affiliates of other non-applicant refugee national organizations with whom the applicant has formed a collaboration; (2) independent refugee organizations, or (3) entities that have demonstrated an ability to work closely with refugees. The successful applicants will provide financial and program support to enable families within the refugee community to receive marriage enrichment training. The marriage enrichment activities proposed in this announcement may be outside the experience of many refugees and may be difficult to implement without a well-established relationship between the refugees and the grantee. Applicants should also demonstrate a relationship to marriage enrichment resources.

ORR is interested in projects which can address refugee needs for cultural and linguistic access to family enrichment services and this is often best achieved through partnerships with grass-roots organizations, including refugee community-based organizations or faith-based organizations. The successful applicants will, through grassroots organizations, provide culturally sensitive marriage enrichment to refugee couples.

Applicants should describe their efforts to create collaborations with marriage education providers and knowledge or expertise in marriage strengthening activities. Information about organizations providing marriage enrichment activities can be found on the ORR web site at: *www.acf.dhhs.gov/programs/orr/programs,* or by contacting Irving Jones, Division of Community Resettlement, ORR, Administration for Children and Families (ACF), (202) 401–6533; E-mail: *ijones@acf.hhs.gov*.

ORR expects that approximately 90 percent of the funding will be expended at the local level, and that the applicant should budget for no more than one full-time staff person at the national level. Through this cooperative agreement, ORR intends to review and approve: (1) A plan for sub-grants, including plans for geographical distribution and technical assistance; (2) a plan for implementation, which should include the building of coalitions and client outreach; (3) all written materials developed and proposed for dissemination; (4) timelines and major program outcomes; and (5) a reporting format that outlines the difficulties refugee couples face, a description of the proposed intervention and the impact of the intervention on the refugee family.

Category 2 Allowable Activities—ORR is interested in the preservation of refugee families and in ensuring their long-term stability and self-sufficiency. ORR supports creative and unique approaches that address the needs of refugee families as well as the development of strategies for partnerships with marriage enrichment organizations. These projects may be designed to translate and adapt contemporary American approaches to traditional practices and cultural

settings. Applicants may propose activities that include, but are not limited to, the following:

- Award 5—10 sub-grants to local organizations to conduct marriage enrichment activities for refugees.
- Develop culturally and linguistically appropriate marriage enrichment and family strengthening materials to be used in training local refugee communities.
- Assist sub-grantees, in coalition with marriage enrichment organizations, to provide culturally and linguistically appropriate communication and conflict resolution skills training to refugee couples in specific refugee ethnic communities to help them improve their relationships and enrich their marriages.
- Assist sub-grantees to train refugee couples to act as mentors in their ethnic community. Newly married refugee couples should be considered a priority.
- Conduct local workshops on marriage and relationship skills that may include coping with the customs of a new community, conflict resolution, financial management, and job and career advancement for refugees.
- Conduct customized premarital education and marriage enrichment programs for refugee youth and young adults.
- Develop refugee resource centers to help enhance the relationships in refugee families.
- Teach effective child-rearing techniques, including positive and culturally-acceptable child disciplinary practices and parenting skills for refugees.
- Provide information about U.S. cultural and legal issues as they affect gender, parenting roles, and intergenerational family relationships for refugees.

The successful application will demonstrate extensive knowledge of, and comprehensive experience working with, refugee communities in providing services or access to services to refugees. The successful application also will demonstrate knowledge of marriage enrichment organizations, both national and in the local communities of sub-grantees.

Category 2 Review Criteria—Category 2 applications will be reviewed and rated based on the following criteria:

1. *Organizational Profiles (30 points)*—Application demonstrates an extensive knowledge of and comprehensive experience working with local entities, including faith-based and community organizations. Application includes letters of support that demonstrate the organization's strong relationship with the local refugee community groups and relationship with marriage enrichment programs. Individual staff position descriptions, volunteer positions, consultants and coalition organizations are appropriate to the goals of the project. The administrative and management features of the project, including a monitoring and technical assistance plan for program and fiscal activities, are adequately described. The applicant provides a copy of its most recent audit report.

2. *Objectives and Need for Assistance (20 points)*—Applicant (a) fully and clearly describes the need for activities to support and strengthen refugee marriages, (b) demonstrates a comprehensive understanding of the refugee experience in local U.S. communities and demonstrates access to agencies that have relationships with refugees, including faith-based and community organizations, (c) clearly understands the marriage enrichment concept and can effectively integrate it with the activities of local refugee community-based organizations, and (d) proposes establishing a coalition with marriage enrichment organizations at the local level for purposes of providing marriage education services to the refugee community.

3. *Approach (20 points)*—The proposed approach for the cooperative agreement and awarding of sub-grants is fully and clearly described. The strategy and plan demonstrate the ability to achieve the proposed results. The proposed communities and the resident refugee groups along with strategies for recruiting them into the program are described in detail. Timeframes are reasonable and feasible. The proposed activities are likely to lead to the desired results, *i.e.*, healthy families among refugee communities.

4. *Results or Benefits Expected (20 points)*—Applicant describes outcomes that are consistent with the goals of marriage enrichment programs for refugee families. The outcomes are likely to be reached through the proposed activities. Proposed outcomes are measurable and achievable within the grant project.

5. *Budget and Budget Justification (10 points)*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. Approximately 90 percent of the funding is expended at the local level. The budget contains no more than one FTE at the national level.

Category 3—Refugee Family Enrichment Projects for Elderly and Youth

Category 3 Purpose and Objectives: ORR is interested in funding 20 or more public or private agencies, including faith-based or community organizations to aid the elderly in accessing appropriate services and to work with youth to promote healthy development. Programs should focus on unmet needs and not duplicate or supplant programs available under any other Federal source of funding.

The successful applicant must demonstrate extensive knowledge of and comprehensive experience in working with refugee communities in providing specialized services to the youth and elderly and promoting access to mainstream services for refugees.

The specific services proposed may be as diverse as the refugee populations and the resettlement communities themselves. Proposed activities and services should be planned in conjunction with mainstream service providers and should provide linkages to these services. ORR is particularly interested in projects that are planned and implemented through coalitions with community-based organizations and local service providers. Such projects would address refugee needs for cultural and linguistic access to services, and would work with their refugee community members to help the elderly to access appropriate services, or with youth, to promote healthy development and adjustment.

Category 3 Allowable Activities—ORR is interested in applications in which an applicant addresses, based on an analysis of service needs and available resources, the difficulties which refugee elderly and youth face. The goals and expected outcomes of activities should be clearly stated and should respond to the particular needs of the elderly and youth in refugee families. The application should clearly outline how the agency will accomplish the goals and how the proposed activity fits into the existing network of services.

An application may include activities for youth, the elderly, or a combination thereof. ORR seeks to support local communities in finding innovative approaches that fit the unique needs of families in different communities. Projects may be designed to adapt contemporary American approaches to traditional practices and cultural settings. Applicants may propose activities that include, but are not limited to, the following:

Elderly

- Develop or implement programs or provide linkages to existing local programs that enable older refugees to live independently as long as possible.
- Provide services that meet the needs of older refugees, such as

outreach, information, referrals, follow-up, nutrition programs (both congregate and home delivered), and transportation to senior centers or medical appointments.

- Conduct outreach to locate and inform elderly refugees of the existence of services in their community.
- Provide transportation services.
- Conduct case management.
- Provide services and/or information and referral to appropriate services that offer in-home care, adult day care, institutionalized care, and State Nursing Home Ombudsmen.
- Offer programs or provide linkages to existing programs that prevent or discourage the abuse of elderly refugees.
- Offer English tutoring or home-based English language training for homebound refugees.
- Provide employment support services, especially with agencies involved with the Older American Act, Title V Senior Employment Programs.
- Provide linkages to caregiver programs.
- Help elderly become naturalized.

Youth

- Conduct workshops for parents and youth on dating and gender cultural norms in the U.S.
- Help students negotiate the school system, familiarizing them with the school rules and fostering better communication between youth, administrators, counselors, mentors and tutors.
- Support or foster parental outreach programs that involve refugee parents in their children's education to help them understand school life.
- Provide youth employment support services.
- Provide after-school tutorials focused on helping students understand and complete assignments.
- Conduct programs that encourage high school completion and full participation in school activities.
- Conduct after-school activities that foster engagement in constructive activities.
- Conduct cognitive enrichment programs to bridge the gap between refugee students' intellectual abilities and the elements of school and curriculum that are culture-based.

Category 3 Review Criteria—Category 3 applications will be reviewed and rated based on the following criteria:

1. *Organizational Profiles (25 points)*—Application demonstrates a history, in-depth experience with, and access to, local refugee communities. Individual staff position descriptions, volunteer positions, consultants and coalition organizations are appropriate to the goals of the project. Application includes letters of support that demonstrate the organization's ability to accomplish, with appropriate partnerships with community organizations, the purpose and objectives of the application. The administrative and management features of the project, including a monitoring and technical assistance plan for program and fiscal activities, are adequately described. The applicant provides a copy of its most recent audit report.

2. *Objectives and Need for Assistance (20 points)*—The application clearly describes the youth or elderly refugees' physical, economic, social, financial, institutional and/or other issues requiring a solution. The need for assistance must be demonstrated and the objectives of the project must be clearly stated. The application clearly describes how funding through this program will meet those needs.

3. *Results or Benefits Expected (20 points)*—The applicant fully and clearly describes the results and benefits to be achieved. The applicant identifies how improvement will be measured on key indicators for the well-being of refugee elderly and youth and provides milestones indicating progress. Proposed outcomes are tangible and achievable within the grant project period and the proposed monitoring and information collection are adequately planned.

4. *Approach (20 points)*—The strategy and plan are likely to achieve the proposed results and the proposed activities and timeframes are reasonable and feasible. The proposed activities focus on unmet needs and do not duplicate or supplant programs available under any other Federal source of funding. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to have a positive impact on the quality of life for refugee elderly and youth and communities by (1) improving refugees' abilities to access services, providing mutual assistance and creating services where they are not available and (2) instituting change among service providers to make these services more accessible.

5. *Budget and Budget Justification (15 points)*—The budget and narrative justification are reasonable in relation to the proposed activities and anticipated results. The budget narrative provides justification in relation to the proposed activities and anticipated outcomes.

Part II: The Review Process

Intergovernmental Review—This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

* All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected not to participate in the Executive Order process. Applicants from these twenty-seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants should contact their Single-Points-of-Contact (SPOC) as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants from participating jurisdictions must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (the date of contact) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 30 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations that may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Grants Management Officer, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., 4th floor, Washington DC, 20447.

A list of the Single Points of Contact for each participating State and Territory can be found on the web at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Initial ACF Screening—Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement;

and (2) the applicant is eligible for funding.

Competitive Review and Evaluation Criteria—Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of evaluation criteria specified in Part I. The evaluation criteria were designed to assess the quality of a proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Part III: The Application

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Selected elements of the ACF Uniform Project Description (UPD) relevant to this program announcement are attached as appendix A.

Application Forms—Applicants requesting financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-Construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Application materials including forms and instructions are also available from the Contact named in the preamble of this announcement.

Application Submission and Deadlines—An application with an original signature and two clearly identified copies are required. Applicants must clearly indicate on the SF 424 the grant announcement number under which the application is submitted.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447 between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: Daphne Weeden.'' (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications that do not meet the criteria above are considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (*e.g.* floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines Contact: Grants Management Officer, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor, West Wing, Washington, DC 20447, Telephone: (202) 401–4577.

Certifications, Assurances, and Disclosure Required for Non-Construction Programs—Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications. Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification need not mail back the certification with the applications.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications. Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification need not mail back the certification with the applications.

General Instructions for Preparing a Full Project Description—The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information they consider relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested. Please refer to the UPD sections in the appendix.

Length of Applications—Each application narrative should not exceed 20 pages in a double spaced 12-pitch

font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. A table of contents and an executive summary should be included but will not count in the page limitations. Each page should be numbered sequentially, including the attachments and appendices. This limitation of 20 pages should be considered as a maximum, and not necessarily a goal. Application forms are not to be counted in the page limit.

Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers.

Part IV: Post-Award

Applicable Regulations—Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

Treatment of Program Income—Program income from activities funded under this program may be retained by the recipient and added to the funds committed to the project, and used to further program objectives.

Reporting Requirements

All required reports must be submitted in a timely manner. Program progress reports must be submitted quarterly. A grantee is allowed 30 days to submit the report following the end of the period. Recommended formats for the reports will be provided. The final report is due 90 days after the end of the project. Grantees are required to file the Financial Status Report (SF–269) semi-annually.

Funds awarded must be accounted for, and reported under the distinct grant number ascribed. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures. The official receipt point for all reports and correspondence is the Grants Management Officer, Administration for Children and Families/Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor West, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report must be submitted within 30 days of the end of each reporting period directly to the Office of Grants Management.

A Final Financial and Program Report will be due 90 days after the project expiration date or termination of Federal budget support.

Appendix A—Uniform Project Description OMB No. 0970–0139

The project description is approved under OMB control number 0970–0139 which expires 12/31/03.

Part I: The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Part II: General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, when applying for a grant to establish a marriage enrichment program, describe who will access program services, and how those services will benefit refugees.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities to be accomplished. For example, when applying for a grant to establish a marriage enrichment program, describe the number of refugee couples expected to access marriage enrichment services for the quarter. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any

non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) currently set at $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application that contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs.

[Self-explanatory]

Dated: June 5, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–14593 Filed 6–9–03; 8:45 am]

BILLING CODE 4184–01–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: Correction

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice; Correction.

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.

Inadvertently, a currently certified laboratory was left off the list published on June 3, 2003, in FR Vol. 68, No. 106, Pages 33173–33175.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, 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 Pub. L. 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 laboratory has met the minimum standards set forth in the Guidelines: 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).

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–14670 Filed 6–9–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15325]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Hazardous Cargo Transportation Security Subcommittee will meet to discuss security issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: CTAC will meet on Thursday, July 17, 2003, from 8 a.m. to 4 p.m. The Subcommittee on Hazardous Cargo Transportation Security will meet on Tuesday, July 15, 2003, from 8 a.m. to 4 p.m. and Wednesday, July 16, 2003, from 8 a.m. to 4 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before July 7, 2003. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before July 7, 2003.

ADDRESSES: CTAC will meet at the Romano Mazzoli Federal Building, 600 Martin Luther King, Jr. Place, Louisville, KY, in room 27. The Subcommittee on Hazardous Cargo Transportation Security will meet at American Commercial Barge Line (ACBL) Company, 1701 E. Market St., Jeffersonville, IN, on the fifth floor. Send written material and requests to make oral presentations to Commander James M. Michalowski, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander James M. Michalowski, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Subcommittee Meeting on July 15–16, 2003

(1) Introduce Subcommittee members and attendees.

(2) Discuss inland vessel tracking system.

(3) Discuss communications/publications.

(4) Discuss crew concerns.

(5) Discuss Declaration of Security (DOS) forms.

(6) Discuss outreach initiatives concerning U.S. Coast Guard security regulations.

(7) Review and prepare comments for six interim rules that promulgate maritime security requirements mandated by the Maritime Transportation Security Act of 2002.

Agenda of CTAC Meeting on Thursday, April 17, 2003

(1) Introduce Committee members and attendees.

(2) Review and prepare comments for six interim rules that promulgate maritime security requirements mandated by the Maritime Transportation Security Act of 2002.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before July 7, 2003. If you would like a copy of your

material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (*see* **ADDRESSES**) no later than July 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: June 4, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–14589 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Decision 03–01]

Customs Accreditation of BSI Inspectorate America Corporation as a Commercial Laboratory

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of BSI Inspectorate America Corporation of Garden City, Georgia, as a commercial laboratory.

SUMMARY: BSI Inspectorate America Corporation of Garden City, Georgia has applied to Customs and Border Protection under § 151.12 of the Customs Regulations for an extension of accreditation as a commercial laboratory to analyze petroleum products under Chapter 27 and Chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Customs has determined that this company meets all of the requirements for accreditation as a commercial laboratory. Specifically, BSI Inspectorate America Corporation has been granted accreditation to perform the following test methods at their Garden City, Georgia site: (1) Distillation of Petroleum Products, ASTM D86; (2) Water in Petroleum Products and Bituminous Materials by Distillation, ASTM D95; (3) API Gravity by Hydrometer, ASTM D287; (4) Kinematic Viscosity of Transparent and Opaque Liquids, ASTM D445; (5) Sediment in Crude Oils and Fuel Oils by Extraction, ASTM D473; (6) Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, ASTM D1298; (7) Water and Sediment in Fuel Oils by the Centrifuge Method, ASTM D1796; (8) Water and Sediment in Middle Distillate Fuels by Centrifuge, ASTM D2709; (9) Water in Crude Oil by Distillation, ASTM D4006; (10) Percent by Weight of Sulfur by Energy-Dispersive X-Ray Fluorescence, ASTM D4294; (11) Water in Crude Oils by Coulometric Karl Fischer Titration, ASTM D4928; and (12) Vapor Pressure of Petroleum Products, ASTM D5191. Therefore, in accordance with Part 151.12 of the Customs Regulations, BSI Inspectorate America Corporation of Garden City, Georgia is hereby accredited to analyze the products named above.

Location: BSI Inspectorate America Corporation accredited site is located at: Miles Street, Georgia Port Authority Gate #2, Garden City, Georgia, 31408.

Effective Date: May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Arlene Faustermann, Science Officer, Laboratories and Scientific Services, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500 North, Washington, DC 20229, (202) 927–1060.

Dated: May 20, 2003.

Donald A. Cousins,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 03–14535 Filed 6–9–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Federal Radiological Preparedness Coordinating Committee Meeting

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) advises the public that the FRPCC will meet on July 30, 2003 in Washington, DC.

DATES: The meeting will be held on July 30, 2003, at 9 a.m.

ADDRESSES: The meeting will be held at Holiday Inn Capitol, Columbia Ballroom, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Pat Tenorio, FEMA, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2870; fax (202) 646–4321; or e-mail *pat.tenorio@dhs.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the FRPCC are described in 44 CFR 351.10(a) and 351.11(a). The Agenda for the upcoming FRPCC meeting is expected to include: (1) Introductions, (2) Federal agencies' updates, (3) reports from FRPCC subcommittees, (4) old and new business, and (5) business from the floor.

The meeting is open to the public, subject to the availability of space. Reasonable provision will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the July 30, 2003, FRPCC meeting should request time, in writing, from W. Craig Conklin, FRPCC Chair, FEMA, 500 C Street, SW., Washington, DC 20472. The request should be received at least five business days before the meeting. Any member of the public who wishes to file a written statement with the FRPCC should mail the statement to: Federal Radiological Preparedness Coordinating Committee, c/o Pat Tenorio, FEMA, 500 C Street, SW., Washington, DC 20472.

W. Craig Conklin,

Director, Technological Services Division, Office of National Preparedness, Federal Emergency Management Agency, Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 03–14488 Filed 6–9–03; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–07]

Notice of Proposed Information Collection for Public Comment: Section 8 Random Digit Dialing Fair Market Rent Telephone Survey

AGENCY: Office of Policy Development and Research, 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:* August 11, 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: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8222, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Marie Lihn, Economic and Market Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8222, Washington, DC 20410; telephone (202) 708–0590, extension 5866; e-mail *marie__l.__lihn@hud.gov.* This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Lihn.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection package 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 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: Section 8 Random Digit Dialing Fair Market Rent Telephone Survey.

OMB Control Number: 2528–0142.

Description of the need for the information and proposed use: This provides HUD with a fast, inexpensive way to estimate and update Section 8 Fair Market Rents (FMRs) in areas not covered by AHS or CPI surveys, and in areas where FMRs are believed to be incorrect. It also provides estimates of annual rent changes. Section 8(C)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition Programs; payment standards for the Rental Voucher Program; and any other programs whose regulations specify their use.

Random digit dialing (RDD) telephone surveys have been used for several years to adjust FMRs. These surveys are based on a sampling procedure that uses computers to select statistically random samples of telephone numbers to locate certain types of rental housing units for surveying. HUD contracts with a private company to conduct two types of RDD surveys: (1) Approximately 50 individual FMR areas are surveyed every year to test the accuracy of their FMRs; (2) In addition, 20 RDD surveys are conducted very year to provide updating factors for FMRs not surveyed individually and for Annual Adjustment Factors (AAFs). These surveys are conducted in the non-metropolitan portions of all 10 HUD regions, and in the 10 metropolitan portions of the regions that do not have their own Consumer Price Index (CPI) surveys.

Members of affected public: Individuals or households living in areas surveyed.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	Number of phone calls made	Average minutes each	Minutes	Hours
Telephone surveys:				
Number who pick up phone but are screened out	416,970	1.16	484,942	8,082
Total interviewed (movers and stayers)	42,205	4.32	182,364	3,039
Mail surveys	3,984	5.00	19,920	332
Annual total	463,159		687,226	11,454

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; and section 8(C)(1) of the United States Housing Act of 1937.

Dated: June 5, 2003.

Christopher D. Lord,

Deputy Assistant, Secretary for Policy Development.

[FR Doc. 03–14595 Filed 6–9–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Status Review and 12-Month Finding for a Petition To List the Washington Population of the Western Gray Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list a distinct population segment (DPS) of the western gray squirrel (*Sciurus griseus griseus*) in Washington, in accordance with the Endangered Species Act of 1973, as amended. After reviewing the best scientific and commercial information available, we find that the petitioned action is not warranted because the petitioned entity is not a DPS and, therefore, not a listable entity. Additionally, we evaluated the Washington populations of the western gray squirrel relative to the entire range of the subspecies and determined that the Washington populations collectively do not constitute a significant portion of the range of the subspecies. We ask the public to submit to us any new information that becomes available concerning the status of or threats to this subspecies. This information will help us monitor and encourage the conservation of this subspecies.

DATES: The finding announced in this document was made on May 30, 2003. Although further listing action will not result from this finding, we request that you submit new information concerning the status of or threats to this subspecies whenever it becomes available.

ADDRESSES: You may send data, information, or questions concerning this finding to the Manager, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503. In order to inspect the petition, the administrative finding, supporting information, and comments received, you may make an appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, Western Washington Fish and Wildlife Office (*see* **ADDRESSES**) (telephone 360/753–9440, facsimile 360/753–9405).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific or commercial information that listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, or (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

On January 4, 2001, we received a petition dated December 29, 2000, from the Northwest Ecosystem Alliance, Bellingham, Washington, and the Tacoma Audubon Society, University Place, Washington. The petition requested an emergency rule to list the Washington population(s) of the western gray squirrel (Sciurus griseus griseus) as threatened or endangered under the Act or, alternatively, the immediate emergency listing of just the southern Puget Sound population of western gray squirrels, followed by a later consideration of the ''full Washington State distinct population segment under the standard processing requirements.'' On October 29, 2002, we announced an initial petition finding in the **Federal Register** (67 FR 65931) concluding the petition presented substantial information to indicate there may be one or more distinct population segments (DPS) of western gray squirrels in Washington for which listing may be warranted. We are making this 12-month petition finding in accordance with a court order to complete this finding by June 1, 2003 (*Northwest Ecosystem Alliance* v. *U.S. Fish and Wildlife Service* (CV No. 02–945 KI (D.OR)).

Taxonomy

The western gray squirrel belongs to the mammalian order Rodentia, the suborder Sciurognathi, and the family Sciuridae. There are three subspecies of western gray squirrel: *Sciurus griseus griseus,* which ranges from central Washington to the western Sierra Nevada Range in central California; *S. g. nigripes,* which ranges from south of San Francisco Bay in the central California Coast Range to San Luis Obispo County; and *S. g. anthonyi,* which ranges from the southern tip of the Coast Range (near San Luis Obispo, California) into south-central California (Hall 1981). *Sciurus griseus griseus* was described from a squirrel seen by Lewis and Clark at The Dalles in Wasco County, Oregon (Bailey 1936; Hall 1981).

The western gray squirrel is the largest native tree squirrel in the Pacific Northwest and is the only member of the genus *Sciurus* native to Washington. Two other members of the genus found in Washington are introduced species: the eastern gray squirrel (*S. carolinensis*) and the fox squirrel (*S. niger*) (Washington Department of Wildlife (WDW) 1993). Other common names applied to this subspecies include the silver-gray squirrel (Bailey 1936; Booth 1947; Maser *et al.* 1981), California gray squirrel (Grinnell and Storer 1924; Couch 1926), Oregon gray squirrel (Bowles 1921), Columbian gray squirrel (Bailey 1936), banner-tail (Scheffer 1923), and gray squirrel (Bowles 1920, Booth 1947).

Description and Natural History

Western gray squirrels are silvery-gray with dark flanks and creamy white underneath. The tail is long, bushy, and edged with white; darker hairs in the tail give it a pepper-gray frost effect. Large ears without tufts also distinguish the western gray squirrel from other tree squirrels. There is a light reddish-brown wash on the backs of the ears, but otherwise the western gray squirrel is entirely gray. To some extent it resembles the eastern gray squirrel, native to the eastern United States but introduced into the range of the western gray squirrel. However, eastern gray squirrels, which are smaller in size, also have smaller tails and rufous (reddish) coloration on the head, back, flanks, and underparts (WDW 1993; Carraway and Verts 1994; Ryan and Carey 1995a).

Body measurements of western gray squirrels can be variable. Adult weights can range from 18 to 33 ounces (520 to 942 grams). Total lengths (inclusive of body and tail) may range from 20 to 24 inches (in) (500 to 615 millimeters (mm)), with tail lengths ranging on average from 9 to 15 in (240 to 381 mm) and body lengths ranging from 10 to 15 in (265 to 391 mm) (Hall 1981; Carraway and Verts 1994). Based on the results of four studies, body measurements of western gray squirrels in Klickitat County, Washington, were found to be significantly larger than elsewhere in the subspecies' range (Mary Linders, Washington Department of Fish and Wildlife (WDFW), pers. comm. 2003d).

Western gray squirrels are arboreal (adapted for living in trees) and, although they forage on the ground, they rarely stray far from trees. They use tree canopies for escape, cover, and nesting. Western gray squirrels can move rapidly and cover long distances among tree canopies when canopy conditions permit. A contiguous tree canopy that allows arboreal travel for at least 198 feet (ft) (60 meters (m)) around the nest is an important feature of western gray squirrel habitat (Ryan and Carey 1995a).

Western gray squirrels avoid open spaces; in the Puget Trough, western gray squirrels will not cross the prairie to use an isolated tree (Ryan and Carey 1995a). Western gray squirrels, when released from traps and pointed toward openings, did not cross the prairie or open areas any larger than about 40 ft (12 m). Movements across relatively open areas to small groups of trees or small habitat patches can be facilitated by scattered saplings and small trees in fence lines or in the open areas. For example, one radio telemetered squirrel was observed in a group of three isolated trees separated from the main stand by scattered individual trees. The distance of movement, which is rapidly completed, across a relatively open area with scattered trees may be about 150 ft (50 m) (M. Linders, pers. comm. 2003a).

Ryan and Carey (1995b) found that western gray squirrels on Fort Lewis Military Reservation (Fort Lewis) in Washington were rarely seen in small (less than 5 ac (2 ha)), isolated pure oak stands or in pure Douglas-fir (*Pseudotsuga menziesii*) stands away from oaks. Western gray squirrels preferred stands with a mixture of conifers, oaks, and other food-bearing tree species, and were seen most often in stands greater than 5 acres (ac) (2 hectares (ha)) in size and not more than 1,280 ft (390 m) away from water.

In Washington, and elsewhere within the subspecies' range, the principal food is acorns, although the seeds of Douglas-fir and other conifers are also eaten (Dalquest 1948). While pine nuts and acorns are considered essential foods for storing body fat and conditioning western gray squirrels for winter, green vegetation, seeds and nuts of trees and shrubs, fleshy fruits, mushrooms, and other foods are also consumed. Hypogeous fungi (underground fungi such as truffles) comprise a large portion of the western gray squirrel diet (WDW 1993; Carraway and Verts 1994; Ryan and Carey 1995a).

The western gray squirrel is in the northern portion of its range in Washington, where the diversity of mast-producing tree species is less than in Oregon or California. ''Mast'' includes fruits and nuts used as a food source by wildlife. A decreased diversity of food resources increases the likelihood that concurrent mast failures could seriously affect the survivability of a mast dependent species such as the western gray squirrel population (Ryan and Carey 1995a, b; Linders 2000).

Western gray squirrels require a year-round source of water. On Fort Lewis, western gray squirrels select forested stands within 1,800 ft (550 m) of permanent water (Ryan and Carey 1995b). The majority of nests at one site in Okanogan County, Washington were within 0.6 mile (mi) (1 kilometer (km)) of water, with a maximum distance of 1 mi (1.6 km) (M. Linders, pers. comm. 2003d). Western gray squirrels drink freely from permanent and intermittent water sources, including lakes, marshes, rivers, streams, and puddles (Ryan and Carey 1995a).

Western gray squirrels are active throughout the day, but are most active in the morning. They were observed from dawn to dusk and year round on Fort Lewis; no nocturnal activity has been observed. Western gray squirrels are most active in August and September, when they are collecting and storing food for winter, and they are less visible in June and July (Ryan and Carey 1995a).

Home range sizes can differ with age, sex, location, population density, and from year to year. Home range size increases with social rank and the number of nests used by an individual. Typically, home range sizes for western gray squirrels vary across the subspecies' range from 1.2 ac (0.5 ha) recorded for males in a city park in California, to 16 ac (6.5 ha) in northern Oregon. Recorded home ranges of females vary from 0.3 ac (0.1 ha) in California to 42 ac (17 ha) in Oregon in the summer (Ryan and Carey 1995a). However, a study on the Klickitat Wildlife Area in Klickitat County, Washington, documented average home range sizes of 180 ac (73 ha) for males and 52 ac (21 ha) for females (Linders 2000). These home range estimates from Klickitat County were significantly larger than in other parts of the subspecies' distribution. However, methods used to determine home range sizes may be a source of variability (Ryan and Carey 1995a).

Western gray squirrels use two types of stick nests: large, round, covered shelter nests are used in winter, and broad platforms are for seasonal or temporary use (Ryan and Carey 1995a). Cavity nests are also used for rearing young and for sleeping at other times (Carraway and Verts 1994). Western gray squirrels frequently use more than one nest, with different individuals often occupying the same nest on successive nights; two squirrels rarely occupy the same nest simultaneously (Linders 2000). Construction and use of multiple nests by individual squirrels, overlap in use, and the fact that nests may remain intact for 3 to 5 years makes it difficult to associate the number of nests with an estimate of the population size. As an example, in Klickitat County, most pregnant and lactating females used cavity nests in oaks and averaged 14.3 nests each, significantly more than the 3.5 nests per squirrel reported for southern Oregon.

Males reach sexual maturity at 1 year and females at 10 to11 months of age. In western Washington, breeding occurs from January to September, and lactating females have been observed from May to August (Ryan and Carey 1995a; M. Linders, pers. comm. 2003d). Most researchers believe western gray squirrels have only one litter each year, although there is some indirect evidence to indicate two litters may be biologically possible, but uncommon (Ryan and Carey 1995a). Litter counts ranged from one to five, averaging about 2.6 young/litter over a 3-year period (M. Linders, pers. comm. 2003d).

Distribution

Historically, the western gray squirrel's distribution was widespread throughout Washington, Oregon, California, and in western Nevada along the base of the Carson Range and in Washoe County (Dalquest 1948). Currently, the subspecies is rare in Nevada and absent from the Central Valley in California. Western gray squirrels still occur in the interior valley margin of the Cascade Mountains in Oregon and Washington; the foothills of the Coast Range in Oregon; the Sierra Nevada, Tehachapi, Little San Bernardino, Santa Rosa, and Laguna Mountains in central and southern California; and westward through the Coast Ranges of California (Carraway and Verts 1994). In California, the western gray squirrel is fairly common in the Klamath Mountains of northern California, and the Transverse and Peninsular Ranges of southern California (California Department of Fish and Game (CDFG) 1990). In Oregon, the western gray squirrel distribution extends along the southwestern foothills of the Coast Range northward to Coos Bay, and north along the eastern side of the Coast Range and along both sides of the Cascade Mountains into Washington (Verts and Carraway 1998).

Western gray squirrels in Washington once ranged from southern Puget Sound south to the Columbia River, east along the Columbia River Gorge in the southern Cascades, and north along the eastern slopes of the Cascades to Lake Chelan. Documentation for western gray squirrels includes records for Pierce, Thurston, Grays Harbor, Lewis, Clark, Skamania, Klickitat, Yakima, Kittitas, Chelan, and Okanogan Counties in Washington. There is one record from extreme northeastern Whatcom County, probably associated with western gray squirrels in the northern Cascade Mountains (WDW 1993; WDFW 2002). Currently in Washington, the western gray squirrel distribution has been reduced to three geographically isolated western gray squirrel populations in Washington: the ''Puget Trough'' population, now centered in Thurston and Pierce Counties in the Puget Sound region; the ''South Cascades'' population in extreme eastern Skamania County and Klickitat and Yakima Counties; and the ''North Cascades'' population in Chelan and Okanogan counties (Bayrakçi *et al.* 2001, WDW 1993). The distribution of western gray squirrels in each of these counties is limited.

Status Review

On October 29, 2002, we published a positive initial 90-day administrative finding on the petition to list the Washington population of the western gray squirrel in the **Federal Register** indicating the petitioned action may be warranted (67 FR 65931). At that time, we requested public comments on this initial finding and any additional information, comments, and suggestions from the public, governmental agencies, the scientific community, industry, and any other interested parties concerning the status of the subspecies throughout its range in Washington, Oregon, California, and Nevada. We asked for

information regarding the subspecies' historic and current distribution, habitat conditions and use, biology and ecology, threats, and ongoing conservation measures for the subspecies and its habitat. We requested any available information on the three Washington populations of the western gray squirrel concerning (1) the genetics of these populations as they relate to each other and to the closest populations in Oregon; (2) the extent to which the two populations east of the Cascade Mountains are discrete from each other; (3) current status and trends of each of these populations; (4) the presence of the subspecies on additional public or private lands; (5) identification of the current specific threats to each of the populations; and (6) any additional information supporting the DPS analysis of significance, as defined in our DPS policy (61 FR 4722), of each of these populations to the subspecies as a whole.

We received comments, information, and data concerning the status of the western gray squirrel from 27 individuals, State and local agencies, nongovernmental organizations, industries, museums, and universities. Some commenters expressed only support for or opposition to a potential listing without providing additional documentation. Information or data from more substantive comments are incorporated, where appropriate, and concerns raised in the comments are addressed throughout this petition finding. We also reviewed information from peer-reviewed journal articles, agency reports and file documents, telephone interviews, and correspondence with biologists familiar with the western gray squirrel.

Western Gray Squirrel Status Summary

The rangewide status review initiated in the 90-day petition finding (67 FR 65931) entailed obtaining and considering the best scientific and commercial information available to assist us in our DPS analysis for the western gray squirrel in Washington.

Nevada

Western gray squirrels are considered uncommon in Nevada. They are only found on the Carson Range in west-central Nevada where they are yearlong residents; they are not documented to currently occur elsewhere in Nevada (Biological Resources Research Center, University of Nevada-Reno (UNR) 2003). Johnson (1954) reported collection of the subspecies in Washoe County near the California State line, and observations of individuals along the base of the Carson Range. Hall (1981) cites marginal records in Verdi and just southwest of Carson City.

The Nevada western gray squirrel population probably represents a migrant population from the Sierra Nevada in California on the fringe of the subspecies' range (UNR 2003). Although western gray squirrels occur along the west slope of the Sierra Nevada, up to 7,700 ft (2,347 m) at times, they probably crossed into Nevada from lower elevations in the northern Sierra Nevada. The subspecies has never been wide-ranging in Nevada, and its limited range in Nevada is probably related to the absence of oak trees (Johnson 1954).

The western gray squirrel is a ''protected species'' under the Nevada Administrative Code (NAC) (NAC 503.030). There is no open season on species classified as protected (NAC 503.090), according to criteria specified in NAC 503.103. The National Heritage Status Rank for the western gray squirrel in Nevada is S4 (Apparently Secure) (NatureServe Explorer 2002).

Current distribution and population sizes in Nevada have not been documented. Although small and possibly isolated from other populations in the subspecies' range in California, this western gray squirrel population has apparently never been large. Two public comments in response to our request for information in the 90-day finding provided data suggesting that western gray squirrels are ''common in the Lake Tahoe basin, especially in the urbanized areas of the basin'' (J. Shane Romsos, Tahoe Regional Planning Agency (NV), pers. comm. 2002) and are ''common and well-adapted to the urban/forest interface setting in South Lake Tahoe, California'' (Peter Maholland, California Tahoe Conservancy, pers. comm. 2002). Western gray squirrels are apparently adapted to habitat and food sources available in these urbanized areas.

California

The western gray squirrel is fairly common in California where it occupies mature stands of most conifer, hardwood, and mixed hardwood-conifer habitats in the Klamath, Sierra Nevada, Tehachapi, Little San Bernardino, Santa Rosa, Laguna Mountains, and Transverse and Peninsular Ranges. Western gray squirrels are also found in riparian stands and other suitable habitats in the Sacramento Valley (CDFG 1990).

The western gray squirrel is a regulated game species in California. CDFG bases hunting regulations on estimates of approximately 12 million ha (30 million ac) of western gray squirrel habitat, not including orchards, that are occupied by approximately 18 million squirrels just before the breeding season. Their estimates include an average net increase of about 1.2 million squirrels annually, after assuming a 50 percent juvenile mortality, a 50 percent adult mortality, and a hunting harvest rate of less than 1 percent each year. Their conclusions, based on these estimates, are that hunting mortality does not have adverse effects on the western gray squirrel populations, and that environmental and density-dependent mechanisms help keep the populations in check with their habitats (CDFG 2002). Also, CDFG data indicate the number of tree squirrel hunters has declined from a high of about 68,000 in the late 1960s to about 12,000 hunters in 2000. The number of tree squirrels harvested has declined from a peak of about 350,000 in the late 1970s to about 75,000 tree squirrels harvested in 2000 (CDFG 2002).

The National Heritage Status Rank for the western gray squirrel in California is S4 (Apparently Secure) and S5 (Secure) (NatureServe Explorer 2002). None of the subspecies of the western gray squirrel is included on the CDFG ''special animal'' list. This list is a general term referring to all of the taxa the California Natural Diversity Data Base is interested in tracking, regardless of their legal and protection status (CDFG 1999).

Several conservation programs, policies, and regulations help maintain western gray squirrel habitat in California. The Integrated Hardwood Range Management Program, established in 1986, aims to maintain, and increase where possible, acreage of California's hardwood range resources. In 2001, the Oak Woodlands Conservation Act created the Oak Woodlands Conservation Fund for conservation actions to preserve oak woodlands and guidelines for the program are under development. The California Forest Practice Rules provide regulations for maintaining hardwood and riparian components during timber harvest planning. California Partners in Flight prepared an oak woodland bird conservation plan to conserve and restore oak woodlands, which will help maintain western gray squirrel habitats and populations. The 1985 hardwood conservation policy and 1989 hardwood guidelines developed by the California Fish and Game Commission are used as references to ensure hardwood conservation measures are considered in all project proposals reviewed under the California Environmental Quality Act (Patrick Lauridson, CDFG, *in litt.* 2002).

Oregon

There are no historical or current population data for the western gray squirrel in Oregon, but based on Bailey (1936) and anecdotal information (Marshall *et al.* 1996), the numbers and distribution of western gray squirrels appear to be much reduced. The Natural Heritage Rank for the western gray squirrel in Oregon is S4? (*i.e.*, the subspecies is not rare and apparently secure, but with cause for long-term concern; the ''?'' indicates the assigned rank is uncertain) (Oregon Natural Heritage Program 2001).

Oregon maintains a list of State threatened and endangered species under the authority of ORS 496.172, the Oregon Endangered Species Act of 1987 (OESA) (Oregon Administrative Rule (OAR) 635–100–100 to 635–100–130), which helps in carrying out the State's policy of preventing the serious depletion of any indigenous species. Oregon's Sensitive Species Rule (OAR 635–100–040) requires the Oregon Department of Fish and Wildlife (ODFW) to develop and maintain a State list of sensitive vertebrate species that are likely to become threatened or endangered throughout all or any significant portion of their range in Oregon. This list was created for the purpose of encouraging actions that will prevent further declines in species' populations and habitats and avoid the need for listing under the OESA. The western gray squirrel is classified by ODFW as a sensitive species of ''undetermined status'' in Oregon, which indicates the subspecies may be susceptible to population decline of sufficient magnitude that it could qualify for State classification as endangered, threatened, critical, or vulnerable status, but additional research is needed (ODFW 1997; Oregon Natural Heritage Program 2001). The basis for the western gray squirrel's sensitive species classification in Oregon includes population declines caused by timber harvesting and competition with other tree squirrel species (Marshal *et al.* 1996). Western gray squirrels are legally hunted in Oregon. Hunting restrictions that delay and shorten the hunting season in north-central Oregon, however, help avoid take of lactating females (Marshal *et al.* 1996).

Washington

The western gray squirrel was once considered one of the most commonly encountered mammals in the Pacific Northwest (Bowles 1921). The western gray squirrel was more widely distributed in prehistoric times, probably ranging throughout western Washington and the Cascade Mountains in association with oak communities, but has diminished in recent times along with the decrease in distribution of oak woodlands (Rodrick 1987; WDW 1993). One hypothesis suggests that the western gray squirrel migrated northward into Washington with the spread of Oregon (Garry) white oak (*Quercus garryana*) from the Willamette Valley in Oregon. Dalquest (1948) described the western gray squirrel in Washington as being a species ''of oak woods rather than coniferous forest'' with its geographic range largely regulated by the distribution of oaks, especially Oregon white oak. The range of this subspecies in Washington, formerly widespread in the oak-conifer forests, is now less widely distributed and limited to small scattered populations that follow the range of Oregon white oak (Ryan and Carey 1995a; WDFW 1995).

In Washington, western gray squirrels once ranged from southern Puget Sound south to the Columbia River, east along the Columbia River Gorge in the southern Cascade Mountains, and north along the east side of the Cascade Mountains to Lake Chelan (Booth 1947; Larrison 1970). During the last century, the western gray squirrel distribution in Washington has been reduced to three geographically isolated western gray squirrel populations in Washington: The ''Puget Trough'' population, now centered in Thurston and Pierce Counties in the Puget Sound region; the ''South Cascades '' population in extreme eastern Skamania County and Klickitat and Yakima Counties; and the ''North Cascades'' population in Chelan and Okanogan counties (WDW 1993). The National Heritage Status Rank for the western gray squirrel in Washington is S2 (imperiled) (NatureServe Explorer 2002).

There have been relatively few studies of western gray squirrels in Washington. Early literature was largely observational and anecdotal (Bowles 1920, 1921; Scheffer 1923; Couch 1926; Dalquest 1948; Larrison 1970). Recent studies to determine western gray squirrel densities, biology, and ecology have not been consistent in objectives, effort, or techniques, and have not been directed at determining the status and trends of the subspecies in all areas of the State.

A regional assessment of the conservation status for potential western gray squirrel habitat in Washington determined that there are approximately 1.8 million ac (719,035 ha) of potential western gray squirrel habitat in the state (M. Linders, pers. comm. 2003d). In the Puget Trough, there are 1,797 ac (727 ha) of occupied habitat remaining (David Brittell, WDFW, *in litt.* 2003). The estimate of ''occupied'' habitat was based on western gray squirrels and nest locations buffered by a 183–ac (74–ha) circle, the average home range size for male squirrels in Klickitat County (D. Britell, *in litt.* 2003). A 1996 model was developed to direct survey efforts in Klickitat County, where 62,189 ac (25,167 ha) were identified as occupied. However, application of the buffering method, developed in a later study, to the 1996 potential habitat model indicated there may be only 56,607 ac (22,908 ha) that are occupied in Klickitat County. In Chelan and Okanogan Counties, 3,094 ac (1,252 ha) were identified as occupied (Cassidy *et al.* 1997; D. Brittell, *in litt.* 2003).

Puget Trough Population. Bowles (1920, 1921) stated that western gray squirrels were in the Puget Trough as early as 1896, although ''by no means common'' at that time, probably because of adverse environmental conditions and lack of legal protection. He suggested that western gray squirrels had always been in Pierce County in low numbers, traveling up from Oregon over time and becoming permanent residents if food and other natural conditions were satisfactory. Bowles reported that following legal protection about 1910, there was an ''immense increase'' in numbers of western gray squirrels. By 1921, there was significant damage to trees caused by western gray squirrels stripping bark for food in the Pierce County area. Squirrel hunting was reinstated in 1926 and continued until 1943, except for a localized hunt in Thurston and Pierce Counties in 1949 and 1950. The western gray squirrel became a State protected species in 1954. Although records show that western gray squirrels still occurred in the Puget Trough in the 1970s and 1980s, they had become increasingly rare and were found only in isolated relict populations restricted to a few locations in the state (Rodrick 1987, WDW 1993, WDFW 2002).

Current population estimates of the western gray squirrel in the Puget Trough area are limited. In southern Thurston County, the last western gray squirrel was seen in the late 1970s (WDFW 2002). Surveys during 1985 and 1986 detected western gray squirrels on just 4 of 26 sites (15 percent), and these were confined to the Fort Lewis area (Rodrick 1987). In Statewide surveys of 40–ac (16–ha) survey blocks from 1994 to 2000 by WDFW, western gray squirrels or nest locations were found in 9 of 100 (9 percent) survey blocks in the Puget Trough. In February 1996, no

western gray squirrels were detected in WDFW surveys in Thurston County (D. Brittell, *in litt.* 2002). Isolated occurrences have been reported in the past in Grays Harbor and Lewis Counties (WDFW 2002), and more recently in Clark County (Tracy Fleming, National Air and Stream Improvement Council, pers. comm. 2003). In 2002, fewer than a dozen sightings of western gray squirrels were reported (Dave Clouse, Fort Lewis, pers. comm. 2003).

Although the western gray squirrel was once common on the partially wooded prairies adjacent to Puget Sound, the surviving Puget Trough population is now centered on Fort Lewis in southern Pierce and northern Thurston Counties where the largest area of oak woodlands remains. From 1992 to 1993, 156 western gray squirrel observations were documented on 169 sites on Fort Lewis. These observations were estimated to represent 81 individual western gray squirrels on 44 oak-conifer sites (Ryan and Carey 1995b). During intensive surveys in 1998 to 1999, only 6 western gray squirrels in only 4 percent (5 of 133) suitable habitat stands were detected in over 4,000 hours of survey effort. The researchers concluded that the low western gray squirrel population on Fort Lewis is at a high risk of extirpation (Bayrakçi *et al.* 2001). Subsequent western gray squirrel sightings included 3 (including 1 road kill) in 2000 and 11 (including 1 road kill) in 2002 (D. Clouse, pers. comm. 2003). Factors that may have influenced the decline of western gray squirrels on Fort Lewis include (1) poor acorn crops or undependable food resources; (2) drought and unavailability of water in many oak ecotones; (3) road kills; (4) competition with eastern gray squirrel and Douglas' squirrels (*Tamiasciurus douglasii*); (5) reduction in quality and quantity of oak habitat; (6) diseases and parasites; and (7) predation (Carey and Harrington 2001).

From 1993 to 1995, The Nature Conservancy of Washington conducted surveys, analyzed nest trees, and trapped western gray squirrels on McChord Air Force Base (McChord AFB) adjacent to Fort Lewis. Fifteen observations of western gray squirrels occurred at 6 different locations on McChord AFB. Most of these observations (13) occurred in 1993, with the remaining two observations occurring in 1995; none were observed in 1994 (The Nature Conservancy of Washington and Washington Natural Heritage Program 1996). They hypothesized that western gray squirrels were dispersing from Fort Lewis to McChord AFB to use acorns and other food resources when available, but only when environmental conditions were favorable (*e.g.*, when water sources are available in wet years). In the mid-1990s, a western gray squirrel occupied a nest box erected for American kestrels (*Falco sparverius*) on McChord AFB. Two or three western gray squirrels were seen in 1995, and possible western gray squirrel nests were found in 1996 (McChord AFB 2002). Although western gray squirrels were previously found on private lands, the last observation of western gray squirrels on private lands adjacent to the military bases was in 1990 (WDFW 2002).

The western gray squirrel in the Puget Trough of western Washington persists in a transitional ecological setting, in comparison with the subspecies' populations elsewhere in its range. Western gray squirrels in the Puget Trough occupy an ecotone (transitional) habitat composed of Oregon white oak woodlands situated between upland Douglas-fir forests and prairies (Ryan and Carey 1995; Bayrakçi *et al.* 2001). Here, scattered woodlands of Oregon white oak and Douglas-fir encircle the prairies (WDW 1993).

This western gray squirrel population, located at the northwestern limits of the subspecies' range, occur in habitat that closely conforms to the distributional range of the Oregon white oak. The western gray squirrel ranges only as far north in the Puget Trough as the northern limit of the continuous distribution of Oregon white oak on the gravelly prairies just south of Tacoma (Dalquest 1948; Larrison 1970; Stein 1990; WDW 1993). While the Puget Trough area is essentially the northwestern limit of the continuous range of the Oregon white oak, it does occurs in discontinuous patches further north on the islands of Puget Sound and, in British Columbia, Canada, on Vancouver Island and in two disjunct stands on the mainland (Stein 1990).

Geologic and floristic evidence indicates that Oregon white oak associations have evolved through successive eras as components of relatively arid pine forest that repeatedly advanced northward from a locus in the southwestern U.S. and northwestern Mexico as climates warmed and retreated as climates cooled. The most recent northward expansion ended about 6,000 years ago (Stein 1990). Pollen spectra samples show that oak communities were common around Puget Sound during the warm, dry post-glacial period 10,000 years ago. Subsequent trends toward cooler and moister conditions have influenced the replacement of Oregon white oaks by conifers (Stein 1990; Agee 1993; WDW 1993).

Prehistorically, the ''Tacoma prairies'' once occupied the lowland areas of Pierce and Thurston Counties in the Puget Sound region of the Puget Trough, with a southward finger into Lewis County; prairies intermittently reappeared in Clark County down to the Columbia River (Kruckeberg 1991). This landscape feature of the Puget Trough consists of a mosaic of prairie, oak woodland, and open forest called a ''gravelly outwash plain.'' The gravelly outwash prairies coincide with the southern terminus of the last continental ice sheet during the Vashon glaciation, which ended 15,000 years ago (Kruckeberg 1991).

Although the Puget Trough of western Washington has a wetter climate than occurs in much of the Oregon white oak range, the Puget Sound area is near sea-level and has a warm, relatively dry climate because of the Puget Sound and the surrounding mountain ranges (Thysell and Carey 2001). The Puget Sound region is included in the *Tsuga heterophylla* (western hemlock) Zone, with many of the same plant communities. Large areas in this region, however, differ from the surrounding plant community types in that prairie, oak woodland, and pine forest are encountered. These plant-community type differences, related to both climate and soil, include Oregon white oak stands and prairies being invaded by Douglas-fir and the occurrence of species rarely or never found in western Washington or northwestern Oregon (Franklin and Dyrness 1988).

As previously discussed, western gray squirrels depend primarily on acorns and pine seeds (Sumner and Dixon 1953; Kruckeberg 1991; Carraway and Verts 1994). Because of the wetter climate and flatter topography of the Puget Trough in comparison with the rest of the western gray squirrel range, the habitat is more homogeneous, and there are fewer mast-producing trees (C. Maser, pers. comm. 2003). Consequently, in this region, the success of the western gray squirrel is probably more intimately tied to the success of Oregon white oak because it provides an essential winter food item for this squirrel.

Elsewhere in the subspecies' range, Oregon white oaks occur in communities that include a wider range of mast-producing tree species. In western Washington, the western gray squirrel depends primarily on Oregon white oak, Douglas-fir, and where available, ponderosa pine (*Pinus ponderosa*). In Oregon, the western gray squirrel diet includes seeds from a

wider variety of oak (*i.e.,* Oregon white oak, tanoak (*Lithocarpus densifloris*), Sadler oak (*Quercus sadleriana*), canyon live oak (*Quercus chrysolepis*), California black oak (*Quercus kelloggii*), valley oak (*Quercus lobata*) and pine species (*i.e.,* sugar pine (*Pinus lambertiana*), Jeffrey pine (*Pinus jeffreyi*), lodgepole pine (*Pinus contorta*) than are available to western gray squirrels in the Puget Trough of Washington (Carraway and Verts 1994; Marshall *et al.* 1996).

In California, the western gray squirrel is dependent on mature stands of conifer and oak habitats and is closely associated with oaks (CDFG 1990). Oak species in western gray squirrel habitat in California include valley oak (*Quercus lobata*), blue oak (*Quercus douglasii*), California black oak, interior live oak (*Quercus wislizenii*), and scrub oak (*Quercus dumosa*). In addition to Douglas-fir and ponderosa pine, other tree species in California western gray squirrel habitats include Fremont cottonwood (*Populus fremontii*), digger pine (*Pinus sabiniana*), white fir (*Abies concolor*), sugar pine, giant sequoia (*Sequoiadendron giganteum*), redwood (*Sequoia sempervirens*), and eucalyptus (*Eucalyptus globulus*) (Carraway and Verts 1994).

Although western gray squirrels consume hypogeous fungi and seeds and nuts of various trees and shrubs, acorns and pine seed may be more critical in the diet because they are high-energy foods needed for overwintering (Ryan and Carey 1995a). In the Puget Trough, acorns are the principal diet from late summer through early spring. Mushrooms and truffles are mostly eaten in spring and fall, and Douglas-fir seed are eaten upon ripening in the late summer through fall. However, mast crops differ each year caused by the depletion of food reserves in a heavy seed year, weather in year of fruiting or previous years, diseases and parasites, and maturation differences among tree groups (Ryan and Carey 1995a). Oak mast production is sporadic and unpredictable, with good mast years occurring only once in 7 to 10 years. During an 8-year study in northern Oregon, there were 4 years with poor Oregon white oak acorn crops. In 1991, there was no acorn crop in the Columbia River Gorge and an insignificant crop in 1992. When ponderosa pine is not available, western gray squirrels also rely on Douglas-fir seed (WDW 1993). However, environmental factors make the Douglas-fir seed crop erratic, and abundant crops are produced sporadically, from 2 to 11 years apart. One crop failure and two or more light to medium crops usually occur between heavy crops (U.S. Forest Service 1974).

South Cascades Population. Although Booth (1947) noted that western gray squirrels were uncommon in the southern part of the Cascade Mountains and more common in Pierce County, the South Cascades population currently is the largest remaining population of western gray squirrels in Washington. The western gray squirrel appears to be widely distributed across Klickitat County, but the populations are localized. Western gray squirrels remain along the Klickitat River and Catherine, Major, and Rock Creeks (WDW 1993). Between 1994 and 1996, systematic field surveys to delineate western gray squirrel distribution in the Columbia River Gorge documented the presence of individuals or their sign (*e.g.,* nests) in 22 watershed administrative units. Surveys were conducted in parts of 275-square mi (712-square km) sections containing suitable western gray squirrel habitat; their presence was recorded in 61 percent of these sections (M. Linders, pers. comm. 2003d).

Based on intensive and widespread surveys in Washington from 1994 to 2000, 89 percent (1,642 of 1,847) of all western gray squirrel nests and observations occurred in Klickitat County (D. Brittell, *in litt.* 2002). Eighty-three percent (514 of 618) of the occupied survey blocks had nest locations alone, and 10 percent (59 of 618) of the survey units had both western gray squirrels and their nests. The 7 percent (45 of 618) of the survey units having western gray squirrels with no known nest locations may have represented dispersal or breeding movements. Nest-only sites likely had associated western gray squirrels. Because nests persist for several years, however, a die-off would be difficult to detect (D. Brittell, *in litt.* 2002). More recent information is limited to forest practice surveys and random encounters. Residents noticed a decline of western gray squirrels in Klickitat County, particularly following introduction of California (Beechey's) ground squirrels (*Spermophilus beecheyi*) (Rodrick 1987; WDW 1993).

Statewide surveys from 1994 to 2002 established that most observations of western gray squirrels and their nests occurred in Klickitat County (M. Linders, pers. comm. 2003c). Surveys in 2000 and 2001 on the Klickitat Wildlife Area documented density estimates of 0.08–0.13 western gray squirrels/ha and a more recent estimate for western gray squirrels in this area was slightly higher (0.1–0.2 squirrels/ha) (M. Linders, pers. comm. 2003b). Density estimates for western gray squirrels in California ranged from 1.37/ha in the spring in Lake County to 2.47/ha in the Yosemite Valley (Grinnell and Storer 1924). There are no density estimates for western gray squirrels in Oregon or Nevada.

Booth (1947) described the western gray squirrel as uncommon in the southern Cascade Mountains. In Yakima County, western gray squirrels were abundant in the Ahtanum and Cowiche Creek drainages, and less common along Oak Creek prior to the 1950s. A mange epidemic in the 1940s and 1950s decimated western gray squirrel populations (Stream 1993). Western gray squirrels may have been extirpated from the Oak Creek Management Area following a severe mange epidemic in the 1940s and 1950s; a reintroduction attempt in the area, using western gray squirrels from Oregon, was not successful (WDW 1993).

Little is known about western gray squirrels on the Yakama Indian Nation Reservation. Between 1995 and 1998, the Yakama Indian Nation conducted limited surveys across the reservation. Small nest clusters, scattered individual western gray squirrels, and negative surveys were reported (D. Brittell, *in litt.* 2002).

North Cascades Population. The North Cascades population has received the least attention of the three Washington populations; no population or trend data, including density estimates, are available. There were no systematic attempts to delineate the distribution of western gray squirrels in the North Cascades prior to 1995. During 1995 surveys by WDFW on the west side of the Methow Valley of Okanogan County, 21 western gray squirrels (including 3 killed by automobiles) and 2 nests were observed. In 1996, 22 western gray squirrels, including roadkills, and 89 nests were observed. No western gray squirrels were observed during surveys of the east side of the Methow Valley in 1997. When interviewed, residents of the upper Methow Valley believed that numbers of western gray squirrels were declining, but residents of the lower Methow Valley thought the populations had been stable over the past 15 to 30 years (M. Linders, pers. comm. 2003d).

In 2000, surveys of all areas previously known to have western gray squirrel nests detected only 3 remnants out of the 89 nests recorded in a 1996 survey (M. Linders, pers. comm. 2003d). Eighteen previously unreported nests were documented and four western gray squirrels were observed. Relocating individual nests, however, can be difficult without detailed mapping and marking (Vander Haegen *et al.* 2003). Also, western gray squirrels build and

use more than one nest per season, and nests may remain intact for 3 to 5 years. Consequently, the fact that only 3 remnant nests and 18 previously unreported nests in an area that formerly had 89 nests may represent a significant reduction in the number of western gray squirrel nests in the Methow Valley, possibly suggesting a corresponding population decline. Additional nest surveys in Chelan County, not previously surveyed, located seven previously unreported nests, three western gray squirrels, and one western gray squirrel skin (no body) (M. Linders, pers. comm. 2003d).

The North cascades population occurs in an ecological setting that differs from the Puget Trough area. The native range of oaks extended only into southeastern Yakima County with a patchy distribution in central Yakima County, central Kittitas County, and northeastern Pierce County (Stein 1990). The range expansion northward from Yakima County required adaptations to habitats lacking oaks, the main source of winter foods for this subspecies in most of its range.

Couch (1928) describes the range of the ''silver gray squirrel'' as being known from Goldendale (Klickitat County) to Lake Chelan (Chelan County). Taylor and Shaw (1929) describe the range of the western gray squirrel as ranging along the eastern edge of the Cascades north to Lake Chelan. There are verified (reported by reliable biologists or other knowledgeable individuals) western gray squirrel sightings recorded for Chelan County from 1938 in the WDFW Natural Heritage Database (WDFW 2002). Booth (1947) notes records from Lake Chelan. Larrison (1970) describes the range as including the lower east slopes of the Cascades to Lake Chelan. He also notes that, while western gray squirrels are most numerous in the oak woods, they are spotty and scarce elsewhere in their range.

The western gray squirrel range extension into Okanogan County may have occurred in response to groves of English walnut (*Juglans regia*) and black walnut (*J. nigra*) planted during the 1940s and 1950s (WDW 1993). Stream (1993) conducted interviews, compiled data from WDW wildlife data printouts, literature reports, and old files from the WDW Yakima Regional office and concluded that the western gray squirrel was native to the east slopes of the Cascade Mountains. He notes that there was ''apparently a native population in Chelan County, especially around Lake Chelan,'' but that the documentation was not clear. Although the predominant habitat used by western gray squirrels was the oak/pine associations in Yakima County, the oak association was not found where the western gray squirrels occurred around Lake Chelan. The interviews revealed that English walnut trees were planted from 1915 to 1920, and by the 1940s, the western gray squirrel was expanding its range northward due to these planted mast-producing trees. By the 1960s, western gray squirrels were showing up in canyons where black walnut trees were planted in the 1940s.

Western gray squirrels were present at Lake Chelan at least as early as the 1920s, and may have been expanding northward before mast-producing trees planted in nut orchards began producing. Their secretive behavior and low population densities may have made them hard to see. Although the nut orchards probably stimulated the northward expansion and helped population sizes increase, western gray squirrels were also found in natural habitats. Western gray squirrels were regularly seen on Chelan Butte (southeast side of Lake Chelan) in the 1960s and in Purtteman Gulch (northeast end of Lake Chelan), but were no longer found there after fires burned the habitat. In the late 1960s, a western gray squirrel nest was found on a pine tree branch in Ribbon Cliff Canyon (along the Columbia River north of Entiat). Western gray squirrels were using pine trees and bigleaf maples (*Acer macrophyllum*) for food. A few western gray squirrels were found in Stehekin (northwestern end of Lake Chelan in Chelan County), but could not survive because of the harsh weather (Mil Sharp, retired WDW wildlife agent, pers. comm. 1992, as cited in Stream 1993).

Distinct Population Segment Review

Under the Act, we must consider for listing any species, subspecies, or any distinct population segments of vertebrates if sufficient information exists to indicate that such action may be warranted. We, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration-Fisheries), developed a joint policy that addresses the recognition of DPS for potential listing actions (61 FR 4722). The policy allows for more refined application of the Act that better reflects the biological needs of a part of the taxon being considered, and avoids inclusion of entities that do not require the Act's protective measures.

Under our policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS. These elements are (1) discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the taxon to which it belongs. If we determine that a population segment being considered for listing meets the discreteness and significance standards, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine if listing the population segment as either threatened or endangered is warranted.

Under current conditions, the Washington population of the western gray squirrel consists of three isolated, disjunct populations. The three populations resulted from western gray squirrels moving northward, from the region that is now the State of Oregon and later became separated from more southern populations by the Columbia River. The distribution of the western gray squirrel in Washington once extended from south Puget Sound, east along the Columbia River, and northward to Lake Chelan and subsequently expanded northward into Okanogan County in more recent times. We view these three populations as isolated portions of a once-continuous population, with a common evolutionary history.

Discreteness

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist.

On the basis of available information, we conclude that the Washington population segment of the western gray squirrel may be discrete in relation to the remainder of the subspecies' populations because it appears to be physically separated from other populations to the south in Oregon, California, and Nevada as a result of geographical isolation by the Columbia River. Additionally, each of the three Washington populations appear to potentially be discrete from each other and this is supported by preliminary genetic analysis (Warheit (2003)). The Columbia River has likely been a barrier

to movement and genetic flow for at least 13,000 years (Mercer and Roth 2003), as discussed further below.

Significance

Under our DPS policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to (1) evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only 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 species in its genetic characteristics.

Ecological Setting. The western gray squirrel in the Puget Trough of western Washington persists in a transitional ecological setting, where it occupies habitat composed of Oregon white oak in an ecotone (transitional) between upland Douglas-fir forests and prairies, in comparison with the subspecies' populations elsewhere in its range (Ryan and Carey 1995; Bayrakçi *et al.* 2001). Consequently, existence of the western gray squirrel in the Puget Trough is more intimately tied to the success of Oregon white oak: Oregon white oak is the only native oak in Washington (Stein 1990) and provides an essential winter food item for this squirrel (Sumner and Dixon 1953; Kruckeberg 1991; Carraway and Verts 1994). Acorns and pine seed are critical high-energy foods needed for overwintering (Ryan and Carey 1995a). In western Washington, western gray squirrels have adapted to a more homogeneous environment with fewer and less reliable food resources (Oregon white oak, Douglas-fir, and some ponderosa pine), particularly relying on the acorn of a single tree species as its essential storable winter food resource, thus occupying a less suitable, marginal habitat. Elsewhere in the subspecies' range, Oregon white oaks occur in communities having a wider range of mast-producing tree species, including a variety of oak and pine species, which allows western gray squirrels to use different food resources when one food resource has a poor year for mast production.

The North Cascades population found east of the Cascade Mountains also persists in an ecological setting which differs from the Puget Trough and the South Cascades. In this population, western gray squirrels expanded their distribution into areas beyond the native range of Oregon white oak. The presence of western gray squirrels in Chelan County early in the twentieth century (Couch 1928; Booth 1947; Larrison 1970; Stream 1993; WDFW 2002) indicates adaptations to using other food resources. The continuous distribution of Oregon white oak extended into Yakima County, with only a spotty distribution into Kittitas County (Stein 1990). The range expansion northward from Yakima County required occupying habitats lacking oaks that provided the main winter food for the subspecies, relying on ponderosa pine as the primary food.

The Washington populations of western gray squirrels are found in differing ecological settings within the State. However, it is not clear that they should collectively or independently be considered as unique ecological settings for the taxon. For example, while the grasslands and oak woodlands of the Puget Sound area have different vegetation complexes compared to the grasslands and oak woodlands where western gray squirrels are found in northern California or southern Oregon, these differences are not so great that we consider the habitat of the Puget Sound population to be a unique or unusual ecological setting for western gray squirrel. The South Cascades population shares many habitat features common to the habitat for western gray squirrels found in Oregon. The North Cascades population's habitat is notable in its absence of oaks, the main source of winter foods for this subspecies in most of its range. This population appears to rely on the seed of pine trees and bigleaf maples (*Acer macrophyllum*). Throughout their range, however, western gray squirrels consume a variety of types of tree seeds, including many conifer species. In summary, we do not find that the Washington populations individually or collectively are located in an ecological setting unusual or unique for the taxon, such that they meet the significance criterion of the DPS policy.

Gap in the Range. The Washington population segment of the western gray squirrel is at the northern portion of the historic and current distribution of the subspecies. Within the Washington population segment, the Puget Trough population represents the northwestern extension, and the North Cascades population represents the northeastern extension of the subspecies' range.

Within the distribution of every species there exists a peripheral population, an isolate or subpopulation of a species at the edge of the taxon's range. The population is the basic evolutionary and ecological functional unit. The local population is where responses to environmental challenges occur, where adaptations arise, and where genetic diversity is maintained and reshuffled each generation. A species can continue to exist even though many of its populations are destroyed, resulting in a loss of biodiversity and what may be unique genetic or phenotypic traits (Meffe *et al.*1997). Peripheral populations are often located at a species' ecological limits where unique genetic combinations are exposed to and tested by environmental circumstances that may not be found elsewhere in the range of the species. When a peripheral population is isolated from gene flow from other populations, the isolated peripheral population may become highly adapted to local conditions. Distinctive traits found in peripheral populations can be important for the survival and evolution of a species as a whole (Meffe *et al.* 1997).

Long-term geographic isolation and the loss of gene flow between populations is the foundation for genetic changes in populations resulting from natural selection or chance. Evidence of changes in peripheral populations may include genetic, behavioral and/or morphological differences from populations in the rest of the subspecies' range. Ecological differences were described above, and genetic differences in western gray squirrels are discussed below. We also considered information regarding morphological and behavioral differences in regard to adaptations that may be occurring in the western gray squirrel in Washington.

The secretive behavior of the western gray squirrel in Washington has been frequently noted and might represent an adaptation of a population on the periphery of its range. Bowles (1921) wrote, regarding western gray squirrels in Pierce County, Washington, that ''although extremely numerous, we may walk for days in the country they inhabit and never see one.'' Scheffer (1923) indicated that in the more heavily timbered country in Washington, the gray squirrel was only occasionally seen. Couch (1926) noted that, although western gray squirrels are hard to see, the presence of western gray squirrels in the lower Puget Sound region is evident in the peeled bark of Douglas-fir. Larrison (1970) wrote that western gray squirrels in Washington are ''rather shy and do not mix well with civilization,'' and in the few places

where they have entered settled areas it ''keeps hidden from the watcher.'' During surveys on McChord AFB, observers noted that western gray squirrels often fled from the presence of the observer (The Nature Conservancy of Washington and Washington Department of Natural Resources (WDNR) 1996). More recently, researchers conducting surveys on Fort Lewis described western gray squirrels as ''very wary and challenging to approach and therefore can be difficult for observers to detect'' (Bayrakçi *et al.* 2001).

In Oregon, although described as ''shy and retiring'' in the countryside where they have little human contact, western gray squirrels can be found in urban parks where they are more tolerant of human contact (Susan Weston, *in litt.* 2003). Along the Nevada/California border, western gray squirrels appear to be well-adapted to the urban-forest interface (P. Maholland, pers. comm. 2003) and have been reported as common in the Lake Tahoe basin, especially in the urbanized areas (J.S. Romsos, pers. comm. 2003).

Whether the western gray squirrels in Washington are more secretive than those elsewhere in the range of the subspecies is unclear. Although evidence of shy behavior of the western gray squirrel has long been documented for the Washington population, similar behavior has been documented in Oregon (Susan Weston, *in litt.* 2003). We believe this behavior may be consistent with a species at the edge of its range, where the amount of habitat is restricted by fragmentation and may be less than optimum, and that rather than being ''shy,'' they are difficult to observe and maintain a close affinity with the habitat that remains. The observation of western gray squirrels in towns in Oregon and Nevada may also be an artifact of there being larger populations of squirrels in this portion of the subspecies' range. The differences between rural and urban communities may also be less distinct in Oregon and Nevada, with the rural characteristic of large Oregon white oak or ponderosa pine trees or possibly other planted nut trees providing suitable habitat for the squirrels in the urban environment.

Overall, much of the available information on ''secretiveness'' of the subspecies is anecdotal in nature and there are no comparative studies to determine whether real behavioral differences in secretiveness exist across the range of the subspecies. Even if such differences do exist, the reasons for them are not clear, including whether or how such behavior might be related to the periphery of the range. The significance of such differences, if they exist, also is unclear.

In evaluating potential differences in the subspecies at the northern extent of its range, we also considered information on morphology and home range size. Body measurements of western gray squirrels in Klickitat County, Washington, were found to be significantly larger than elsewhere in the subspecies' range (M. Linders, pers. comm. 2003d). This study was conducted in a small area of Klickitat County and results were compared to another study in Washington with a small sample size, and with two California studies. Based on the limited area studies and the small sample size, the results may not be conclusive and applicable for western gray squirrels over their entire range. We also considered information showing that western gray squirrels on the Klickitat Wildlife Area have substantially larger home range sizes when compared with home range estimates elsewhere in the subspecies' distribution. In this same study, western gray squirrels also used significantly more nests per squirrel than recorded for the subspecies in Oregon (Linders 2000). These results, while interesting, do not explain the reasons for the differences in home range size and numbers of nests. The limited sample size is a confounding factor in interpreting these results. Also, as noted above, differences in methods used to determine home range sizes may be a source of variability in results among studies (Ryan and Carey 1995a). Many factors could account for these differences, and we have no basis for concluding that these results should be attributed to the location of the study area at the northern periphery of the range of the subspecies. Consequently, we do not believe that the information concerning morphology, home range size, or number of nests described for western gray squirrels in Klickitat County provides a justification for a determination of significance under the DPS policy.

The importance of peripheral populations in relation to climate change is a continuing source of discussion and study in the scientific community. Species' ranges can change dramatically with global shifts in climate. Peripheral populations may survive in isolated refugia that later, with different environmental conditions, serve as a source population for an expanded range and subsequent radiation. What constitutes a peripheral population today could be the center of a species' range in the future, and consequently peripheral populations are vitally important to a species' past, present, and future existence (Nielsen *et al.* 2001).

We have considered the extent to which western gray squirrels in Washington may be significant in relation to climate change. As the result of a climate shift, as occurred in the past when Oregon white oaks moved northward from Oregon, the northern limits of the western gray squirrel range could expand northward as the changing climate again favors Oregon white oak distribution over conifer distributions. At this time there is speculation, but no clear evidence, of the potential role that western gray squirrels in Washington might play in relation to the rest of the subspecies in response to climate change. Similarly, the nature and extent of the effects of climate change on ecological conditions for the western gray squirrel in Washington are not known. Based on the speculative nature of the situation involving the western gray squirrel in relation to climate change, we do not have a basis for concluding that a potential gap in the distribution of western gray squirrels at the northern extent of its range would have evolutionary implications for the subspecies in relation to the potential effects of climate change.

Lastly we consider whether the potential reduction in the range of the subspecies that could occur in the event of the hypothetical loss of the Washington populations, collectively or individually, would meet the significance criterion of the DPS policy. Individually, we do not find that the loss of range that would be represented by the loss of any of the current Washington populations meets the significance criterion of the DPS policy. The limited population information available makes a determination about potential significance particularly difficult, but when viewed individually we do not see the potential reduction in range of each population as reaching significance to the subspecies. Collectively, the loss of all of the Washington populations would represent a serious reduction in the species range. However serious such a hypothetical reduction might be, we do not have information currently that demonstrates this consideration would meet the DPS policy's requirement of significance to the taxon (subspecies) as a whole, since there is only limited information on the potential biological and ecological significance for Washington in terms of range of the subspecies.

Whether the Population Represents the Only Surviving Natural Occurrence of the Taxon. As part of a determination

of significance, our DPS policy suggests that we consider whether there is evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range. The western gray squirrel in Washington is not the only surviving natural occurrence of the subspecies. Consequently, this factor is not applicable to our determination regarding significance.

Marked Differences in Genetic Characteristics. The DPS policy suggests that one measure of significance is evidence that the discrete population segment differs markedly from other populations of the subspecies in its genetic characteristics. Preliminary evidence of genetic variation among the three western gray squirrel populations in Washington and two populations in Oregon showed that genetic variability may exist (Parametrix, Inc. 1999). The sample sizes, however, were too small for substantive conclusions (M. Linders, pers. comm. 2003d).

In 2003, researchers from WDFW and the University of Washington completed genetic analyses, using standard conservation genetic research techniques, the results point towards significant genotypic differentiation between Washington populations and squirrel populations south of the Columbia River. The report presents the results of two different types of genetic analyses (microsatellite DNA analysis and mitochondrial control region sequence analyses). The following discussion of the results of the genetic analyses is summarized from Warheit (2003).

Microsatellite DNA Analysis

Microsatellite DNA analyses were completed on samples from 128 western gray squirrels from California (3), Oregon (24), and Washington (101). Samples were obtained from museum skins, museum tissue collections, road-killed individuals, and ear punches from live-trapped individuals.

Microsatellites are short (no longer than six base pairs (nitrogenous bases that are part of the DNA molecule, such as cytosine and guanine)) tandemly repeated segments interspersed throughout the chromosome. Changes in the repeats result in different lengths of DNA, and a specific length of DNA can be used as a marker for a microsatellite locus (position on the chromosome). Seven of these loci that showed variation were analyzed. The results of the microsatellite analysis was summarized by the genetic diversity (the variation in chromosomes) and the genetic differentiation (how different genetically are the populations).

Genetic Diversity

- An allele is a series of two or more different genes that occupy the same position on a chromosome. All populations in Oregon and California showed at least three private alleles (alleles present in only that population), while no Washington population had a private allele. This indicates that while all alleles present in each of the Washington populations are also present in at least one of the Oregon or California populations, there are alleles present in either Oregon or California that are not present in Washington.
- The Washington populations show reduced genetic diversity at all measures compared with populations south of the Columbia River, despite the fact that the mean sample size per locus is larger for each of the Washington populations.
- The reduction in genetic diversity within the Washington populations may be a function of genetic drift, which in turn may be the result of relatively smaller effective population sizes in Washington compared with that in Oregon and California.

Genetic Differentiation

- There is significant differentiation between each of the Washington populations, and the Oregon and California populations.
- These data support the hypothesis that each of the Washington Western Gray Squirrel populations are genetically distinct from each other, and are now functioning as separate and isolated populations.
- What these analyses demonstrate is that there is considerably more genetic differentiation between Washington and Oregon or California, than there is between Oregon and California populations.

Mitochondrial Control Region Sequence Analyses

A subset (67) of the same samples from 128 western gray squirrels used in the Microsatellite DNA analyses were used for an additional mitochondrial control region sequence analyses. Mitochondria are structures in the cell, but outside of the nucleus, which contain DNA inherited only from the mother. A 367 basepair portion of the DNA from the control region of mitochondria was sequenced (Warheit 2003).

- The haplotype is the set, made up of one allele of each gene. Haplotypes comprise the genotype (or genetic constitution of an individual or taxon). They identified only three haplotypes from 40 Washington individuals, compared with 14 haplotypes from 27 Oregon and California individuals, and no haplotype was shared across the Columbia River.
- Genetic differences between populations can also be measured using nucleotide diversity (*i.e.,* average sequence difference). The nucleotide diversity between populations equated to long time intervals since these the Washington and California or Oregon populations diverged (roughly 12,000 to 126,000 years ago).
- Some haplotypes in Washington are more closely related to haplotypes in Oregon than other haplotypes in Washington.

Warheit (2003) summarized the results of these analyses by noting:

> this study still requires additional analyses for at least three reasons. First, samples sizes need to be increased for each of the populations south of the Columbia River. Although I do not anticipate that an increase in sample size for each of the Oregon and California will significantly alter the conclusions drawn from the current data set, a greater likelihood and confidence in these conclusions will arise from more samples from Oregon and California. Second, the overall levels of genetic diversity for each of the seven microsatellite markers used in this study are low, and a greater number of microsatellite loci will provide us with a broader survey of the squirrel genome. [T]hird, we need to obtain the control region sequences for the new samples included in the expanded analysis of microsatellites. A more complete set of analyses is needed on the control region data to help understand the historical events that may have produced the phylogeographic patterns drawn from the data (*e.g.,* nested clade analysis).
>
> Despite the preliminary nature of these analyses, the following set of conclusions have been strengthened by the inclusion of a larger sample size from the Fort Lewis and Okanogan Western Gray Squirrel populations:
>
> 1. Washington populations of Western gray Squirrels show reduced genetic diversity at both nuclear (microsatellite) and mitochondrial (control region sequences) markers compared with populations from Oregon and California. This reduction in genetic diversity may be the result of genetic drift and relatively smaller effective populations sizes.
>
> 2. There is significant genetic differentiation between Washington Western Gray Squirrels, and squirrels from populations south of the Columbia River. Both the microsatellite and sequence data support the hypothesis that the Washington squirrels are a population(s) distinct from those in Oregon and California.
>
> 3. There is significant genetic differentiation among the three Washington populations. * * *
>
> Additional and more variable microsatellites should be included in any

subsequent study. It may be advantageous to develop microsatellites specifically for Western Gray Squirrels, rather than adapt microsatellites developed in other species of sciurids.

Thus, the preliminary information from Warheit (2003) suggests that there is genetic differentiation between Washington western gray squirrels, and squirrels from populations south of the Columbia River. We believe that this information supports our contention that western gray squirrel populations in Washington collectively or individually could meet the discreteness criterion of the DPS policy. However, we find that based on the genetic information currently available, the western gray squirrel populations in Washington collectively or individually do not differ markedly from other populations of the subspecies in their genetic characteristics such that they should be considered biologically or ecologically significant based simply on genetic characteristics. Biological and ecological significance under the DPS policy is always considered in light of Congressional guidance (*see* Senate Report 151, 96th Congress, 1st Session) that the authority to list DPS's be used ''* * * sparingly'' while encouraging the conservation of genetic diversity.

One of the more notable pieces of genetic information in the Washington populations is the lack of genetic diversity. As noted above, this reduction in genetic diversity may be the result of genetic drift and relatively smaller effective populations sizes. While there is clearly some genetic information that shows that the Washington populations are different from other populations (*e.g.*, in the microsatellite DNA analyses no haplotype was shared across the Columbia River, also evidence suggests a long time interval since the Washington and California or Oregon populations diverged), at this time we do not be believe them to be markedly so. The information we believe counterbalances the differential information is the fact that all alleles present in each of the Washington populations are also present in at least one of the Oregon or California populations, that some haplotypes in Washington are more closely related to haplotypes in Oregon than other haplotypes in Washington, and the fact that the Washington populations of western gray squirrels show reduced genetic diversity at both nuclear (microsatellite) and mitochondrial (control region sequences) markers.

Information on genetics supports the contention that western gray squirrels in Washington have been isolated from other populations for a long period of time. The results suggest that genetic differences may occur between populations of the western gray squirrel throughout its range. The genetics studies by Warheit (2003) rely on relatively limited sample sizes for some populations, n = 3 for California. Results from the genetics studies may be confounded by the effects of small population size and the consequent inbreeding and genetic drift. The patterns of differentiation that were observed may reflect the negative consequences of isolation, range contraction, and recent significant declines of local populations. To what extent the forces of isolation, genetic drift and/or inbreeding have impacted the western gray squirrel population remaining in Washington is uncertain.

Conclusion

On the basis of available information, we determined that the Washington populations of the western gray squirrel may be discrete in relation to the remainder of the subspecies' populations. This determination is based on information showing that the populations appear to be geographically separated from, and to have some genetic differences from, other populations to the south in Oregon, California, and Nevada as a result of isolation by the Columbia River. But, pursuant to our DPS policy, this apparent directness does not necessarily mean that the populations in Washington are significant to the remainder of the taxon.

Consequently, following a review of the available information, we conclude that the western gray squirrel populations in Washington are not significant to the remainder of the taxon. We made this determination based on the best available information, which does not demonstrate that (1) these populations persist in ecological settings that are unique for the taxon; (2) the loss of these populations would result in a significant gap in the range of the taxon; and (3) these populations differ markedly from other populations of the subspecies in their genetic characteristics, or in other considerations that might demonstrate significance. Further, the available information does not demonstrate that the life history and behavioral characteristics of these populations in Washington are unique to the subspecies. We acknowledge that, while the precise biological and ecological importance of a discrete population segment is likely to vary from case to case, we were unable to identify any other information that might bear on the biological and ecological importance of these populations.

Significant Portion of the Range

Pursuant to the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered in a significant portion of its range. Consequently, we evaluated the three populations in Washington to determine if they collectively constitute a significant portion of the range of the subspecies. In our evaluation we considered whether the geographic extent of the range of the western gray squirrel in Washington is significant relative to the remainder of the subspecies' range. Based on the extent of the range of the western gray squirrel subspecies, from southern California north to Washington as discussed in the Background section of this notice, we do not believe that Washington constitutes a significant portion of the geographic extent of the subspecies, and subsequently the range of the subspecies. Further, the available information regarding the collective abundance of animals in the three populations in Washington does not indicate that the Washington population constitutes a significant portion of the western gray squirrel population rangewide. Consequently, we have determined that the population of the western gray squirrel in Washington does not constitute a significant portion of the subspecies or its range.

Finding

We have carefully assessed the best scientific and commercial information available regarding the discreteness and significance of the western gray squirrel in Washington. We reviewed the petition, literature cited in the petition, information available in our files, peer-reviewed literature and other published and unpublished literature and information, and information submitted to us during the comment period following our 90-day petition finding. We have consulted with biologists and researchers, including geneticists familiar with the western gray squirrel, and reviewed the status of the western gray squirrel in light of the requirements of our DPS policy. On the basis of the best scientific and commercial information available, we conclude that the populations of western gray squirrel in Washington do not represent a DPS, and are therefore not a listable entity. Our review did indicate that these populations may be discrete from other western gray squirrel populations south of the Columbia River, but under our DPS policy, the Washington populations collectively or individually are not

significant to the remainder of the taxon. This finding is primarily based on the fact that available information does not demonstrate that the Washington populations have marked genetic, ecological, or behavioral differences when compared with the remainder of the subspecies. As such, we find that the petitioned action is not warranted. Further, we have concluded that the three populations in Washington are not significant to the remainder of the taxon, and consequently do not constitute a significant portion of the range of the subspecies.

References Cited

A complete list of all references cited in this document and additional references can be requested from the Western Washington Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

This document was prepared by the Western Washington Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 30, 2003.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–14354 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Planning Advisory Committee Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Hanford Reach National Monument Federal Planning Advisory Committee Meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is announcing four meetings of the Hanford Reach National Monument (Monument) Federal Planning Advisory Committee (Committee). In the next four meetings, the Committee will continue their work on making recommendations to the Service and the Department of Energy (DOE) on the preparation of a Comprehensive Conservation Plan and associated Environmental Impact Statement (CCP/EIS) which will serve as a long-term management plan for the Hanford Reach National Monument. The Committee is focusing on advice that identifies and reconciles land management issues while meeting the directives of Presidential Proclamation 7319 that established the Monument.

DATES: The Committee has scheduled the following meetings:

1. Tuesday, June 24, 2003, 12:30 p.m. to 4:30 p.m., Richland, WA.
2. Thursday, August 7, 2003, 12:30 p.m. to 4:30 p.m., Richland, WA.
3. Thursday, September 25, 2003, 12:30 p.m. to 4:30 p.m., Richland, WA.
4. Thursday, December 4, 2003, 12:30 p.m. to 4:30 p.m., Richland, WA.

ADDRESSES: The meeting locations are:

1. Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120 A, Richland, WA.
2. Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 210, 212 and 214, Richland, WA.
3. Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120 A, Richland, WA.
4. Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120 A, Richland, WA.

Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument Federal Planning Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Official. Comments may be submitted via e-mail to *hanfordreach@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument Federal Planning Advisory Committee; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: Verbal comments will be considered during the course of the meeting and written comments will be accepted at the close of the meeting. Comments may also be submitted via e-mail or mail to the Monument office addresses above. The meetings are open to the public. Over the next several months, the Committee will receive information from Planning Workshops and present advice to the Service and Department of Energy on draft products from those Workshops that will be considered in the CCP/EIS. The Committee will also nominate and elect a chair and vice-chair.

Dated: May 29, 2003.

David J. Wesley,

Deputy Regional Director.

[FR Doc. 03–14668 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Renewal of Loan Guaranty, Insurance, and Interest Subsidy, Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal of information collection.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments on the collection of information necessary for utilization of the Loan Guaranty, Insurance, and Interest Subsidy Program. This is necessary to continue the use of forms for this program approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The public will have the opportunity to comment on the time and expense required by these forms to access the program.

DATES: Submit comments on or before August 11, 2003.

ADDRESSES: Send comments to Ray Brown, Acting Director, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C St., NW., Mail Stop 2412–MIB, Washington, DC 20240; or hand deliver them to Room 2412 at the above address. We cannot use e-mail but you may comment by telefacsimile at (202) 208–7419.

FOR FURTHER INFORMATION CONTACT: David B. Johnson, Division of Indian Affairs, Office of the Solicitor, (202) 208–340.

SUPPLEMENTARY INFORMATION: The Loan Guaranty, Insurance, and Interest Subsidy Program (Program) was established in the Act of April 12, 1974, as amended, 88 Stat. 79, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.* The Program has existed since 1974 and the regulations implementing it have existed since 1975, with significant revision in 2001. It is necessary to collect information from users of this program in order to determine eligibility and credit worthiness of respondents.

Request for Comments: The Bureau of Indian Affairs requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, 9 a.m. to 4 p.m. EST, Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0020.

Type of review: Renewal.

Title: Loan Guaranty, Insurance, and Interest Subsidy, 25 CFR part 103.

Brief Description of Collection: The purpose of the Loan Guaranty, Insurance, and Interest Subsidy Program, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.*, is to encourage private lending to individual Indians and organizations of Indians, by providing lenders with loan guaranties or loan insurance to reduce their potential risk. Lenders, borrowers, and the loan purpose all must qualify under Program terms. In addition, the Secretary of the Interior must be satisfied that there is a reasonable prospect that the loan will be repaid. BIA collects information under the proposed regulations to assure compliance with Program requirements.

Based upon historical records, BIA anticipates approximately 64 applications for loan guaranties each year. Although there have never been any loan insurance applications, apparent need suggests that BIA will receive approximately 20 additional loan insurance applications or notices of loan insurance per year. Of the combined 84 applications/notices, BIA expects that it will guarantee or insure approximately 64 new loans each year, of which approximately 45 will receive interest subsidy.

In all, BIA estimates the total annual Program compliance burden to range from approximately 4 to 12 hours per loan, with the average loan causing a burden of approximately 6.18 hours. Most compliance burdens fall below this average. BIA assumes the average hourly cost per respondent to be $20.00:

Respondents: Commercial banks.

Number of Respondents: 84.

Number of Responses Annually: 852.

Estimated Time per Respondent: 6 hours.

Frequency of Response: As needed.

Total Annual Burden to Respondents: 519.

Total Annual Cost to Respondents: $10,382.00.

Dated: May 26, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–14531 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–6687–A; KOA–2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act, will be issued to Old Harbor Native Corporation, for lands in T. 33 S., R. 24 W., Seward Meridian, Alaska, located in the vicinity of Old Harbor, Alaska, containing 277.71 acres. Notice of this decision will also be published four times in the *Kodiak Daily Mirror.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 10, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have until 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, # 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon, by phone at (907) 271–3226.

Chris Sitbon,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–14453 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1010 (Final)]

Lawn and Garden Steel Fence Posts from China

Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of lawn and garden steel fence posts, provided for in subheadings 7326.90.85 and 7308.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 1, 2002, following receipt of a petition filed with the Commission and Commerce by Steel City Corp., Youngstown, OH. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of lawn and garden steel fence posts from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Deanna Tanner Okun and Commissioner Stephen Koplan dissenting.

Federal Register of January 21, 2003 (68 FR 2794). The hearing was held in Washington, DC, on April 22, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 2, 2003. The views of the Commission are contained in USITC Publication 3598 (June 2003), entitled *Lawn and Garden Steel Fence Posts from China: Investigation No. 731–TA–1010 (Final).*

By order of the Commission.

Issued: June 4, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–14581 Filed 6–9–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1039–1041 (Preliminary)]

Certain Wax and Wax/Resin Thermal Transfer Ribbons From France, Japan, and Korea

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations No. 731–TA–1039–1041 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France, Japan, and Korea of certain wax and wax/resin thermal transfer ribbons,[1] that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 14, 2003. The Commission's views are due at Commerce within five business days thereafter, or by July 21, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 30, 2003, by IIMAK International Imaging Materials, Inc., Amherst, NY.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 20, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher Cassise ((202) 708–5408) not later than June 18, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 25, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document

[1] Products include wax and wax/resin thermal transfer ribbons (''TTR''), in slit or unslit (''jumbo'') form, designed for use in printers generating alphanumeric and machine-readable characters, with a total wax (natural or synthetic) content of all the image side layers equal to or greater than 20 percent by weight and a wax content of the colorant layer equal to or greater than 10 percent by weight, and a black color, as defined by industry standards by the Lab color specification such that L*<35, -20>a*<35 and −40<b*<31. Excluded from product coverage are: (1) Slitted thermal transfer ribbons for fax or for multi-function thermal transfer printing devices with a width equal to or greater than 212 millimeters (''mm'') but not greater than 220 mm (or 8.35 inches and 8.66 inches) and a length of 230 meters or less (including cassettes); (2) pure resin TTR; and (3) color TTR. The products are provided for in heading 3702 and subheadings 3921.90.40 and 9612.10.90 (imported under statistical reporting numbers 3921.90.4025 and 9612.10.9030) of the Harmonized Tariff Schedule of the United States (HTS).

filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 3, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14582 Filed 6–9–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Divison; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Extension of a currently approved collection; Application for Representative Payee.

The Department of Justice (DOJ), Civil Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 250, page 79648 on December 30, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until [The Federal Register will insert the date 30 days from the date this notice is published in the **Federal Register**. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a Currently Approved Collection.

(2) *The title of the form/collection:* Application for Representative Payee.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: Non. Office of the Attorney General, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: None. Abstract: The Application for Representative Payee will collect information about applicants regarding their eligibility to serve as a Representative Payee and therefore receive funds directly on behalf of minor children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 2,000 respondents who will each require an average of 30 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1,000 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 5, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14534 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosive

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: revision of a currently approved collection; Application for Permit, User Limited Display Fireworks.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approved in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 51, page 12715 on March 17, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Application For Permit, User Limited Display Fireworks.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F 5400.21, Department of Justice.

(4) *Affected pubic who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions, State, Local or Tribal Government. The purpose of this collection is to enable ATF to ensure that persons seeking to obtain a permit under 18 U.S.C. chapter 40 and responsible persons of such companies are not prohibited from shipping, transporting, receiving, or possessing explosives, on a one-time basis.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 150 respondents will complete the application in approximately 1 hour and 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 225 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 4, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14532 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Die Products Consortium (''DPC'')

Notice is hereby given that, on May 19, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Die Products Consortium (''DPC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, August Technology, Bloomington, MN; Intel Corp., Hillsboro, OR; Motorola SPS, Austin, TX; and Samsung Electronics, Seoul, Republic of Korea have been added as parties to this venture. Also, Agere Systems, Allentown, PA; Amkor Technology, Inc., West Chester, PA; and Tempo Electronics, North Hollywood, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DPC intends to file additional written notification disclosing all changes in membership.

On November 15, 1999, DPC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on February 1, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2002 (67 FR 10759).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–14599 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on May 19, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tim Farlow (individual member), Waterloo, IA; Marc Lavine (individual member), Paris, FRANCE; and Valliappan Ramanathan (individual member), Nadu, INDIA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 6, 1999, J Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on February 25, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 18, 2003 (68 FR 12933).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–14601 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on May 20, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Concrete Promotion Council of Northern California, Citrus Heights, CA has been added as a party to this venture. Also, Norval Inc.,

Brooklyn, NY and Claudius Peters (Americas), Dallas, TX have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on January 31, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 3, 2003 (60 FR 10034).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–14600 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: extension of a currently approved collection; National Crime Victimization Survey (NCVS).

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget (OMB) approval is being sought for the information collection listed below. The proposed information collection was previously published in the **Federal Register**, Volume 68, Number 58, page 14698, on March 21, 2003, allowing 60 days for public comment.

The purpose of this notice is to allow for an additional 30 days for public comment until July 10, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the accuracy, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, (including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses).

Overview of this information:

(1) *Type of information collection:* Extension of a Currently Approved Collection.

(2) *The title of the form/collection:* National Crime Victimization Survey.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: NCVS–1, NCVS–1A, NCVS–2, NCVS–500, NCVS–7, NCVS–572(L), NCVS–573(L), NCVS–574(L), NCVS–541, NCVS–545, NCVS–1SP, and NCVS–2SP.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. Other: None. The National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the amount and type of crime committed against households and individuals in the United States. Respondents include persons age 12 or older living in about 45,650 interviewed households.

(5) *An estimate of the total number of respondents is 110,100 and the amount of time estimated for an average respondent to respond/reply:* It will take the average interviewed respondent an estimated 23 minutes to respond, the average non-interviewed respondent an estimated 7 minutes to respond, the estimated average follow-up interview is 12 minutes, and the estimated average follow-up for a non-interview is 1 minute.

(6) An estimate of the total public burden (in hours) associated with the collection is 74,010 hours annual burden.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: June 4, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–14533 Filed 6–9–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 2, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king. darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Agency, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of

the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Type of Review: Extension of a currently approved collection.

Title: Prohibited Transaction Class Exemption 97–41; Collective Investment Funds Conversion Transactions.

OMB Number: 1210–0104.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Number of Respondents: 75.

Number of Annual Responses: 75.

Estimated Time Per Response: 35 hours.

Total Burden Hours: 2,625.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $186,750.

Description: Prohibited Transaction Class Exemption 97–41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (Code). The exemption permits an employee benefit plan to purchase shares of one or more open-end investment companies (Mutual Funds) registered under the Investment Advisers Act of 1940 in exchange for plan assets transferred in-kind to the Mutual Fund from a collective investment fund (CIF) maintained by a bank or plan adviser, where the bank or plan adviser is both the investment adviser to the Mutual Fund and a fiduciary of the plan. The transfer and purchase must be in connection with a complete withdrawal of a plan's assets from the CIF. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as the bank or plan adviser and the Mutual Fund.

In order to ensure that the exemption is not abused and that rights of participants and beneficiaries are protected, the Department requires the bank to give the independent fiduciary notice of the in-kind transfer and full written disclosure of information concerning the registered investment company. Further, the bank or plan adviser must provide the independent fiduciary with certain ongoing disclosures.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–14528 Filed 6–9–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–11; Exemption Application No. D–10840 et al.]

Grant of Individual Exemptions; Deutsche Bank AG

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank AG, located in New York, New York.

[Prohibited Transaction Exemption 2003–11; Exemption Application Number D–10840.]

Exemption

Section I—Retroactive Relief

For the period from June 4, 1999, until June 10, 2003, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Bank Plan or a Client Plan (either, a Plan) in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the Bundesanstalt fur Finanzdienstleistungsaufsicht (the BAFin),[1] and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) The investment is:

(i) Made by a Bank Plan; or

(ii) Made by a Client Plan and expressly authorized pursuant to a provision of such Plan (or trust thereof) or expressly authorized by an independent fiduciary,[2] as defined in

[1] For purposes of this exemption, supervision of Deutsche Bank AG by the BAFin is deemed to include supervision of Deutsche Bank AG by the Federal Banking Supervisory Authority (das Bundesaufsichtsamt fuer das Kreditwesen), the predecessor to the BAFin.

[2] The Department notes that the Act's general standards of fiduciary conduct apply to arrangements involving the investment of Plan assets permitted by this exemption. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent fiduciary with respect to a Plan must act prudently with respect to: (1) The decision to enter into an arrangement described

section III(g), with respect to such Plan; and

(d) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 5% of the total amount of the plan's assets managed by such investment manager.

Section II—Prospective Relief

Effective after June 10, 2003, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Plan in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) Prior to: (i) an investment of Plan assets in bank deposits; or (ii) the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(A) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank AG or its subsidiaries or branches; and

(B) A description of the applicable sovereign regulatory authority/ authorities governing the activities of Deutsche Bank AG;

(d) A fiduciary independent of Deutsche Bank AG and its affiliates (other than with respect to a Bank Plan) receives, upon request, copies of the most recent financial statement of Deutsche Bank AG and/or its subsidiaries;

(e) Immediately after any material adverse change in the financial condition of Deutsche Bank AG, Deutsche Bank AG will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary;

(f) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 1% of the total amount of the plan's assets managed by such investment manager;

(g) Deutsche Bank AG–

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank AG; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(h) The investment is:

(i) Made by a Bank Plan and authorized by a Bank Plan fiduciary; or

(ii) Made by a Client Plan and authorized by an independent fiduciary with respect to such Client Plan. Notwithstanding (h)(i) and (h)(ii) above, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank AG does not receive any response from such Plan pursuant to two written requests by Deutsche Bank AG (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) with respect to Plans that invest in the deposits of Deutsche Bank AG prior to June 10, 2003, the first request occurs not later than July 25, 2003, and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank AG following June 10, 2003, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter;

(i) Investments in the deposits of a subsidiary of Deutsche Bank AG will be backed by the full faith and credit of Deutsche Bank AG;

(j) Short-term debt issued by Deutsche Bank AG is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution;

(k) Deutsche Bank AG maintains or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described below in paragraph (l) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank AG, the records are lost or destroyed prior to the end of the six-year period; and

(l)(1) Except as provided in paragraph (2) of this section (l) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k) are unconditionally available at their customary location in the United States for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (l)(1)(ii) and (iii) shall be authorized to examine trade secrets of Deutsche Bank AG, or commercial or financial information that is privileged or confidential.

Section III—Definitions

(a) The term ''bank'' means a bank supervised by the United States, a state, or a sovereign government.

(b) An ''affiliate'' of a person includes:

(1) Any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

herein; and (2) the negotiation of the terms of such an arrangement, including, among other things, the specific terms by which Plan assets will be invested in the deposits of Deutsche Bank AG. The Department further emphasizes that it expects plan fiduciaries, prior to allowing or authorizing the transactions described herein, to fully understand the benefits and risks associated with such transactions, following disclosure by Deutsche Bank AG of all relevant information. In addition, the Department notes that such plan fiduciaries must periodically monitor, and have the ability to so monitor, the services provided by Deutsche Bank AG.

(d) A ''Client Plan'' refers to an employee benefit plan as described in section 3(3) with respect to which Deutsche Bank AG acts as a trustee or custodian.

(e) A ''Bank Plan'' means a plan sponsored or maintained by: (1) Deutsche Bank AG or any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank AG or; (2) any entity in which Deutsche Bank AG holds more than a ten percent equity interest.

(f) A ''reasonable'' rate of interest means a rate of interest determinable by reference to short-term rates available to other customers of the bank, those offered by other banks, those available from money market funds, those applicable to short-term instruments such as repurchase agreements, or by reference to a benchmark such as sovereign short term debt (*e.g.,* in the U.S., treasury bills), all in the jurisdiction where the rate is being evaluated. The requirement that an interest rate be ''reasonable'' does not preclude the payment of no interest in situations where the deposit is with a branch or subsidiary of Deutsche Bank AG that acts as a local subcustodian and no interest is paid to similarly situated custody clients of the global custodian so long as, prior any investment in deposits that pays no interest, Deutsche Bank AG discloses to the appropriate Plan fiduciary that no interest may be paid with respect to an arrangement described above. Notwithstanding the foregoing, no interest may be paid if local law is changed to preclude the payment of interest, and Deutsche Bank AG discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

(g) An ''independent fiduciary'' means a fiduciary independent of Deutsche Bank AG and its affiliates who has the authority to make the investments described herein, or to instruct the trustee or other fiduciary with respect to such investments, and who has no interest in the transaction which may affect the exercise of such authorizing fiduciary's best judgment as a fiduciary so as to cause such authorization to constitute an act described in section 406(b) of the Act.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 3, 2003, at 68 FR 10035.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Deutsche Bank AG (Deutsche Bank), located in Germany, with Affiliates in New York, New York and other locations.

[Prohibited Transaction Exemption 2003–12; Exemption Application Number D–11055]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 11, 2001, to the following foreign exchange transactions between Deutsche Bank or a foreign affiliate thereof that is a bank or broker-dealer (collectively, DBAG), and an employee benefit plan with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section II below are met:

(1) An income item conversion; or

(2) A *de minimis* purchase or sale transaction.

Section II. Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by DBAG in comparable arm's-length foreign exchange transactions involving unrelated parties.

(c) DBAG does not have any discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investment of those assets.

(d) DBAG maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for DBAG knows that he or she is dealing with a plan.

(e) The covered transaction is performed under a written authorization executed in advance by a fiduciary of the plan whose assets are involved in the transaction, which plan fiduciary is independent of DBAG. The written authorization must specify:

(1) The identities of the currencies in which covered transactions may be executed; and

(2) That the authorization may be terminated by either party without penalty on no more than 10 days notice.

(f)(1) Income item conversions are executed within no more than one business day from the date of receipt of notice by DBAG that such items are good funds, and a foreign custodian which is an affiliate of DBAG, provides such notice to DBAG within ''one business day'' of its receipt of good funds;

(2) *De minimis* purchase and sale transactions are executed within no more than one business day from the date that either DBAG receives notice from a foreign custodian that the proceeds of a sale of foreign securities dominated in foreign currency are good funds, or the direction to acquire foreign currency was received by DBAG and a foreign custodian which is an affiliate of DBAG provides such notice to DBAG within one business day of its receipt of good funds from a sale.

(g)(1) At least once each day, at the time(s) specified in its written policies and procedures, DBAG establishes either a rate of exchange or a range of rates to be used for income item conversions and *de minimis* purchase and sale transactions covered by this exemption.

(2) Income item conversions are executed at the next scheduled time for conversions following receipt of notice by DBAG from the foreign custodian that such funds are good funds. If it is the policy of DBAG to aggregate small amounts of foreign currency until a specified minimum threshold amount is received, then the conversion may take place at a later time but in no event more than 24 hours after such receipt of notice.

(3) *De minimis* purchase and sale transactions are executed at the next scheduled time for such transactions following receipt of either notice that the sales proceeds denominated in foreign currency are good funds, or a direction to acquire foreign currency. If it is the policy of DBAG to aggregate small transactions until a specified threshold amount is received, then the execution may take place at a later time but in no event more than 24 hours after receipt of either notice that the sales proceeds have been received by the foreign custodian as good funds, or a direction to acquire foreign currency.

For purposes of this paragraph (g), the range of exchange rates established by DBAG for a particular foreign currency cannot deviate by more than three percent [above or below] the interbank bid and asked rates as displayed on Reuters or another nationally recognized independent service in the foreign exchange market (provided that the independent service chosen will be consistently used in determining whether the deviation limitation has been met) for such currency at the time such range or rates is established by DBAG;

(h) Prior to the execution of the authorization referred to in paragraph (e), DBAG provides the independent fiduciary with a copy of DBAG's written policies and procedures regarding the handling of foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions. The policies and procedures must, at a minimum, contain the following information:

(1) Disclosure of the time(s) each day that DBAG will establish the specific rate of exchange or the range of exchange rates for the covered transactions to be executed and the time(s) that such covered transactions will take place. DBAG shall include a description of the methodology that DBAG uses to determine the specific exchange rate or range of exchange rates;

(2) Disclosure that income item conversions and *de minimis* purchase and sale transactions will be executed at the first scheduled transaction time after notice that good funds from an income item conversion or a sale have been received, or a direction to purchase foreign currency has been received. To the extent that DBAG aggregates small amounts of foreign currency until a specified minimum threshold amount is met, a description of this practice and disclosure of the threshold amount; and

(3) A description of the process by which DBAG's foreign exchange policies and procedures for income item conversions and *de minimis* purchase and sale transactions may be amended and disclosed to plans.

(i) DBAG furnishes to the independent fiduciary a written confirmation statement with respect to each covered transaction not more than five business days after execution of the transaction.

(1) With respect to income item conversions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that good funds were received;

(C) Transaction date;

(D) Exchange rate;

(E) Settlement date;

(F) Identity of foreign currency;

(G) Amount of foreign currency sold;

(H) Amount of U.S. dollars or other currency credited to the plan; and

(2) With respect to *de minimis* purchase and sale transactions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that sales proceeds denominated in foreign currency are received as good funds or direction to acquire foreign currency was received;

(C) Transaction date;

(D) Exchange rate;

(E) Settlement date;

(F) Currencies exchanged:

i. Identity of the currency sold;

ii. Amount sold;

iii. Identity of the currency purchased; and

iv. Amount purchased.

(j) DBAG—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(k) DBAG maintains, within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (l) of this section to determine whether the applicable conditions of this exemption have been met, including a record of the specific exchange rate or range of exchange rates DBAG established each day for foreign exchange transactions effected under standing instructions for income item conversions and *de minimis* purchase and sale transactions. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond DBAG's control, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than DBAG shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records, are not maintained by DBAG, or are not made available for examination by DBAG, or its affiliate as required by paragraph (l) of this section.

(l)(1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k) of this section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(2) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine DBAG's trade secrets or commercial or financial information of DBAG, which is privileged or confidential.

Section III. Definitions and General Rules

For purposes of this exemption,

(a) A ''foreign exchange'' transaction means the exchange of the currency of one nation for the currency of another nation.

(b) The term ''standing instruction'' means a written authorization from a plan fiduciary, who is independent of DBAG, to DBAG to effect the transactions specified therein pursuant to the instructions provided in such authorization.

(c)(1) The term ''independent of DBAG'' means a plan fiduciary who is unrelated to, and independent of, DBAG. For purposes of this exemption, a plan fiduciary will be deemed to be unrelated to, and independent of, DBAG if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DBAG and represents that such fiduciary shall advise DBAG if those facts change.

(2) Notwithstanding anything to the contrary in this section III (c), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with DBAG;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from DBAG for his own personal account in connection with any transaction described in this exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DBAG, responsible for the transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in section I. However, if such individual is a director of the plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of DBAG as a directed trustee or custodian and (B) the decision to authorize or terminate authorization for transactions described in section I, then section III(c)(2)(iii) shall not apply.

(3) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(d) The term ''control'' means the power to exercise a controlling influence over the management of policies of a person other than an individual.

(e) An ''income item conversion'' means: (1) The conversion into U.S. dollars of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by DBAG on behalf of the plan from the plan's foreign investment portfolio; or (2) the conversion into any currency as required and specified by the standing instruction of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends, or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by DBAG on behalf of the plan from the plan's foreign investment portfolio, provided that the converted funds are either transferred to an interest bearing account which provides a reasonable rate of interest within 24 hours of the conversion and held therein pending reinvestment by the plan or the bank reinvests such proceeds within 24 hours of the conversion at the direction of the plan.

(f) A ''*de minimis* purchase or sale transaction'' means the purchase or sale of foreign currencies in an amount of no more than 300,000 U.S. dollars or the equivalent thereof in connection with the purchase or sale of foreign securities by a plan.

(g) For purposes of this exemption the term ''employee benefit plan'' refers to a pension plan described in 29 CFR 2510.3–2 and/or a welfare benefit plan described in 29 CFR 2510.3–1.

(h) For purposes of this exemption, the term ''good funds'' means funds immediately available in cash with no sovereign or other governmental impediments or restrictions to the exchange or transfer of such funds.

(i) For purposes of this exemption, the term ''business day'' means a banking day as defined by federal or state banking regulations.

(j) For purposes of this exemption, a ''foreign affiliate'' of Deutsche Bank means any non-U.S. entity that is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Deutsche Bank.

(k) For purposes of this exemption, the term ''bank'' means a foreign affiliate of Deutsche Bank: (1) That is a banking institution supervised and examined by the German banking authorities (currently, the Bundesanstalt fur Finanzdienstleistungsaufsicht (the BAFin), in cooperation with the Deutsche Bundesbank (the Bundesbank)), or is subject to regulation by similar governmental banking authorities located in the same country as such affiliate; and (2) whose activities are monitored and controlled pursuant to the statutory and regulatory standards of German law applicable to the foreign affiliates of Deutsche Bank engaged in banking activities.

(l) For purposes of this exemption, the term ''broker-dealer'' means a foreign affiliate of Deutsche Bank: (1) Engaged in the business of effecting transactions in securities for the account of others, or regularly engaged in the business of buying and selling securities for its own account through a broker or otherwise; and (2) supervised by the German authorities responsible for regulating the activities described in (1) of this paragraph, or subject to regulation by similar governmental authorities located in the country in which such affiliate is located.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on December 30, 2002 at 67 FR 79649.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8544. (This is not a toll-free number.)

Law Offices of Richard D. Gorman Pension & Profit Sharing Plan (the Plan), located in Monterey, California.

[Prohibited Transaction Exemption No. 2003–13; Application No. D–11104]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of unimproved real property (the Property) by the Plan to Mr. Richard Gorman, a trustee of the Plan, and a party in interest with respect to the Plan. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The sale is a one-time cash transaction;

(b) The Plan receives the greater of either: (i) $290,000; or (ii) the fair market value for the Property established at the time of the sale by an independent, qualified appraiser; and

(c) The Plan pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on March 21, 2003, at 68 FR 13964.

FOR FURTHER INFORMATION CONTACT: Khalif I. Ford of the Department at (202) 693–8540. (This is not a toll-free number.)

ACR Homes, Inc. Employee Stock Ownership Plan and Trust (the ESOP), located in Roseville, Minnesota.

[Prohibited Transaction Application 2003–14: Exemption Application No. D–11146]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason

of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale on August 28, 2001 (the Stock Redemption), by the ESOP to the ACR Homes, Inc., the sponsoring employer (the Employer), of 3,600 shares of the Employer's class A common stock (the Shares) for $511,250 in cash; provided that the following conditions were satisfied:

(a) The Stock Redemption was a one-time cash transaction;

(b) The ESOP received the fair market value of the Shares as determined by an independent, qualified appraiser on the date of the Stock Redemption; and

(c) The ESOP paid no commissions or other expenses associated with the Stock Redemption.

EFFECTIVE DATE: This exemption is effective as of August 28, 2001.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 16, 2003, at 68 FR 18686 (the notice).

Written Comments

The Department received one written comment (the Comment) with respect to the notice and no requests for a hearing. The Comment was filed by the attorney for the applicant. The Comment states that the chart contained in Paragraph 2 of the Summary of Facts and Representations in the notice erroneously lists the number of shares owned by Dorothy Nelson (Mrs. Nelson) before the Stock Redemption as 10,400. The correct amount owned by Mrs. Nelson before the Stock Redemption was 10,000 shares.

The Department acknowledges the applicant's correction to the notice, as stated in the Comment. Accordingly, based on the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 5th day of June, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–14594 Filed 6–9–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Secretary of Labors Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 11, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of the Secretary of Labors Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. These awards are presented annually to Federal contractors and non-profit organizations whose activities support the mission of the OFCCP. The recognition of Federal contractors who are in compliance with the OFCCP regulations and who work with community and public interest organizations sends a positive message throughout the U.S. Labor Force and business community.

The Secretary of Labor's Opportunity and EVE award recipients must be Federal contractors covered by Executive Order 11246, as amended; Section 503 of the Rehabilitation Act, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act, as amended.

The Secretary of Labor's Opportunity Award is presented to one contractor each year that has established and instituted comprehensive workforce strategies to ensure equal employment opportunity. The EVE Award is given to those contractors who have demonstrated through programs or activities, exemplary and innovative efforts to create an inclusive American Workforce. The EPIC Award is presented to public interest organizations that have supported equal employment opportunity and linked their efforts with those of the Federal contractors to enhance employment opportunities for those with the least opportunity to join the workforce. Guidelines for the nomination process can be found in Administrative Notice Number 261 dated January 21, 2003.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks approval to collect this information to recognize outstanding Federal contractors and non-profit public interest organizations with exceptional equal opportunity and nondiscrimination programs that support the OFCCP mission.

Type of Review: New Collection.

Agency: Employment Standards Administration.

Title: Secretary of Labors Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards.

OMB Number: 1215-.

Agency Number:

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents/Responses: 80.

Total Annual responses: 80.

Frequency: Annually.

Estimated Total Burden Hours: 95,760.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 4, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–14526 Filed 6–9–03; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petitions for Modification of Mandatory Safety Standards

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 44.9, 44.10, and 44.11; Petitions for Modification of Mandatory Safety Standards.

DATES: Submit comments on or before August 11, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary of Labor (Secretary) to modify the application of a mandatory safety standard. A petition for modification may be granted if the Secretary determines (1) that an alternative method of achieving the results of the standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard, or (2) that the application of the standard will result in a diminution of safety to the miners affected.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

Under 30 CFR 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 CFR 44.10, detailed guidance for filing a petition for modification is provided for the operator of the affected mine or any representative of the miners at that mine. The petition must be in writing, filed with the Assistant Secretary of Labor for Mine Safety and Health, and a copy of the petition served by the filing party (the mine operator or

representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Petitions for Modification of Mandatory Safety Standards.

OMB Number: 1219–0065.

Recordkeeping: Under 30 CFR 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 CFR 44.10 The petition must be in writing, filed with the Assistant Secretary of Labor for Mine Safety and Health, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 158.

Estimated Average Time Per Respondent: 35 hours.

Total Burden Hours: 5,520 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $41.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this fourth day of June, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–14527 Filed 6–9–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of the Financial Disclosure Form, a new Standard Form, that will be used to make personnel security determinations, including whether to grant a security clearance, to allow access to classified information, sensitive areas, and equipment; or to permit assignment to a sensitive national security position. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Financial Disclosure Form.

OMB number: 3095–NEW.

Agency form number: Standard Form NEW.

Type of review: Regular.

Affected public: Business or other for-profit, Federal government.

Estimated number of respondents: 25,897.

Estimated time per response: 2 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 51,794 hours.

Abstract: Executive Order 12958 as amended, ''Classified National Security Information'' authorizes the Information Security Oversight Office (ISOO) to develop standard forms that promote the implementation of the Government's security classification program. This is a continuing authority, which was first given to ISOO with the issuance of the predecessor executive order on security classification, Executive Order 12356. Prior to E.O. 12356, executive branch agencies developed their own forms to address security needs. For example, each agency had a different cover sheet for each of the classification levels. With the issuance of Standard Forms SF 703, 704 and 705 in 1985, executive branch agencies began using the same standard form to serve as a shield to protect classified information at the Top Secret, Secret and Confidential levels. These forms promoted and continue to promote consistency and uniformity in the protection of classified information. An individual can go from one agency to another and know that an orange cover sheet has Top Secret information attached to it (SF 703).

In the wake of the Aldrich Ames espionage case, Congress passed

legislation in 1994 (50 U.S.C. 436) that authorized investigative agencies to obtain financial information about Government employees with access to classified information who are suspected of compromising classified information. To facilitate investigations and as a condition for obtaining a security clearance, Executive Order 12968, ''Access to Classified Information,'' issued on August 4, 1995, required: (1) All employees granted access to classified information to provide written consent (SF 713) for access to certain financial records under specified conditions; and (2) that employees who have regular access to particularly sensitive classified information submit, as a condition of maintaining access to such information, relevant information concerning their financial condition as may be necessary to ensure appropriate security. The Security Policy Board, created in 1993 by Presidential Directive to consolidate security policy groups and abolished in February, 2001 by National Security Presidential Directive Number 1, originally developed a draft consent form and a draft financial disclosure form after lengthy meetings/negotiations with the major classifying agencies.

Under the new policy coordinating structure created by National Security Presidential Directive 1 of April 21, 2001, several policy coordinating committees (PCCs) were established to serve as the main ''day-to-day'' forum for interagency coordination of national security policy. The PCC on Records Access and Information Security is the PCC that handles security classification and personnel security matters. It is this PCC that resurrected the Financial Disclosure Form to solicit views from its members and to obtain final approval. The members of this PCC include NSC as Chairman, NSC as Executive Secretary, Department of Defense, Director Central Intelligence Agency, Department of State, Department of Justice, Department of Energy, Office of Management and Budget, Information Security Oversight Office and an industry observer. The Director of Records Access at the NSC chairs this committee. All members unanimously endorsed the Financial Disclosure Form now submitted for processing as a Standard Form.

The Financial Disclosure Form will contain information that will be used to make personnel security determinations, including whether to grant a security clearance; to allow access to classified information, sensitive areas, and equipment; or to permit assignment to sensitive national security positions. The data may later be used as a part of a review process to evaluate continued eligibility for access to classified information or as evidence in legal proceedings.

The Financial Disclosure Form will help law enforcement obtain pertinent information in the preliminary stages of potential espionage and counter terrorism cases. The PCC on Records Access and Information Security forwarded the current form to the Information Security Oversight Office for issuance. The Office of Management and Budget is aware of the form.

Dated: June 2, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–14530 Filed 6–9–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 25, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in

the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–03–8, 2 items, 2 temporary items). Appointment records of Air Force transportation officers and agents, including appointment orders, requests for appointments, records relating to qualifications of potential appointees, and files relating to termination of orders. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of Defense, National Imagery and Mapping Agency (N1–537–03–4, 19 items, 19 temporary items). Records of the Office of Inspector General relating to intelligence oversight inspections, audit and investigative cases, relationships with external auditing agencies, procedures, and planning. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Defense, National Imagery and Mapping Agency N1–537–03–15, 5 items, 4 temporary items). Records relating to forms management and extra copies of policy documents. Proposed for permanent retention are recordkeeping copies of the master file of all internal policy documents. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Energy, Agency-wide (N1–434–03–1, 5 items, 5 temporary items). Files relating to security clearance matters and access authorizations. Included are files documenting the processing of individuals for access authorizations, records relating to the revocation or denial of access, and indexes to personnel security records.

5. Department of Health and Human Services, Food and Drug Administration (N1–88–03–2, 12 items, 12 temporary items). Inputs, outputs, master files, system documentation, and system backups associated with an electronic information system relating to the certification of performance requirements for x-ray systems. Included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to paper records and scanned images.

6. Department of the Treasury, Bureau of the Public Debt (N1–53–03–3, 57 items, 57 temporary items.) Records relating to savings bond and marketable securities. Included are such records as savings and marketable securities accounting records, administrative records, agency qualification agreements, audit reports, consignment agent files, detached requests for payment, EasySaver enrollment forms, reissue requests for current income savings bonds, savings bond issue records, tenders and related documents, and statistical and management reports. Also included are electronic copies of documents created using electronic mail and word processing.

7. Administrative Office of the U.S. Courts, Agency-wide (N1–116–03–5, 6 items, 6 temporary items). Records relating to heritage celebrations, the resolution of financial irregularities, and work measurement studies. Also included are electronic copies of documents created using electronic mail and word processing.

8. Central Intelligence Agency, Directorate of Science and Technology (N1–263–03–1, 2 items, 2 temporary items). Open source publications, including such materials as trade brochures, academic theses, conference proceedings, and documents originated by other agencies. These documents are collected in response to requirements levied by the Intelligence Community. Also included is an electronic index to the publications.

9. National Archives and Records Administration, Electronic and Special Media Records Services Division (N2–185–03–1, 1 item, 1 temporary item). Panama Canal Commission ship data bank system, which contains information concerning ships that have passed through the canal. Records were accessioned into the National Archives, but cannot be copied due to technical problems.

10. National Science Foundation, Office of Inspector General (N1–307–03–2, 12 items, 8 temporary items). Investigative files lacking historical value, files covering allegations that do not result in the creation of a formal investigative file, audit and review files without significant historical value, audit work papers, work papers and other background materials relating to policies and procedures, and other administrative files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as investigative cases and audit reports that have significant historical value, policies and procedures, and semiannual reports.

11. Office of Personnel Management, Federal Executive Boards (N1–414–03–1, 24 items, 12 temporary items). Administrative records such as working papers, meeting logistics records, feeder reports, and routine committee files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as organization and functions files, directives, Executive Directors' correspondence, meeting minutes, annual reports, and publications.

12. United States International Trade Commission, Office of the Secretary (N1–81–03–1, 12 items, 11 temporary items). Import Injury Investigation Case Files, Research Program Case Files, and Intellectual Property-Based Import Investigations. Recordkeeping copies of these files created after 1995 are maintained in a centralized electronic document repository. Also proposed for disposal are Action Jackets that do not pertain to rulemaking. Recordkeeping copies of Action Jackets that relate to rulemaking are proposed for permanent retention.

Dated: June 3, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–14529 Filed 6–9–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Music: June 30–July 2, 2003, Room 716 (Creativity category—Panel A). A portion of this meeting, from 1 p.m. to 2 p.m. on July 2nd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 30th and July 1st, and from 9 a.m. to 1 p.m. and 2 p.m. to 2:30 p.m. on July 2nd, will be closed.

Music: July 2, 2003, Room 714 (Services to Arts Organizations and Artists category). This meeting will be closed.

Music: July 14–18, 2003, Room 714 (Creativity category—Panel B). A portion of this meeting, from 9 a.m. to 10:30 a.m. on July 18th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on July 14th–17th, and from 10:30 a.m. to 3 p.m. on July 18th, will be closed.

Theater: July 14–18, 2003, Room 730 (Creativity category). A portion of this meeting, from 3 p.m. to 4:30 p.m. on July 17th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on July 14th–16th, from 9:30 a.m. to 3 p.m. and 4:30 p.m. to 6:30 p.m. on July 17th, and from 9:30 a.m. to 5 p.m. on July 18th, will be closed.

The closed meetings and portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202)682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: June 3, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–14568 Filed 6–9–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; System of Records

AGENCY: National Labor Relations Board.

ACTION: Notice of revised Privacy Act System of Records.

SUMMARY: The National Labor Relations Board (NLRB) Office of Inspector General (OIG) is revising its Privacy Act System of Records, NLRB 18, Office of Inspector General Investigative Files, to include as routine uses the disclosure of information (1) to the public when a legitimate public interest exists; (2) to the public when it is necessary for the protection from imminent threat to life or property; (3) to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency (PCIE/ECIE) for the purpose of accurate reporting to the President and Congress on the activities of the Inspectors General; (4) to members of the PCIE/ECIE, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for investigative qualitative assessment review. The PCIE/ECIE is establishing a peer review process to ensure that adequate internal safeguards and management procedures continue to exist. The objectives of the review are to assess whether adequate internal safeguards and management procedures are met, foster high-quality investigations and investigative processes, ensure that the highest levels of professionalism are maintained, and promote consistency in investigative standards and practices within the Inspector General investigative community.

The revision also includes the addition of routine uses to allow the disclosure of information to the Agency's legal representative; other Federal agencies in response to their requests in connection with background investigations; State and local bar associations for disciplinary proceeding and inquiries; the Office of Government Ethics for any purpose consistent with that office's mission; in association with the collection of debt, Program Fraud Civil Remedies Act litigation; and to the Office of Management and Budget when seeking advice regarding the Agency's obligations under the Privacy Act.

EFFECTIVE DATE: The changes to this System of Records will become effective without further notice 30 days from the date of this publication (July 10, 2003), unless comments are received on or before that date which result in further modifications.

ADDRESSES: Written comments regarding proposed revisions to the NLRB Privacy Act Systems of Records, NLRB–18 may be submitted to the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Suite 11610, Washington, DC 20570. Copies of all comments received will be available for inspection between 8:30 a.m. and 5 p.m. in Room 11600.

FOR FURTHER INFORMATION CONTACT: David P. Berry, Counsel to the Inspector General, Office of Inspector General, National Labor Relations Board, 1099 14th Street, NW., Suite 9820, Washington, DC 20570, (202) 273–1960.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish their amended systems in the **Federal Register** when there is a revision, change, or addition. NLRB is amending the Routine Uses of System of Records, NLRB 18 Office of Inspector General Investigative files previously published at 57 FR 11523 (Apr. 3, 1992).

The Routine Use Notice is being amended to specifically allow for a legitimate public interest the disclosure of names of indicted or convicted individuals in the Office of Inspector General (OIG) Semiannual Report, monthly reports, and press releases or other forms of communication with the media. NLRB's objective in allowing disclosure of names is to enhance the deterrence of similar crimes against the Agency. In addition, the amended routine uses would allow the disclosure of information to the PCIE/ECIE for the preparation of reports to the President and Congress on the activities of the Inspectors General. Finally, the amendments would allow the disclosure of information to members of the PCIE/ECIE, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of investigative qualitative assessment reviews to ensure adequate internal safeguards and management procedures are maintained.

The revision also includes the addition of routine uses to allow the disclosure of information to the Agency's legal representative; other Federal agencies in response to their requests in connection with background

investigations; State and local bar associations for disciplinary proceeding and inquiries; the Office of Government Ethics for any purpose consistent with that office's mission; in association with the collection of debt, Program Fraud Civil Remedies Act litigation; and to the Office of Management and Budget when seeking advice regarding the Agency's obligations under the Privacy Act.

The notice contains minor typographical changes. Several data elements have also been updated and clarified: NLRB 18, Office of Inspector General Investigative Files, safeguards, retention and disposal, system manager(s) and address, and record source categories.

System Name:

Office of Inspector General Investigative Files—NLRB 18.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

These records may be disclosed as a routine use to other agencies, offices, establishments, and authorities, whether Federal, State, or local, (including State or local bar associations and other professional, regulatory, or disciplinary bodies) authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order pursuant thereto.

These records may be disclosed, as a routine use, to the Agency's legal representative, to include the Department of Justice and other outside counsel, where the Agency is a party in litigation or has an interest in litigation when either (a) NLRB, or any component thereof; (b) any employee of NLRB in his or her official capacity; (c) any employee of NLRB in his or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee; or (d) the United States, where NLRB determines that litigation is likely to affect NLRB or any of its components, is a party to litigation or has an interest in such litigation, and NLRB determines that the use of such records by the Department of Justice is relevant and necessary to litigation; provided however, that in each case, NLRB determines that disclosures to the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

These records may routinely be disclosed to other Federal agencies, in response to their requests in connection with the conduct of background checks. Disclosure will be made only to the extent that the information is relevant and necessary to the requesting agencies' function.

These records may be disclosed, as a routine use, to the Office of Government Ethics for any purpose consistent with that office's mission, including the compilation of statistical data.

These records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718. These records may be disclosed, as a routine use, to agency personnel responsible for bringing Program Fraud Civil Remedies Act litigation, to the persons constituting the tribunal hearing such litigation or any appeals therefrom, and to counsel for the defendant party in any such litigation.

These records may be disclosed, as a routine use, for a legitimate public interest to the news media and public to provide information on events in the criminal process following an indictment, the filing of formal charges by another means, or a conviction; or when necessary for protection from imminent threat to life or property. These records may be disclosed, as a routine use, to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General. These records may be disclosed, as a routine use, to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of NLRB OIG to ensure that adequate internal safeguards and management procedures are maintained.

These records may be disclosed, as a routine use, to the Office of Management and Budget in order to obtain that office's advice regarding the NLRB's obligations under the Privacy Act.

Dated: June 4, 2003.

By Direction of the Board.

Lester A. Heltzer,

Acting Executive Secretary, National Labor Relations Board.

NLRB 18

SYSTEM NAME:

Office of Inspector General Investigative Files.

SYSTEM LOCATION:

Office of Inspector General, National Labor Relations Board, 1099 14th Street, NW., Suite 9820, Washington, DC 20570, (202) 273–1960.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subject individuals include, but are not limited to, current and former employees; contractors, subcontractors, their agents, or employees; and others whose actions affect the NLRB, its programs, and operations.

CATEGORIES OF THE RECORDS IN THE SYSTEM:

All correspondence relevant to the investigation; all internal staff memoranda; copies of all subpoenas issued during the investigation; affidavits, statements from witnesses, and transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; working papers of the staff; other documents and records relating to the investigations, and records relating to ''Hotline'' complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, as amended, 5 U.S.C. app. at 1184 (1988); 5 U.S.C. 552a.

PURPOSE(S):

These records are used by the Inspector General's Office in the investigation of programs and operations of the National Labor Relations Board pursuant to the Inspector General Act Amendments of 1988, 5 U.S.C. app. at 1184 (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Other agencies, offices, establishments, and authorities, whether Federal, State, or local, (including State or local bar associations and other professional, regulatory, or disciplinary bodies) authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether

criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order pursuant thereto.

Any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

Independent auditors or other private firms with which the Office of Inspector General has contracted to carry out an independent audit or noncriminal investigation, or to analyze, collate, aggregate, or otherwise refine data collected in the system of records. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, when the NLRB determines it is relevant and necessary to the litigation.

A court or other adjudicative body before which the NLRB is authorized to appear, when either (a) the NLRB, or any component thereof, (b) any employee of the NLRB in his or her official capacity, (c) any employee of the NLRB in his or her individual capacity, where the NLRB has agreed to represent the employee, or (d) the United States, where the NLRB determines that litigation is likely to affect the NLRB or any of it components, is a party to litigation or has interest in such litigation, and the NLRB determines that disclosure of the records to a court or other adjudicative body is relevant, necessary, and compatible with the purpose for which the records were collected.

The Department of Justice for use in litigation when either (a) the NLRB, or any component thereof, (b) any employee of the NLRB in his or her official capacity, (c) any employee of the NLRB in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or (d) the United States, where the NLRB determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the NLRB determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

These records may be disclosed, as a routine use, to the Agency's legal representative, to include the Department of Justice and other outside counsel, where the Agency is a party in litigation or has an interest in litigation when either (a) NLRB, or any component thereof; (b) Any employee of NLRB in his or her official capacity; (c) Any employee of NLRB in her or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee; or (d) The United States, where NLRB determines that litigation is likely to affect NLRB or any of its components, is a party to litigation or has an interest in such litigation, and NLRB determines that the use of such records by the Department of Justice is relevant and necessary to litigation; provided however, that in each case, NLRB determines that disclosures of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

These records may routinely be disclosed to other Federal agencies, in response to their requests in connection with the conduct of background checks. Disclosure will be made only to the extent that the information is relevant and necessary to the requesting agencies' function.

These records may be disclosed, as a routine use, to the Office of Government Ethics for any purpose consistent with that office's mission, including the compilation of statistical data.

These records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

These records may be disclosed, as a routine use, to agency personnel responsible for bringing Program Fraud Civil Remedies Act litigation, to the persons constituting the tribunal hearing such litigation or any appeals therefrom, and to counsel for the defendant party in any such litigation.

A member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of an individual about whom the record is maintained. In such cases, the member has no greater right to access to the record than does the individual.

These records may be disclosed, as a routine use, for a legitimate public interest to the news media and public to provide information on events in the criminal process following an indictment, the filing of formal charges by another means, or a conviction; or when necessary for protection from imminent threat to life or property.

These records may be disclosed, as a routine use, to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General.

These records may be disclosed, as a routine use, to members of the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of NLRB OIG to ensure that adequate internal safeguards and management procedures are maintained.

These records may be disclosed, as a routine use, to the Office of Management and Budget in order to obtain that office's advice regarding the NLRB's obligations under the Privacy Act.

The Department of Justice for the purpose of obtaining its advice in the event that the NLRB concludes it is desirable or necessary in determining whether particular records are required to be disclosed under the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Office of Inspector General Investigative Files consists of paper records maintained in files, records on computer disks and diskettes, and records on computer tapes.

RETRIEVABILITY:

The records are retrievable by case number and individual name.

SAFEGUARDS:

These records are only available to those persons whose official duties require such access. The records are kept in a limited access area during on duty hours. During off-duty hours they are kept inside locked offices, in locked file cabinets, or in safes. Computer records can be accessed only through use of confidential procedures and passwords.

RETENTION AND DISPOSAL:

As prescribed in NLRB Records Schedule, Job Number N1–025–01–1, OIG Investigative Files are generally destroyed 10 years after a case is closed. Cases that are unusually significant for documenting major violations of criminal law or ethical standards are offered to the National Archives for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Inspector General, National Labor Relations Board, 1099 14th Street, NW., Suite 9820, Washington, DC 20570, (202) 273–1960.

NOTIFICATION PROCEDURE:

The OIG Investigative Files are exempt pursuant to 5 U.S.C. 552a (j)(2) and (k)(2); however, consideration will be given to requests addressed to the system manager. The request should include the individual's name and date of birth.

RECORD ACCESS PROCEDURE:

See ''Notification Procedures'' above. Requestors should specify the record contents being sought. Under section 7(b) of the Inspector General Act of 1978 (Pub. L. 95–452), the identity of an employee or other personal source who makes a complaint or provides information to the Office of the Inspector General (OIG) via the OIG ''Hotline'' is exempt from disclosure unless the Inspector General determines such disclosure is unavoidable during the course of an investigation.

CONTESTING RECORD PROCEDURES:

Contact the system manager at the above address, and identify the record, specify the information to be contested, and the corrective action sought with supporting justification.

RECORD SOURCE CATEGORIES:

The Office of Inspector General collects information from a wide variety of sources, including information from the NLRB and other Federal, state, and local agencies, witnesses, complainants and other nongovernmental sources.

SYSTEMS EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records, to the extent it consists of investigatory material compiled for criminal law enforcement purposes, is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2), this system of records, to the extent it consists of investigatory material compiled for law enforcement purposes other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2), is exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

These exemptions are contained in 29 CFR part 102.

[FR Doc. 03–14479 Filed 6–9–03; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of the Advisory Committee for Physical Anthropology and Archaeology Data Sharing is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Physical Anthropology and Archaeology Data Sharing (#16587).

Purpose: Advise the National Science Foundation (NSF) on matters concerning sharing of primary data within physical anthropology and archaeology. Recognizing unique characteristics of such information, it will assist Foundation officials in producing guidelines to implement NSF's data sharing policies. It will engage in discussion and prepare a report with recommendations.

Responsible NSF Official: Mark Weiss, Program Director, Physical Anthropology, National Science Foundation, 4201 Wilson Boulevard, Room 995, Arlington, VA 22230. Telephone: 703/292–8740.

Dated: June 5, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–14597 Filed 6–9–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of June 9, 16, 23, 30, July 7, 14, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 9, 2003
Wednesday, June 11, 2003
10:30 a.m. All Employees Meeting (Public Meeting).
1:30 p.m. All Employees Meeting (Public Meeting).
Friday, June 13, 2003
8:30 a.m. Discussion of Management Issues (Closed—Ex. 2).

Week of June 16, 2003—Tentative
There are no meetings scheduled for the Week of June 16, 2003

Week of June 23, 2003—Tentative
There are no meetings scheduled for the Week of June 23, 2003

Week of June 30, 2003—Tentative
Tuesday, July 1, 2003
10 a.m. Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1)

Week of July 7, 2003—Tentative
There are no meetings scheduled for the Week of July 7, 2003

Week of July 14, 2003—Tentative
There are no meetings scheduled for the Week of July 14, 2003

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information; David Louis Gamberoni (301) 415–1651.

Additional Information: By a vote of 4–0 on May 15, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); Intervenor's Request for Suspension of Proceeding Pending Decision on Rulemaking Petition'' be held on May 16, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: June 5, 2003.

D. L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–14687 Filed 6–6–03; 10:12 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, May 16, 2003, through May 29, 2003. The last biweekly notice was published on May 27, 2003 (68 FR 28843).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 10, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish

those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: January 29, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.6.5.1, ''Drywell,'' Surveillance Requirement 3.6.5.1.3 to delay the performance of the next drywell bypass leakage test to no later than November 23, 2008. The proposed amendment would also revise TS 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to remove an exception which is no longer applicable and to reflect a one-time deferral of the primary containment Type A test to no later than November 23, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will revise TS 3.6.5.1, ''Drywell,'' Surveillance Requirement SR 3.6.5.1.3 to delay the performance of the next drywell bypass leakage rate test (DBLRT) to no later than November 23, 2008. This request will also revise CPS [Clinton Power Station] TS 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time deferral of the primary containment Type A test to no later than November 23, 2008. The current Type A test interval of 10 years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test. In addition, AmerGen is proposing to delete from TS 5.5.13 the expired exception that allowed deferral of the leakage rate testing of the primary containment penetration 1MC–042 until the seventh refueling outage.

The drywell houses the reactor pressure vessel, the reactor coolant recirculating loops, and branch connections of the Reactor Coolant System (RCS), which have isolation valves at the primary containment boundary. The function of the drywell is to maintain a pressure boundary that channels steam from a Loss of Coolant Accident (LOCA) to the suppression pool, where it is condensed. Air forced from the drywell is released into the primary containment through the suppression pool. The suppression pool is a concentric open container of water with a stainless steel liner that is located at the bottom of the primary containment. The suppression pool is designed to absorb the decay heat and sensible heat released during a reactor blowdown from safety/relief valve (SRV) discharges or from a LOCA.

The function of the Mark III containment is to isolate and contain fission products released from the RCS following a design basis LOCA and to confine the postulated release of radioactive material to within limits. The test interval associated with the drywell bypass leakage and Type A testing is not a precursor of any accident previously evaluated. Therefore, extending these test intervals on a one-time basis from 10 years to 15 years does not result in an increase in the probability of occurrence of an accident. The successful performance history of the drywell bypass leakage and Type A testing provides assurance that the CPS drywell and primary containment will not exceed allowable leakage rate values specified in the TS and will continue to perform its design function following an accident. The risk assessment of the proposed changes has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes for a one-time extension of the drywell bypass leakage and Type A tests and deletion of an expired local leak rate test exception for CPS, will not affect the control parameters governing unit

operation or the response of plant equipment to transient and accident conditions. The proposed changes do not introduce any new equipment or modes of system operation. No installed equipment will be operated in a new or different manner. As such, no new failure mechanisms are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

CPS is a General Electric BWR/6 plant with a Mark III containment system. The Mark III containment design is a single-barrier pressure containment and a multi-barrier fission containment system consisting of the drywell and primary containment. The drywell houses the reactor pressure vessel, the reactor coolant recirculating loops, and branch connections of the RCS, which have isolation valves at the primary containment boundary. The function of the drywell is to maintain a pressure boundary that channels steam from a LOCA to the suppression pool, where it is condensed. The suppression pool is an annular pool of demineralized water between the drywell and the outer primary containment boundary. This pool covers the horizontal vent openings in the drywell to maintain a water seal between the drywell interior and the remainder of the containment volume. The primary containment consists of a steel-lined, reinforced concrete vessel, which surrounds the RCS and provides an essentially leak-tight barrier against an uncontrolled release of radioactive material to the environment. Additionally, this structure provides shielding from the fission products that may be present in the primary containment atmosphere following accident conditions. The primary containment is penetrated by access, piping and electrical penetrations.

The integrity of the drywell is periodically verified by performance of the DBLRT. This test ensures that the measured drywell bypass leakage is bounded by the safety analysis assumptions. The drywell integrity is further verified by a number of additional tests, including drywell airlock door seal leakage tests, overall drywell airlock leakage tests and periodical visual inspections of exposed accessible interior and exterior drywell surfaces. Additional confidence that significant degradation in the drywell leaktightness has not developed is provided by the periodic qualitative assessment of drywell performance.

The integrity of the primary containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak-tight integrity of the primary containment is verified by a Type A integrated leak rate test (ILRT) as required by 10 CFR 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' These tests are performed to verify the essentially leak-tight characteristics of the primary containment at the design basis accident pressure. The proposed changes for a one-time extension of the drywell bypass leakage and Type A tests and deletion of an expired local leak rate test exception for CPS, do not effect the method for drywell or containment testing or the test acceptance criteria.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: April 25, 2003.

Description of amendments request: The amendments would revise Specification 5.3.1 in Section 5.3, ''Unit Staff Qualifications,'' of the Technical Specifications, and add a new Specification 5.3.2. Specification 5.3.1 states the qualifications of the unit staff. The revision would state there is an exception for operator license applicants and the new specification would provide the requirements for these applicants. Only the qualifications of operator license applicants are being changed. Because a new specification would be added, the existing Specification 5.3.2 would also be renumbered 5.3.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification (TS) change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program. These changes conform to the current requirements of 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications remain unchanged.

Although licensed operator qualifications and training may have an indirect impact on accidents [involving operator action] previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. Palo Verde's licensed operator training program is accredited by INPO [Institute of Nuclear Power Operations] and is based on a systems approach to training.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program and to conform to the revised 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications remain unchanged.

As noted above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident [involving operator action] from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. [That is to say an accredited license operator training program that is based on a systems approach to training would not introduce a new or different kind of accident.] As previously noted, Palo Verde's licensed operator training program is accredited by INPO and is based on a systems approach to training.

Additionally, the proposed TS change does not affect plant design, hardware, system operation, or procedures. Thus, the proposed amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change is an administrative change to clarify the current requirements applicable to licensed operator qualifications and licensed operator-training program. This change is consistent with the requirements of 10 CFR [Part] 55. The TS qualification requirements for all other unit staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55 [rule] determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, Palo Verde's licensed operator training program is accredited by INPO and is based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, ''Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses,'' that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining an INPO accredited, systems approach based licensed operator training program is equivalent to maintaining [an] NRC approved licensed operator training program which conform[s] with applicable NRC Regulatory Guides or NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining an INPO accredited licensed operator training program.

In addition, the NRC has published NRC Regulatory Issue Summary 2001–01, ''Eligibility of Operator License Applicants,'' dated January 18, 2001, ''to familiarize addressees with the NRC's current guidelines for the qualification and training of reactor operator (RO) and senior operator (SO) license applicants.'' The document again acknowledges that the INPO National Academy for Nuclear Training (NANT) guidelines for education and experience, outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, there is no change in the analysis results and the proposed amendment request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Stephen Dembek.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 10, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.6.E, ''Jet Pump Surveillance Requirements'' and its Bases. Specifically, Notes 1 and 2 would be added to the surveillance to provide clarity for performing the surveillance under the designated condition. The proposed change would also modify the applicability of the surveillance. Additionally, the condition for flow imbalance of the two recirculation loops would be changed from 15% to 10%. A reference in TS 4.11.C.1 to the bases for Specification 3.3.B.5 would also be changed to reference TS Table 3.2.C.1, Note 5.

Basis for proposed no significant hazards consideration determination: As required by title 10 of the Code of Federal Regulations (10 CFR), section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Pilgrim TS 4.6.E imposes more restrictive surveillance requirements in accordance with the Standard Technical Specifications (STS) surveillance requirement 3.4.3.1 to ensure jet pump integrity during startup and run modes. The more restrictive conditions are: the recirculation loops have a flow imbalance of less than 10%, instead of the current 15%, when the pumps are operated at the same speed, and the occurrence of two of three conditions, instead of the simultaneous occurrence of all three conditions currently specified in TS 4.6.E for jet pump integrity.

The proposed more restrictive surveillance requirements ensure safe operation of the plant during startup and run modes. The requirements are not accident precursors. The proposed change that corrects a reference in Surveillance 4.11.C.1 is an administrative change with no impact on safety. These changes do not create accident conditions or increase the probability of previously evaluated accidents. The proposed changes provide additional assurance that the assumptions (*i.e.*, jet pump integrity) are met. Therefore, the probability or the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident [from] any accident previously evaluated?

Response: No.

The proposed changes do not involve a change to the plant design or a new mode of equipment operation. As a result, the proposed changes do not affect parameters or conditions that could contribute to the initiation of any new or different kind of accident. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed surveillance requirements increase the margin of safety by providing additional assurance of jet pump integrity. The proposed change to correctly reference the existing Specification is administrative in nature. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: James W. Clifford.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: March 19, 2003.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.5.3, ''Post Accident Sampling,'' requirements to maintain a Post-Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by an Order for many facilities and were added to, or included in, the TSs for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means, or is of little use in the assessment and mitigation of accident conditions.

The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, ''Elimination of Requirements for a Post Accident Sampling System (PASS).'' The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the

applicability of the following NSHC determination in its application dated March 19, 2003.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) section 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J.M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 8, 2003.

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' to add a note allowing intermittent opening of penetration flow paths, under administrative control, that are isolated to comply with TS ACTIONS and to revise the operability requirement for the Reactor Core Isolation Cooling (RCIC) steam supply line low pressure isolation instrumentation to be consistent with the RCIC system operability requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to adopt TSTF [Technical Specification Task Force]-306 allows primary containment and drywell isolation valves to be unisolated under administrative controls when the associated isolation instrumentation is not operable. The isolation function is an accident mitigating function and is not an initiator of an accident previously evaluated. Administrative controls are required to be in effect when the valves are unisolated so that the penetration can be rapidly isolated when the need [for isolation] is indicated. Therefore the probability or consequences of previously evaluated accidents are not significantly increased.

The proposed change also allows the RCIC turbine steam line low pressure containment isolation instrumentation to be inoperable during low startup operating pressures. These instruments primarily provide automatic isolation when steam line pressure is too low for RCIC turbine operation. The low pressure automatic isolation feature will only be unavailable during the time that the RCIC system is not required to be operable. Therefore the change does not adversely affect the ability of the RCIC system to perform its safety function.

The RCIC steam line low pressure instruments also provide a diverse signal to indicate a possible system break. Even though the low pressure automatic isolation function will not be available for a short period during plant startup, the likelihood of a steam line break during the short period of time is low due to the low operating pressure. In addition, the safety function of providing containment integrity is maintained since there are other diverse leak detection instruments as well as other barriers or isolation capabilities that provide the isolation function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. The TS currently allow[s] containment and drywell isolation valves to be open under administrative controls after being closed to comply with TS ACTIONS for inoperable valves. Extending this allowance to the supporting instrumentation does not introduce any new method of isolation that has not already been evaluated.

Allowing the RCIC turbine steam line low pressure isolation instrumentation to be inoperable during low startup operating pressures does not create the possibility of any new failure modes other than those previously evaluated. No new or different type of equipment will be installed. There are no new failure mechanisms or accident initiators introduced. The low pressure isolation is designed to terminate RCIC turbine operation at low steam pressures for equipment protection. However, this function is not required since the RCIC system is not required to be operable and the same function is accomplished by maintaining the turbine trip/throttle valve closed. The low pressure isolation function will continue to be required when the RCIC system is required to be operable.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The change to allow containment and drywell isolation valves to be unisolated under administrative control does not reduce any margins to safety since the proposed allowance for the supporting isolation instrumentation is no less restrictive than the allowance for the equipment it supports. When the valves are unisolated, the design basis function of containment isolation is maintained by administrative controls.

The change to allow the RCIC turbine steam line low pressure isolation instrumentation to be inoperable during low startup operating pressures does not reduce any margins to safety. The current bounding analysis for a steam line break outside of containment remains bounding for a[n] RCIC steam break at lower pressures. In addition, the current high energy line break evaluations and subcompartment pressurization evaluations remain bounding for the low pressure condition. The design basis functions of containment isolation and containment integrity are maintained by the diverse leak detection instruments as well as other barriers or isolation capabilities that provide the isolation function.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 12, 2003.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to remove the MODE restrictions for performance of Surveillance Requirement (SR) 3.8.4.7 and SR 3.8.4.8 for the Division 3 direct current electrical power subsystem.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The power supplied by the battery is used only as a source of control and motive power for the HPCS [High Pressure Core Spray] system logic, HPCS diesel-generator set control and protection, and other Division 3 related controls. The loads supplied by this system are only loads associated with Division 3 of the Emergency Core Cooling Systems (ECCS).

The battery testing period is within the period of time that the system is scheduled to be out of service for other planned maintenance. The battery test does not increase unavailability of the supported system or represent any change in risk above the current practice of planned system maintenance outages as currently allowed by the TS. Any risk associated with the testing of the Division 3 batteries will be enveloped by the risk management of the system outage.

The out of service condition is controlled and evaluated for safety implications in accordance with 10 CFR 50.65. The HPCS system reliability and availability are monitored and evaluated in relationship to Maintenance Rule goals to ensure that total outage times do not degrade operational safety over time.

Therefore, the proposed change will have no effect on the probability or consequences of any previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves the testing of the HPCS battery on-line while the system is already out of service. The testing will not add additional out of service time. Testing during this period has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. The method of performing the test is not changed. No new accident modes are created by testing during the period when the system is already unavailable. Because the system is already out of service, no safety-related equipment or safety functions are altered as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The battery testing will be performed when the HPCS system is already out of service for maintenance. The out of service condition is controlled and evaluated for safety implications in accordance with 10 CFR 50.65. The batteries are not expected to be unavailable for more than 24 hours. This testing period is within the period of time that the system is scheduled to be out of service for other planned maintenance. Therefore, the battery test does not increase unavailability of the supported system or represent any change in risk above the current practice of planned system maintenance outages as currently allowed by the TS. Timing of this test has no effect on any fission product barrier.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 12, 2003.

Description of amendment request: The proposed amendment would change the Technical Specification (TS) 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' to add a provision to the APPLICABILITY requirement specified in Table 3.3.6.1–1, to eliminate the requirement that the instrumentation for the Residual Heat Removal (RHR) System Isolation

Function on Reactor Vessel Water Level-Low, Level 3, be OPERABLE during certain conditions in MODE 5. Specifically, the proposed change would remove the requirement when the upper containment reactor cavity is at the High Water Level condition specified in TS 3.5.2, ''Emergency Core Cooling Systems (ECCS) Shutdown.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the applicability requirement for the Residual Heat Removal (RHR) System Isolation function of the Primary Containment and Drywell Isolation Instrumentation during MODE 5. The change removes the requirement that the instrumentation be operable during certain conditions during refueling outages. The function is intended to mitigate reactor vessel draindown events. Although draindown events during refueling operations are not specifically evaluated in the Updated Final Safety Analysis Report (UFSAR), these events were evaluated in support of licensing actions for the Alternate Decay Heat Removal System (ADHRS). The probability that a draindown event will be initiated is unrelated to operability requirement for this instrumentation or the associated isolation valves. The evaluation supporting this change determined that mitigating actions can be taken to terminate all postulated draindown events prior to fuel uncovery. As a result, the probability of draindown events causing fuel uncovery and the potential for radiological releases has not significantly increased. The operation or failure of the shutdown cooling suction isolation does not contribute to the occurrence of an accident. No active or passive failure mechanisms that could lead to an accident are affected by the proposed change.

The consequences of a vessel drainage event are not significantly increased by the proposed change. Entergy [Entergy Operations, Inc.] has evaluated various draindown and pumpdown events through the shutdown cooling flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate such events such that adequate core cooling is maintained and a radiological release does not occur.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Entergy has evaluated various draindown events through the shutdown cooling flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate any events such that adequate core cooling is maintained. With the containment refueling cavity flooded, sufficient inventory is available to allow operator action to terminate the inventory loss prior to reaching a low water level in the reactor. Installed equipment is not operated in a new or different manner, no new or different system interactions are created, and no new processes are introduced. No new failures have been created by the proposed changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not introduce any new setpoints at which protective or mitigative actions are initiated. No current setpoints are altered by this change. The design and functioning of the containment and drywell isolation function is also unchanged. The change simply modifies the applicability of the Technical Specifications (TS) by removing the requirement that the RHR system isolation on low reactor vessel level be operable with the upper containment cavity flooded in MODE 5. During MODE 5, the RHR system isolation mitigates postulated draindown events through the RHR system. Entergy has evaluated various draindown events through this flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate such events such that adequate core cooling is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 12, 2003.

Description of amendment request: The proposed amendment would change administrative Technical Specification (TS) 5.5.12 regarding containment integrated leakage rate testing (ILRT) and TS 3.6.5.1.1 regarding drywell bypass leak rate testing (DWBT). The change would allow for a one-time extension of the interval (15 years) for performance of the next ILRT and DWBT.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to TS 5.5.12 adds a one-time extension to the current interval for Type A testing (*i.e.,* the ILRT) and the DWBT. The current interval of ten years, based on past performance, would be extended on a one-time basis to 15-years from the date of the last test. The proposed extension to the Type A test cannot increase the probability of an accident since there are no design or operating changes involved and the test is not an accident initiator. The proposed extension of the test interval does not involve a significant increase in the consequences since research documented in NUREG–1493, ''Performance Based Containment Leak Rate Test Program,'' has found that, generically, fewer than 3% of the potential containment leak paths are not identified by Type B and C testing. A risk evaluation of the interval extension for GGNS [Grand Gulf Nuclear Station, Unit 1] is consistent with these results. In addition, the testing and containment inspections also provide a high degree of assurance that the containment will not degrade in a manner detectable only by a Type A test. Inspections required by the Maintenance Rule (10 CFR 50.65) and by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code are performed to identify containment degradation that could affect leak tightness.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed extension to the interval for the Type A test does not involve any design or operational changes that could lead to a new or different kind of accident from any accidents previously evaluated. The tests are not being modified, but are only being performed after a longer interval. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, the proposed change does not create the possibility of a new or

different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The generic study of the increase in the Type A test interval, NUREG–1493, concluded there is an imperceptible increase in the plant risk associated with extending the test interval out to twenty years. The evaluations done in support of this change confirm that (conclusion). Further, the extended test interval would have a minimal effect on this risk since Type B and C testing detects 97% of potential leakage paths. For the requested change in the GGNS ILRT/DWBT interval, it was determined that the risk contribution of leakage will increase 0.99%. This change is considered very small and does not represent a significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 18, 2003.

Description of amendment request: The proposed amendments would revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change will modify TS Table 3.3.6.1–1, ''Primary Containment Isolation Instrumentation,'' to add the requirement to perform a Channel Check in accordance with Surveillance Requirement (SR) 3.3.6.1.1 to thirteen listed instrument functions. The proposed change is the result of the replacement of existing plant equipment with equipment that has the capability of permitting the performance of a Channel Check with the plant in MODE 1, 2, and 3. The proposed change is consistent with the wording specified in NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6,'' Revision 2, dated June 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in probability or consequences of an accident previously evaluated.

The proposed change to Technical Specifications (TS) Table 3.3.6.1–1, ''Primary Containment Isolation Instrumentation'' will incorporate into the LaSalle County Station (LSCS) TS, wording specified in NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6,'' Revision 2, dated June 2001. The proposed change will modify TS Table 3.3.6.1–1 to add the requirement to perform a Channel Check in accordance with Surveillance Requirement (SR) 3.3.6.1.1 to thirteen listed instrument functions. The performance of TS surveillance testing is not a precursor to any accident previously evaluated. A Channel Check is a monitoring activity that does not represent an accident initiator. Thus, the proposed change does not have any effect on the probability of an accident previously evaluated.

The function of instrumentation listed on TS Table 3.3.6.1–1, in combination with other accident mitigation features, is to limit fission product release during and following postulated Design Basis Accidents (DBAs) to within limits. The surveillance testing specified in TS Table 3.3.6.1–1 will provide assurance that the instrumentation will perform as designed. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The failure modes of the new instrumentation do not give rise to a new or different kind of accident. The proposed change does not introduce any new modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The leak detection system at LaSalle County Station uses ambient or differential temperature increases to detect small primary coolant boundary leaks in the Main Steam Line Tunnel and in various rooms of the Reactor Core Isolation Cooling (RCIC) System and the Reactor Water Cleanup (RWCU) System. The existing thermocouple monitors did not have the capability to allow a Channel Check to be performed without undue risk of initiating an inadvertent system isolation in MODE 1, 2 and 3. Thus, the LSCS TS took exception to the guidance contained in NUREG–1434 and did not specify on TS Table 3.3.6.1–1 that a SR 3.3.6.1.1 Channel Check be performed on the above listed thirteen instrument functions.

The new thermocouple monitors have continuously reading digital displays that permit the performance of a Channel Check with the Unit in MODE 1, 2 and 3 without risk of inadvertent system isolations. The new thermocouple digital displays have been installed on Unit 2 during the January/February 2003 refuel outage and are scheduled to be installed in Unit 1 during the upcoming January 2004 refuel outage. LSCS after the return to service of Unit 2 in March of 2003, verified that the thermocouple digital displays do permit a Channel Check to be successfully performed on the above listed thirteen instrument functions. Therefore, LSCS is requesting that TS Table 3.3.6.1–1 is modified to specify that a SR 3.3.6.1.1 Channel Check be performed in MODE 1, 2 and 3, consistent with the guidance contained in NUREG–1434, Rev. 2.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, Exelon Generation Company concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 18, 2003.

Description of amendment request: The proposed amendments would revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change will modify TS Surveillance Requirement (SR) 3.6.1.3.8 to identify that the specified testing requirement is applicable to reactor instrumentation lines. The proposed change is consistent with the SR wording specified in

NUREG–1433, ''Standard Technical Specifications General Electric Plants, BWR/4,'' Revision 2, dated June 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in probability or consequences of an accident previously evaluated.

The proposed change to the Technical Specifications (TS) Surveillance Requirement (SR) 3.6.1.3.8 will incorporate into the SR, wording specified in NUREG–1433, ''Standard Technical Specifications General Electric Plants, BWR/4,'' Revision 2, dated June 2001. The proposed change will specify that the testing required by SR 3.6.1.3.8 is applicable to reactor instrumentation line excess flow check valves (EFCVs). The performance of TS surveillance testing is not a precursor to any accident previously evaluated. Thus, the proposed change does not have any affect on the probability of an accident previously evaluated.

The function of reactor instrumentation line EFCVs, in combination with other accident mitigation features, is to limit fission product release. The surveillance testing specified in SR 3.6.1.3.8 will provide assurance that the reactor instrumentation line EFCVs will perform as designed. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

NUREG–1433, Rev. 2, provided licensees with the latest NRC recommended content and format for TS. The NUREG–1433 SR for testing EFCVs, SR 3.6.1.3.10, specifies that this testing is associated with reactor instrumentation line EFCVs. The Bases to SR 3.6.1.3.10 in NUREG–1433, Rev. 2, provides a reference to NEDO–32977–A, ''Excess Flow Check Valve Testing Relaxation,'' dated June 2000. NEDO–32977–A was approved for use by licensees in a NRC letter dated March 14, 2000. NEDO–32977–A states the following on the scope of TS testing associated with EFCVs:

EFCVs in instrument lines which connect to the reactor coolant pressure boundary (RCPB) are normally tested during refueling outages to meet Technical Specification requirements. Instrument lines that connect to the containment atmosphere, such as those which measure drywell pressure, or monitor the containment atmosphere or suppression pool water level, are considered extensions of primary containment. A failure of one of these instrument lines during normal operation would not result in the closure of the associated EFCV, since normal operating containment pressure is not sufficient to operate the valve. Such EFCVs will only close with a downstream line break concurrent with a Loss of Coolant Accident (LOCA). Since these conditions are beyond the plant design basis, EFCV closure is not needed and containment atmospheric instrument line EFCVs need not be tested.

The proposed change will incorporate the wording from NUREG–1433 into LaSalle County Station SR 3.6.1.3.8 to limit the scope of TS required testing to EFCVs that are directly connected to the RCPB.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, Exelon Generation Company concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: May 14, 2003.

Description of amendment request: The proposed amendment would modify the Technical Specifications by allowing entry into Mode 3 operation (shutdown with reactor coolant system temperature equal to or greater than 280 degrees Fahrenheit) during the current outage only with neither high pressure injection (HPI) pump capable of taking suction from the low pressure injection system trains when aligned for containment sump recirculation. The HPI system will otherwise be operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows the plant to operate in Mode 3 in support of RCS [reactor coolant system] leakage inspection activities conducted during the ongoing Thirteenth Refueling Outage, utilizing a limited exception to Limiting Condition for Operation (LCO) 3.5.2. This LCO applies in plant operational Modes 1 (Power Operation), 2 (Startup), and 3 (Hot Standby). Under the proposed exception, for entry into Mode 3, both HPI trains would be required to be operable except for the capability of maintaining suction from the containment emergency sump during the recirculation phase.

The ability of the HPI pumps to draw suction from the containment emergency sump (via the LPI [low pressure injection] pumps) is a design feature credited by the Davis-Besse Nuclear Power Station Updated Safety Analysis Report (USAR) for mitigation of various types of loss-of-coolant accidents (LOCAs). Due to the potential susceptibility to damage from debris contained in the pumped fluid, the existing HPI pumps may not be capable of maintaining suction from the containment emergency sump without an increased probability for malfunction. However, the current plant conditions are unique in that decay heat generation rate in the reactor core is extremely low due to the fact that the plant has not operated in more than 14 months and 76 unirradiated fuel assemblies have been loaded into the core, replacing irradiated fuel assemblies.

A LOCA evaluation has been performed considering the current reactor core decay heat generation rate. The evaluation shows that in the unlikely event that a LOCA did occur while operating in Mode 3 under the proposed exception, the accident can be mitigated without crediting HPI flow during the recirculation phase, while crediting additional operator actions not presently credited in the USAR. In addition, a risk evaluation has been performed and shows that the increase in core damage frequency, accounting for human error probability for the additional operator actions, is very small. Also, in the unlikely event that a LOCA did occur while operating in Mode 3 under the proposed exception, radiological consequences would be very small compared to the accident analyses results of record, given the fission product decay over the extended plant shutdown. Therefore, the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no new or different accident initiators introduced by the proposed change to allow the plant to operate n Mode 3 under a limited exception, with the HPI pumps not capable of maintaining suction from the containment emergency sump (via the LPI pumps) during the recirculation phase of a LOCA. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change allows the plant to operate in Mode 3 under a limited exception, with the HPI pumps not capable of maintaining suction from the containment emergency sump (via the LPI pumps) during the recirculation phase of a LOCA. Although the ability of the HPI pumps to draw suction from the containment emergency sump (via the LPI pumps) is a design feature credited by the Davis-Besse Nuclear Power Station USAR for mitigation of various types of LOCAs, an evaluation shows that given the extremely low decay heat generation rate in the reactor core under current plant conditions, and crediting additional operator actions, in the unlikely event that a LOCA did occur while operating in Mode 3 under the proposed exception, the accident can be mitigated without crediting HPI flow during the recirculation phase. In addition, a risk evaluation has been performed and shows that the increase in core damage frequency, accounting for human error probability for the additional operator actions, would be expected to be very small. Also, in the unlikely event that a LOCA did occur while operating in Mode 3 under the proposed exception, radiological consequences would be very small compared to the accident analyses results of record, given the fission product decay over the extended plant shutdown. Accordingly, given that accident severity or consequences will not be significantly increased under the proposed change, a significant reduction in a margin of safety is not involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: May 19, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by removing the designation of safety grade as a description of the flow indication for the motor driven feedwater pump system. The licensee inadvertently requested that the flow indication be designated as safety grade in an amendment request that was approved as license Amendment No. 193.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change corrects a post modification and repair Surveillance Requirement for the Motor Driven Feedwater Pump System. This surveillance is not an initiator to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The Technical Specifications continue to require the MDFP System to be operable and capable of performing its design function. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed correction does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed correction does not result in a significant reduction in the margin of safety. The corrected Surveillance Requirement continues to ensure that the Motor Driven Feedwater Pump System can perform its required function. Thus, appropriate equipment continues to be tested in a manner that provides confidence that the equipment can perform its assumed function. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: May 21, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by relocating to the licensee's Technical Requirements Manual the TS surveillance requirement pertaining to flow balance testing of the emergency core cooling system (ECCS) high pressure injection and low pressure injection subsystems following system modifications that alter subsystem flow characteristics. Also, the proposed amendment would add an ECCS pump operability requirement to the TS consistent with NUREG–1430, Standard Technical Specifications-Babcock and Wilcox Plants, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed surveillance requirement relocation and replacement does not alter the design, operation, or testing of any structure system or component. No previously analyzed accident scenario is changed. Initiating conditions and assumptions remain as previously analyzed. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed surveillance requirement relocation and replacement does not alter the design, operation, or testing of any structure system or component. No new or different accident initiators are created as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed surveillance requirement relocation and replacement does not reduce or adversely affect the capabilities of the ECCS. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin; Docket No. 50–255, Palisades Plant, Van Buren County, Michigan; and Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 30, 2003.

Description of amendment request: The proposed amendments would revise the Kewaunee Nuclear Power Plant Technical Specification (TS) Section 6.3, ''Plant Staff Qualifications,'' Palisades Plant TS Section 5.3, ''Plant Staff Qualifications,'' and Point Beach Nuclear Plant TS 5.3, ''Facility Staff Qualifications,'' to specify an exception to the current TS minimum qualifications. This exception requires licensed operators to meet the education and experience eligibility requirements of the National Academy for Nuclear Training (NANT) (ACAD 00–003), ''Guidelines for Initial Training and Qualification of Licensed Operators,'' dated January 2000.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification (TS) amendments are administrative changes to clarify the current requirements for licensed operator qualifications and licensed operator training program. With these amendments, the TS continue to meet the current requirements of 10 CFR 55.

Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the Nuclear Regulatory Commission (NRC) considered this impact during the rulemaking process, and by issuance of the revised 10 CFR 55 rule, concluded that this impact remains acceptable, as long as the licensed operator training programs are certified to be accredited and are based on a systems approach to training. NMC licensed operator training programs are accredited by the National Nuclear Accrediting Board (NNAB) and are based on a systems approach to training. The proposed TS amendments take credit for the NNAB accreditation of the licensed operator training programs. The TS requirements for all other facility staff qualifications remain unchanged.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS amendments are administrative changes to clarify the current requirements for licensed operator qualifications and licensed operator training programs and to conform to the revised 10 CFR 55.

As discussed above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by issuance of the revised rule, concluded that this impact remains acceptable, as long as licensed operator training programs are certified to be accredited and based on a systems approach to training. As previously noted, NMC licensed operator training programs are accredited by NNAB and are based on a systems approach to training. The proposed TS amendments take credit for the NNAB accreditation of the licensed operator training programs. The TS requirements for all other facility staff qualifications remain unchanged.

Additionally, the proposed TS amendments do not affect plant design, hardware, system operation, or procedures. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS amendments are administrative changes to clarify the current requirements applicable to licensed operator qualifications and licensed operator training programs. With these changes the TS continue to be consistent with the requirements of 10 CFR 55. The TS qualification requirements for all other facility staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by issuance of the revised 10 CFR 55, determined that this impact remains acceptable, when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, NMC licensed operator training programs are accredited by NNAB and are based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, ''Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses,'' that the standards and guidelines applied by the Institute for Nuclear Power Operations in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining NNAB accredited, systems approach based, licensed operator training programs is equivalent to maintaining NRC approved licensed operator training programs, which conform to applicable NRC Regulatory Guides or NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining the NNAB accredited licensed operator training programs.

In addition, the NRC published NRC Regulatory Issue Summary 2001–01, ''Eligibility of Operator License Applicants,'' dated January 18, 2001, ''to familiarize addressees with the NRC's current guidelines for the qualification and training of reactor operator (RO) and senior operator (SO) license applicants.'' This document acknowledges that the National Academy for Nuclear Training guidelines for education and experience outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 22, 2003.

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) operating license and Technical Specifications (TSs) to increase the licensed rated power by 6.0 percent from 1673 megawatts thermal (MWt) to 1772 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Proposed Power Level Changes

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The stretch uprate evaluations performed included performance of accident analyses at uprated power parameters using approved methodologies. Results of these analyses continue to meet the event acceptance criteria. An evaluation of components and systems, including interface and control systems, that could be affected by the change in power level, were performed for the stretch power uprate. Components and systems will continue to function as designed and performance requirements for these systems will continue to be met. Additionally, the proposed change in power level was not found to initiate any accident, and therefore, does not increase the probability of an accident.

Dose consequences were evaluated using the uprated power parameters. Acceptance criteria continue to be met. Therefore, the change also does not increase the consequences of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The change has no adverse effect on any safety related system and does not change the performance or integrity of any safety related system. Additionally, no new safety related equipment is being added or changed as a result of this proposed change in power. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

All analyses supporting the proposed uprated power condition continue to meet the appropriate acceptance criteria. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the changes in rated power level.

Proposed Safety Limit Change

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is an industry accepted safety limit applicable to the KNPP transition to Westinghouse fuel. Therefore, the change does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed change in fuel centerline temperature. The change has no adverse effect on the fuel or the performance or integrity of the fuel. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The proposed safety limit change is backed by technical evaluations performed by Westinghouse and experimental data. The limit is shown to be met as part of reload safety evaluations performed on a cycle specific basis. All applicable analyses supporting the proposed uprated power condition continue to meet the appropriate acceptance criteria. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the change in the safety limit.

Engineered Safety Feature (ESF) Setting Change

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The stretch power uprate evaluations performed included performance of accident analyses. Results of the accident analyses have verified that the acceptance criteria continue to be met. Neither the change in the analytical limit nor the change in the TS setting limit changes how the system functions. Systems will continue to function as designed and system performance criteria will continue to be met. Dose consequences have also been evaluated at uprate conditions and doses remain within the appropriate acceptance criteria. Therefore, the change does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The change has no adverse effect on any safety related system and does not change the performance or integrity of any safety related system. Additionally, no new safety related equipment is being added or changed as a result of the proposed change in the high-high steam flow TS setting limit. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The results of the accident analyses demonstrate the acceptance criteria continue to be met. Systems will continue to function as designed and system performance criteria continue to be met. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the change in the high-high steam flow TS setting limit.

Proposed Containment Cooling Systems Change

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Removal of the LCO [limiting condition for operation] is conservative in that it eliminates relaxation of a design requirement for system redundancy. Deletion of the less conservative condition is more conservative by definition. Maintaining the system in a more conservative condition cannot create new challenges to components and systems that could adversely affect their ability to mitigate accident consequences or diminish the integrity of any fission product barrier. Therefore, the deletion of the LCO does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Maintaining the system in a more conservative condition does not adversely affect any fission product barrier, nor does it alter the safety function of safety related systems, structures, and components depended upon for accident prevention or mitigation. Equipment important to safety will continue to function at its design capacity. No new equipment is being added, replaced, or taken away by the deletion of the LCO. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

Safety analysis acceptance criteria continue to be satisfied for containment heat removal with deletion of this LCO. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the containment cooling systems change.

Proposed Condensate Storage Tank (CST) Changes

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The stretch power uprate project evaluations performed included a review of the SBO [station blackout] event. Results of the evaluation verified that with the increase in the CST [condensate storage tanks] inventory, the evaluation criteria continue to be met. Systems will continue to function as designed and system performance criteria will continue to be met. Additionally, dose consequences have been evaluated for the power uprate and results remain within the appropriate acceptance criteria. Therefore, the changes to CST inventory do not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. The changes have no adverse effect on any safety related system and do not change the performance or integrity of any safety related system. Additionally, no new safety related equipment is being added or changed as a result of the proposed changes in inventory. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The results of the SBO event review have verified that the analysis criteria continue to be met. Systems will continue to function as designed and system performance criteria

continue to be met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the changes in CST inventory.

Proposed Auxiliary Feedwater System Changes

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The LONF accident analyses have demonstrated that the TS required AFW [auxiliary feedwater] trains at the minimum assumed flow capability provide sufficient heat removal capacity to mitigate the LONF accident such that acceptance criteria are satisfied. Single failure criteria are still met, and no physical system changes have been made. Dose consequences have been evaluated for the power uprate and the results remain within the appropriate acceptance criteria. Therefore, the changes to the auxiliary feedwater system technical specifications do not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The change has no adverse effect on any safety related system and does not change the performance or integrity of any safety related system. Additionally, no new safety related equipment is being added or changed as a result of these proposed changes to technical specifications. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The LONF analysis supporting the proposed changes to technical specifications meets the appropriate acceptance criteria. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the auxiliary feedwater system technical specification changes.

Proposed Editorial and Administrative Changes

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The editorial and administrative changes do not affect the analysis performed in support of the stretch power uprate. Therefore, the changes do not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The editorial and administrative changes do not affect the analysis performed in support of the stretch power uprate. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed editorial and administrative changes. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The editorial and administrative changes do not affect the analysis performed in support of the stretch power uprate. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Therefore, there are no significant hazards associated with the editorial changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Esq., Shaw Pittman, Potts & Trowbridge, 2300 N. Street, NW, Washington, DC 20037–1128.

NRC Section Chief: L. Raghavan.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 10, 2003.

Description of amendment request: The amendments would modify the Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Technical Specifications (TSs) Table 3.3–1 ''Condition and Setpoint'' description for permissive P–7 to reflect the new location of pressure transmitters.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Does the proposed change involve a significant increase in probability or consequences of an accident previously evaluated?

The proposed change to replace the words ''impulse chamber'' with ''steam line input'' in the descriptive text associated with the P–7 function of the Reactor Trip System does not involve any physical or design change to the P–7 function. The proposed change renames the turbine inlet pressure to reflect the change in turbine design and the new location where the pressure is sensed. Because the P–7 function is not affected by the proposed amendment request, the changes to the Salem TSs are effectively editorial in nature. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The intent of the proposed change is to revise the description of the P–7 permissive as a result of changes to the design of the turbine. The P–7 permissive function is based on a relationship between first stage turbine inlet pressure and rated thermal power (RTP). Although the pressure sensed at the new location will be slightly higher, the instrument and controls logic, and all design basis functions that rely on the P–7 function, will remain the same. Therefore, the proposed change does not create the possibility of a new or different kind of accident than any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

As previously stated, the proposed change is editorial in nature and maintains the design basis functions associated with the P–7 permissive interlock. This is accomplished because the turbine pressure input to the P–7 function will continue to exhibit a consistent and accurate relationship to RTP following plant modifications. Therefore, because there will be no changes to the input assumptions associated with Salem's accident analysis, the proposed change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 11, 2003.

Description of amendment request: The amendment would modify Surveillance Requirements and Bases regarding response time testing of the Engineered Safeguards System Actuation System (ESFAS) and the Reactor Trip System (RTS).

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change to the Technical Specifications does not result in a condition where the design, material, and construction

standards that were applicable prior to the change are altered. The same RTS and ESFAS instrumentation is being used; the time response allocations/modeling assumptions in the Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the SAR [safety analysis report]. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

The proposed change to remove the footnote from Unit 1 Surveillance Requirement 4.3.2.1.3 is an administrative change and does not result in any increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not alter the performance of the pressure and differential pressure transmitters and switches used in the plant protection systems. All sensors will still have response time verified by test before placing the sensor in operational service and after any maintenance that could affect response time. Changing the method of periodically verifying instrument response for certain sensors (assuring equipment operability) from time response testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the sensor response characteristic. Implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to remove the footnote from Unit 1 Surveillance Requirement 4.3.2.1.3 is an administrative change and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for selected pressure and differential pressure sensors is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will detect any degradation which might significantly affect sensor response time. Based on the above, it is concluded that the proposed license amendment does not result in a reduction in margin with respect to plant safety.

The proposed change to remove the footnote from Unit 1 Surveillance Requirement 4.3.2.1.3 is an administrative change and does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 31, 2003.

Description of amendment request: The proposed change would replace ''Central Power and Light Company (CPL)'' with ''AEP Texas Central Company'' throughout the Operating License of each unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed administrative license amendment only changes the name of one of the owners of STP in the Operating Licenses. This is not an initiator for accidents nor does this action affect the consequences of an accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed administrative license amendment only changes the name of one of the owners of STP in the Operating Licenses. This is not an initiator for accidents. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel and fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed administrative license amendment only changes the name of one of the owners of STP in the Operating Licenses. The proposed action does not affect margin of safety at all. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, STPNOC concludes that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92 and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 30, 2003.

Description of amendment request: The amendment would modify several surveillance requirements (SRs) in Technical Specifications (TSs) 3.8.1 and 3.8.4 on alternating current and direct current sources, respectively, for plant operation. The revised SRs would have notes deleted or modified to allow the SRs to be performed, or partially performed, in reactor modes that are currently not allowed by the TSs. The current SRs are not allowed to be performed in Modes 1 and 2. Several of the current SRs also cannot be performed in Modes 3 and 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design of plant equipment is not being modified by the proposed changes. In addition, the DGs [diesel generators] and their associated emergency loads are accident mitigating features. As such, testing of the DGs themselves is not associated with any potential accident-initiating mechanism. Therefore, there will be no significant impact on any accident probabilities by the approval of the requested changes.

The changes include an increase in the online time that a DG under test will be paralleled to the grid (for SRs 3.8.1.10 and

3.8.1.14). As such, the ability of the tested DG to respond to a design basis accident [(DBA)] could be adversely impacted by the proposed changes. However, the impacts are not considered significant based, in part, on the ability of the remaining DG to mitigate a DBA or provide safe shutdown. With regard to SR 3.8.1.10 and SR 3.8.1.14, experience shows that testing per these SRs typically does not perturb the electrical distribution system. In addition, operating experience and qualitative evaluation of the probability of the DG or bus loads being adversely affected concurrent with or due to a significant grid disturbance, while the DG is being tested, support the conclusion that the proposed changes do not involve any significant increase in the likelihood of a safety-related bus blackout or damage to plant loads.

The SR changes that are consistent with TSTF [Technical Specification Task Force]-283 have been approved by the NRC for submittal by licensees. The on-line tests allowed by the TSTF are only to be performed for the purpose of establishing OPERABILITY [of the DG being tested]. Performance of these SRs during restricted MODES will require an assessment to assure plant safety is maintained or enhanced.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The capability to synchronize a DG to the offsite source (via the associated plant bus) and test the DG in such a configuration is a design feature of the DGs, including the test mode override in response to a safety injection signal. Paralleling the DG for longer periods of time during plant operation may slightly increase the probability of incurring an adverse effect from the offsite source, but this increase in probability is judged to be still quite small and such a possibility is not a new or previously unrecognized consideration.

The proposed changes would not require any new or different accidents to be postulated since no changes are being made to the plant that would introduce any new accident causal mechanisms. This license amendment request does not impact any plant systems that are potential accident initiators; nor does it have any significantly adverse impact on any accident mitigating systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. The margin of safety is related to the confidence in the ability of the fission product barriers to perform their design [safety] functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes do not directly affect these barriers, nor do they involve any significantly adverse impact on the DGs which serve to support these barriers in the event of an accident concurrent with a loss of offsite power. The proposed changes to the testing requirements for the plant DGs do not affect the OPERABILITY requirements for the DGs, as verification of such OPERABILITY will continue to be performed as required (except during different allowed MODES [of operation]). These changes have an insignificant impact on DG availability, as continued verification of OPERABILITY supports the capability of the DGs to perform their required [safety] function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Only one DG is to be tested at a time, so that the remaining DG will be available to safely shut down the plant if required. Consequently, performance of the fission product barriers will not be impacted by implementation of the proposed amendment.

In addition, the proposed changes involve no changes to [safety] setpoints or limits established or assumed by the accident analyses. On this and the above basis, no safety margins will be impacted.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: May 1, 2003, as supplemented by letter dated May 2, 2003.

Brief description of amendment request: The proposed amendments would modify Technical Specification Surveillance Requirements to provide an alternative means of testing the Unit 1 main steam electromatic relief valves, including those that provide the automatic depressurization and the low set relief functions, and provide an alternative means for testing the Units 1 and 2 dual function Target Rock safety/relief valves.

Date of publication of individual notice in ***Federal Register:*** May 13, 2003 (68 FR 25645).

Expiration date of individual notice: May 27, 2003.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety

Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1, (Fermi 1) Monroe County, Michigan

Date of amendment request: January 28, 2003 (Reference NRC–03–0011).

Brief description of amendment: This amendment revises the Fermi 1, Technical Specifications by removing the requirements for Water Intrusion alarms, associated surveillances, and liquid waste tank level check surveillance. The sections containing Reactor Building and Fuel and Repair Building drains descriptions are removed in their entirety, clarification is added for evolutions when tritium sampling is not required. This amendment also removes previously deleted items and re-numbers/letters remaining sections, and makes several editorial corrections.

Date of issuance: May 16, 2003.

Effective date: On the date of issuance of this amendment and must be fully implemented no later than 60-calendar days from the date of issuance.

Amendment No.: 20.

Facility Operating License No. DPR–9: Amendment revised the Technical Specifications by: (1) Deleting Sections A.1, 2, 4, 8, C.1, D, E.1, H.3.b, I.5, I.7b, I.9.d, which were previously deleted and the word ''Deleted'' used as a place marker to alleviate the need to renumber or re-letter the remaining sections. Also, the remaining sections were renumbered or re-lettered as appropriate. (2) Deleting Sections C.2 and E.2 which cover the Reactor Building and Fuel and Repair Building Drains. These requirements are no longer necessary in this phase of Fermi 1 decommissioning. (3) In Section F, the following words were added, ''Monitoring or sampling for tritium will not be required if the sample results have determined that tritium is not present during a given evolution.'' This wording was added to clarify during which evolutions resulting in radioactive gaseous effluents the effluents would be monitored or sampled and analyzed for tritium. (4) Sections H.1 and H.2, which covered water intrusion monitoring system alarms, including surveillances, allowed out-of-service time, compensatory measures and alarm readouts for alarms associated with water intrusion, were deleted. (5) In Section H.3 the surveillance requirement for radiation for the sump pump serving the reactor building annulus will not be required once the pump is made inactive and the surveillance requirement for radiation of the steam cleaning room access plug is deleted. In Section H.4 the requirement for a monthly level check of the liquid waste tanks was deleted. (6) Table H–1, which only lists water intrusion alarms, was deleted. (7) Editorial changes included in this amendment are in Section I.2, the word ''employes'' was changed to ''employees'; in Section I.2.b the word ''He'' was changed to ''The Health Physicist'; in Section I.7 the word ''his'' was removed from the following sentence, ''The Custodian may temporarily change a procedure by Written Order following his determination that the change does not constitute a significant increase in the hazards associated with the operation.'' In Section I.9.h the word ''usual'' will be changed to ''unusual.''

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18271). The NRC's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2003.

No significant hazards consideration comments: None received.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: May 23, 2002.

Brief description of amendment: The amendment deletes License Condition 2.C.(19) of the Operating License which pertains to historical actions that have been met. The amendment also deletes Section 2.F of the Operating License which requires reporting violations of the requirements in Section 2.C of the Operating License. The reporting requirements in Section 2.F are either adequately addressed by the requirements of 10 CFR 50.72 and 10 CFR 50.73, or are not needed because more restrictive requirements are contained in the specific License Condition.

In its May 23, 2003, application, the licensee also proposed to delete License Conditions 2.C.(20) and 2.C.(21) which pertain to historical actions that have been met. The Nuclear Regulatory Commission staff's evaluation of the proposed deletion of License Conditions 2.C.(20) and 2.C.(21) will be addressed under separate cover.

Date of issuance: May 16, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 155.

Facility Operating License No. NPF–43: Amendment revises the Operating License.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42817).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–245, Millstone Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 13, 2002.

Brief description of amendment: The amendment revised selected radiological-related technical specifications of the Millstone Unit 1 Permanently Defueled Technical Specifications. These changes are a result of the revision to part 20 of title 10 of the Code of Federal Regulations.

Date of issuance: May 15, 2003.

Effective date: May 15, 2003, and shall be implemented within 120 days from the date of issuance.

Amendment No.: 112.

Facility Operating License No. DPR–21: The amendment revised the Permanently Defueled Technical Specifications.

Date of initial notice in ***Federal Register:*** July 23, 2002 (67 FR 48215). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendments: May 13, 2002.

Brief description of amendments: The amendments revise the Millstone Power Station, Unit No. 2 (MP2) and Unit No. 3 (MP3) Technical Specifications (TSs) changing selected MP2 and MP3 radiological-related TSs. These changes are due to the revision to part 20 of title 10 of the Code of Federal Regulations.

Date of issuance: May 15, 2003.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 276 and 215.

Facility Operating License Nos. DPR–65 and NPF–49: These amendments revised the TSs.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45562). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: February 17, 2003.

Brief description of amendments: The amendments revised the Technical Specifications Surveillance Requirement 3.10.1.9 to increase the loading requirements for the Standby Shutdown Facility Diesel Generator from ≥ 3000 kW to ≥ 3280 kW.

Date of Issuance: May 19, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 331, 331, and 332.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 1, 2003 (68 FR 15759). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: February 27, 2003.

Brief description of amendment: The amendment deletes Technical Specification 5.5.3, ''Post Accident Sampling,'' and thereby eliminates the requirements to have and maintain the post accident sampling system for the James A. FitzPatrick Nuclear Power Plant.

Date of issuance: May 16, 2003.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 278.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18276). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 12, 2002, as supplemented on April 3, 2003 and May 2, 2003.

Brief description of amendment: The amendment revises the Facility Operating License and the Technical Specifications (TSs) to increase the licensed core thermal power level to 3114.4 megawatts (MWt), which is a 1.4% increase above the currently authorized power level of 3071.4 MWt. The power uprate is based on the improvement in the core power uncertainty allowance originally required for the emergency core cooling system (ECCS) evaluations performed in accordance with Appendix K, ''ECCS Evaluation Models,'' to Part 50 of Title 10 of the Code of Federal Regulations. Specifically, the reduced uncertainty is obtained by using a more accurate measurement of feedwater flow. In addition, changes were made to TS Sections 1.1, 2.1, 2.3, 3.1, 3.4, 6.9, and the applicable TS Bases to account for the change in power level.

Date of issuance: May 22, 2003.

Effective date: May 22, 2003.

Amendment No.: 237.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 00801). The April 3 and May 3, 2003, letters provided clarifying information that did not enlarge the scope of the original **Federal Register** notice or change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: November 22, 2002, as supplemented by letter dated March 13, 2003.

Brief description of amendment: The amendment allows for a one-time change to revise the steam generator in-service inspection frequency requirements in Technical Specification 4.4.5.3.a to allow a 40-month inspection interval after one inspection, rather than after two consecutive inspections, based on the results falling into the C–1 classification.

Date of issuance: May 28, 2003.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 247.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78520). The March 13, 2003, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: December 12, 2002.

Brief description of amendments: The amendments would add a new Surveillance Requirement to Technical Specification Section 3.7.5, ''Auxillary Feedwater (AF) System,'' which requires operation of the diesel-driven AF pump on a monthly frequency (*i.e.,* once every 31 days) for greater than or equal to 15 minutes.

Date of issuance: May 22, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 132/127.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications 3.7.5.

Date of initial notice in ***Federal Register:*** February 18, 2003 (68 FR 7817). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 28, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: November 27, 2002.

Brief description of amendments: These amendments deleted TS 5.5.3, ''Post Accident Sampling,'' and thereby eliminated the requirements to have and maintain the post accident sampling system for Peach Bottom Atomic Power Station, Units 2 and 3.

Date of issuance: May 22, 2003.

Effective date: As of the date of issuance, to be implemented within 180 days.

Amendments Nos.: 248 and 251.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2802). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: August 30, 2002 as supplemented by letters dated February 27, April 7, April 29, and May 2, 2003.

Brief description of amendments: The amendments revise the reactor trip system and engineered safety features actuation system surveillance requirements, increasing selected surveillance intervals for analog channels, logic cabinets, and reactor trip breakers. Additionally, the amendments revise the reactor trip system and engineered safety features actuation system surveillance requirements, increasing the completion time and bypass time for the reactor trip breakers.

Date of issuance: May 23, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 277 and 260.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63695). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: March 11, 2003.

Brief description of amendment: The amendment changes the operating license by adding a paragraph authorizing the licensee to revise the updated final safety analysis report by deleting the notation that the Nuclear Regulatory Commission does not endorse the reactor building crane as single-failure-proof.

Date of issuance: May 16, 2003.

Effective date: As of the date of issuance and shall be implemented no later than the update of the final safety analysis report to be submitted in accordance with 10 CFR 50.71(e).

Amendment No.: 251.

Facility Operating License No. DPR–49: The amendment revised the Facility Operating License.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18278). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: July 10, 2002, as supplemented May 9, 2003.

Brief description of amendments: The amendments change the Sequoyah Nuclear Plant (SQN) Technical Specifications (TSs) by modifying the requirements applicable when actions or other requirements direct suspension of activities that involve a positive reactivity change for the SQN TSs. The proposed change will remove the requirement to not make positive reactivity changes during certain conditions. The changes will permit limited positive reactivity changes that are necessitated by plant operations. These changes will limit the amount of reactivity changes to those that will continue to assure appropriate reactivity limits are met, either shutdown margin or refueling boron concentration, as appropriate.

Date of issuance: May 22, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment Nos.: 285 and 274.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50961). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: November 15, 2002, as supplemented February 28, 2003, March 14, 2003, and April 25, 2003.

Brief description of amendment: The Amendments revise the Technical Specification (TS) 3.7.1.3, ''Condensate Storage Water,'' Limiting Condition for Operation by increasing the required minimum amount of stored water from 190,000 gallons to 240,000 gallons. This change is being made to support the replacement steam generator requirements.

Date of issuance: May 27, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment Nos.: 286 and 275.

Facility Operating License No. DPR–77 and DPR–79: Amendments revise the TSs.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5682). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendments request: August 19, 2002.

Brief description of amendments: The amendment revised Technical Specification Section 3/4.3.2, ''Engineered Safety Features Actuation System Instrumentation,'' to extend the interval between slave relay tests.

Date of issuance: May 19, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–152 ; Unit 2–140.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61685). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 2nd day of June, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–14277 Filed 6–9–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. MC2003–2; Order No. 1373]

Experimental Parcel Return Services

AGENCY: Postal Rate Commission.

ACTION: Notice and order.

SUMMARY: This document provides notice that the Postal Service has filed a request with the Commission seeking an expedited decision approving a two-year experiment testing bulk parcel return services. It briefly describes the proposal, which focuses primarily on the customer-to-merchant segment of retail transactions. The notice also addresses related terms and conditions, proposed rates, and eligibility for participation in the experiment. It identifies conference dates and deadlines for certain procedural steps in the initial stages of this case.

DATES: 1. June 18, 2003: notices of intervention, requests for a hearing, and comments on experimental status.

2. June 24, 2003: (optional) comments on discovery-related deadlines.

3. June 25, 2003: prehearing conference (2 p.m.).

4. June 27, 2003: responses to conditional motion for waiver of certain filing requirements.

ADDRESSES: Submit documents electronically via the Commission's Filing Online system, which can be accessed at *http://www.prc.gov.* Settlement and prehearing conferences will be held in the Commission's hearing room, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION: On May 28, 2003, the Postal Service filed a request seeking a recommended decision approving an experimental change in the Domestic Mail Classification Schedule (DMCS) to establish rate categories, including rates and fees, for certain parcels and bound printed matter that are returns from customers to merchants.[1] The request, which includes six attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*[2]

In contemporaneous filings, the Postal Service requests expedited consideration of its proposal, including establishment of settlement procedures,[3] and a conditional motion for waiver of the filing requirements.[4] The Postal Service's request for expedition is in addition to that generally available under the Commission's experimental rules [39 CFR 3001.67–3001.67d]. The request, accompanying testimony of witnesses Gullo (USPS–T–1), Eggleston (USPS–T–2), Kiefer (USPS–T–3), and Wittnebel (USPS–T–4), and other related material are available for inspection in the Commission's docket room during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's Web site (*http://www.prc.gov*).

I. Proposed Parcel Return Services

The Postal Service proposes an experimental bulk parcel return service applicable to merchandise returned as either Parcel Post or Bound Printed Matter (BPM) mail. Collectively, the experimental changes are referred to as Parcel Return Services, comprised of Parcel Select Return Service (PSRS) and Bound Printed Matter Return Service (BPMRS). Witness Kiefer sponsors the proposed rates and classifications. *See* USPS–T–3. The proposed rates are based on workshare savings for returned parcels retrieved in bulk by shippers (or their agents) at designated delivery units or bulk mail centers.

PSRS adds two rate categories to the Parcel Post subclass, Parcel Select Return Delivery Unit (RDU) and Parcel Select Return Bulk Mail Center (RBMC). The proposed RDU rate for mail retrieved in bulk at delivery units is $2.00 per parcel. The proposed RBMC rates for parcels retrieved in bulk at the first BMC they reach range between $0.86 and $1.51 below the non-workshared rates for regular-sized parcels.[5] *Id.* at 2.

BPMRS adds one rate category to the BPM subclass, Bound Printed Matter Bulk Mail Center (RBMC). Similar to Parcel Select Return Service, the RBMC rate is applicable to BPM parcels retrieved in bulk at the first BMC they reach. The proposed rates are $0.24 below the non-workshared BPM rates. *Id.*; see also Request at 2.[6]

Witness Kiefer's proposed rates are based on cost data supplied by witness Eggleston. *See* USPS–T–2. The Postal Service indicates that the cost avoidance measures underlying its proposed rates are estimated using the same cost base supporting the Commission rate recommendations in Docket No. R2001–1. In addition, the Postal Service states that the proposed experiment will not materially affect its overall revenues. Request at 2–3.

In support of its proposal, the Postal Service also submits the testimony of witness Gullo (USPS–T–1), who describes the proposed Parcel Return Services products, and witness Wittnebel, who discusses, from a mailer's perspective, the processing of returns and the benefits associated with the experiment (USPS–T–4).

Experimental designation. By designating its proposal as experimental, the Postal Service seeks consideration of its Request under rules 67–67d. The Postal Service suggests that these rules are appropriate as they contemplate review of proposed experimental classifications in the absence of historical data that normally underlie requests for permanent classification changes. While acknowledging that it lacks data about the potential response to the

[1] Request of the United States Postal Service for a Recommended Decision on Experimental Parcel Return Services, Docket No. MC2003–2, May 28, 2003 (Request).

[2] Attachment A contains the proposed classification schedule provisions; attachment B sets forth the proposed rate and fee schedules; attachment C contains the certified financial statements for the years ending September 30, 2001 and September 30, 2002; attachment D is the certification required by Commission rule 54(p); attachment E is an index of testimonies; and attachment F is the statement addressing compliance with various filing requirements.

[3] United States Postal Service Request for Expedition and Establishment of Settlement Procedures, May 28, 2003 (Request for Expedition).

[4] Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, May 28, 2003 (Conditional Motion).

[5] Nonmachinable RBMC Parcel Post mail is subject to nonmachinable surcharges. See proposed DMCS 521.7.

[6] BPM mailers are eligible for RDU service and rates if they so choose.

experiment, the Postal Service states that it intends to gather more complete data during the proposed term of the experiment. It says this effort may support a request for a permanent classification. *Id.* at 3–4. The Service proposes that the experimental classification be in effect for two years, but also seeks approval of a provision that would allow for a brief extension if permanent classification authority is sought while the experiment is pending. The Postal Service proposes to limit the number of participants to 20 in the first year of the experiment, enlarging it by 10 in the second year. USPS–T–1 at 16.

The Service says the expedition allowed under the experimental rules is appropriate in the interest of putting the proposed services into effect in time for the 2003 holiday mailing season. Request at 5.

II. Conditional Request for Waiver of Certain Filing Requirements

The Postal Service avers that its filing complies with applicable Commission filing requirements, but, as a precautionary alternative, seeks waiver of various filing requirements should the Commission conclude otherwise.[7] In support of its request, the Postal Service says its compliance statement (attachment F to the request) addresses each filing requirement and indicates which parts of the filing satisfy each rule. It also notes that it has incorporated by reference pertinent materials from docket no. R2001–1, the most recent omnibus rate case.[8] It states that incorporation satisfies the filing requirements pertaining to classes of mail and special services. In addition, the Postal Service contends that the experimental parcel return services will not materially alter the rates, fees and classifications established in docket No. R2001–1. It concludes that its proposal will have only a limited impact on overall postal costs, volumes, and revenues. *Id.* at 1. It also asserts that there is substantial overlap between information sought in the general filing requirements and the materials provided in docket No. R2001–1. *Id.* at 2.

Notwithstanding its principal position, the Postal Service recognizes that the Commission may find that it has failed to comply with the filing requirements. Accordingly, the Postal Service requests a waiver of certain filing requirements if the Commission concludes that the materials incorporated from the omnibus case are not sufficient to satisfy those requirements. *Id.* at 4. Responses to the Postal Service's conditional motion are due on or before June 27, 2003.

III. The Postal Service Requests Expedition, Suggesting Several Specific Procedures, Including Settlement Procedures

In support of its request for expedition beyond that contemplated by the rules governing experimental classifications, the Postal Service asserts that the proposed classification change is straightforward, and of limited scope and duration. It also states that the proposed parcel return services would have an insignificant effect on overall volumes, revenues, and costs. Further, it states that, based on discussions with industry representatives, the proposal has widespread support and should have no significant adverse impact on competitors. The Postal Service believes there is a distinct possibility for settlement.[9]

In lieu of proposing a specific schedule, the Postal Service identifies four procedures the Commission could employ to expedite the proceeding. These include setting a relatively short intervention period and requiring participants to identify, in their notices of intervention, whether they intend to seek a hearing and to identify any genuine issues of material fact that may warrant such a hearing. In addition, the Postal Service requests that a settlement conference be scheduled as quickly as possible following the deadline for intervention. Finally, it suggests that the time allotted for discovery, if found to be necessary, be abbreviated and limited to matters related directly to its proposal. *Id.* at 2–3.

IV. Commission Ruling

Proceeding under the experimental rules. The Postal Service's request was filed pursuant to the Commission's rules 67–67d involving experimental classification changes. Formal status as an experiment under these rules is based on an evaluation of factors such as the proposal's novelty, magnitude, ease or difficulty of data collection, and duration. A final determination regarding the appropriateness of the experimental designation and application of Commission rules 67–67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file comments on this matter by June 18, 2003. *See* rule 67(c).

Postal Service's request for expedition.The Postal Service requests that the Commission expedite this proceeding, advancing several reasons to support its request. First, the Postal Service states that the proposal is straightforward and has a limited scope and duration, as explained in the testimony of witness Gullo and in its Request. Further, the Postal Service contends that the proposed changes would not significantly effect its overall revenues, volumes, or costs. Finally, the Postal Service states that industry representatives support the proposal, concluding that it should have no adverse effect on competitors.[10]

To expedite the proceeding, the Postal Service suggests several procedures for the Commission's consideration, including establishing a relatively short intervention period, requiring the prospective participants to request a hearing and identify any issues of material fact in their notices of intervention.[11] In addition, the Postal Service requests that a settlement conference be convened at an early date, and further that the time allotted for discovery, if necessary, be abbreviated.[12]

The reasons offered by the Postal Service in support of expedition are essentially the same as advanced in prior requests.[13] This undercuts the claim for expedition since there is nothing to distinguish this proceeding from any other. Moreover, it gives the appearance that such requests have become routine. In any event, the reasons advanced to accelerate this proceeding are not particularly compelling.

It would appear to be axiomatic that any proposed experiment would have the characteristics that the Postal Service offers to support an expedited schedule. For example, presumably all experimental changes would have a limited scope and duration, be sufficiently explained by supporting testimony, and be supported by industry representatives. Even taking these as a given, they fail to warrant accelerating this proceeding in the manner suggested by the Postal Service.

The Postal Service requests a relatively short intervention period. The Postal Service does not suggest a

[7] The Request (at 5) limits the waiver request to rules 54 and 64. While the Conditional Motion also references rule 67 (at 4), the relief requested is limited to rules 54 and 64. Conditional Motion at 5, n.4.

[8] Conditional Motion at 1 and 3.

[9] Request for Expedition at 1–2.

[10] Request for Expedition at 1–2.

[11] *Id.* at 2–3.

[12] *Id.* at 3.

[13] Compare United States Postal Service Request for Expedition and Establishment of Settlement Procedures, Docket No. MC2002–3 September 26, 2002; and Motion of the United States Postal Service for Expedition, and Waiver of Certain Provisions of Rule 161 and Certain Provisions of 64(h), Docket No. MC2000–1, September 27, 2000.

specific deadline, creating some uncertainty as to what might satisfy its request since the Commission's rules do not specify an intervention deadline. Deadlines for interventions in the last three proceedings under the experimental rules were 22 days (docket no. MC2002–3), 28 days (docket no. MC2002–2), and 20 days (docket no. MC2001–2).[14] In any event, it would appear that the request is designed to compel potential participants to evaluate the merits of the proposal in an even shorter time. Under the circumstances, that result would be inappropriate.

By statute, the Commission is required ''to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties.'' [15] Accordingly, the Commission will conduct this proceeding with dispatch. Moreover, assuming this case is considered under the experimental rules, nothing in those rules precludes an adoption of a recommended decision in advance of the 150-day deadline. See rule 67d.

The Postal Service indicates it wishes to implement this program in time for the 2003 holiday mailing season, suggesting an early October effective date would be necessary.[16] This is a reasonable goal, but the Service does not provide any explanation of when a recommendation would have to be issued to enable the Service to achieve that goal. The Postal Service controls its own calendar. It is the Commission's understanding that this proposal has been under development for some time, perhaps 12 months or more.

The due date for notices of intervention is June 18, 2003. Any person wishing to intervene must file a notice electronically via the Commission's Filing Online system, in conformance with the Commission's rules 9 through 12. See 39 CFR 3001.9–3001.12. Notices should indicate whether participation will be on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a.

Turning to the balance of the Postal Service's suggestions, participants should indicate in their notices of intervention whether they request a hearing and, if so, they should identify all issues of material fact that may warrant such a hearing.[17] Given the due date for interventions established by this order, prospective intervenors will have sufficient time to review the Postal Service's proposal and formulate a position on whether or not to request a hearing. No decision has been made at this point on whether a hearing will be held in this case.

Settlements are to be encouraged. Given the Postal Service's representations that the proposal is widely supported and should not adversely affect competitors or other mailers, the Commission will authorize settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, Postal Service counsel shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold a settlement conference on June 23, 24 or 25, 2003, at 10:00 a.m. in the Commission's hearing room. Authorization of settlement discussions does not constitute a finding on the proposal's experimental status or on the need for a hearing.

Finally, under the Commission's rules, discovery is permissible upon intervention. The Postal Service suggests that time limits for discovery be abbreviated without suggesting specific time limits. At this stage of the proceeding, the Commission is unable to determine whether and to what extent, if any, discovery may ensue. Nonetheless, to facilitate resolution of this proceeding, participants desiring to engage in any discovery are encouraged to submit it promptly and to be prepared to discuss the need for additional discovery at the prehearing conference. Postal Service's responses will be due within 10 days after the filing of the discovery. Objections, if any, should be filed within 7 days of the filing of the discovery. Motions to compel, if any, should be filed within 7 days of the filing of the relevant objection.[18]

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Prehearing conference. A prehearing conference will be held June 25, 2003, at 2 p.m. in the Commission's hearing room. Participants shall be prepared to address matters referred to in this ruling.

Ordering Paragraphs

It is ordered:

1. The Commission establishes docket no. MC2003–2, experimental parcel return services, to consider the Postal Service request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. The deadline for filing notices of intervention is June 18, 2003.

4. Notices of intervention shall indicate whether the participant seeks a hearing and, if so, identify with particularity any genuine issues of material fact that may warrant a hearing.

5. Responses to the Postal Service's conditional motion for waiver of certain filing requirements are due on or before June 27, 2003.

6. The United States Postal Service's request for expedition and establishment of settlement procedures is denied, in part, and granted, in part, as set forth in the body of this order.

7. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.

8. A prehearing conference will be held June 25, 2003 at 2:00 p.m. in the Commission's hearing room.

9. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

10. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Issued June 3, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03–14483 Filed 6–9–03; 8:45 am]

BILLING CODE 7710–FW–P

[14] See PRC Order No. 1347, October 2, 2002, PRC Order No. 1346, September 24, 2002, and PRC Order No. 1323, September 25, 2001, respectively.

[15] 39 U.S.C. 3624(b); *see also* id. at 3624(a) (''The Postal Rate Commission shall promptly consider a request made under section 3622 or 3623 of this title, * * *.'')

[16] Request at 4–5; Request for Expedition at 2.

[17] Notices of intervention not addressing these issues will be deemed not to have requested a hearing.

[18] Participants may, if desired, file comments concerning these deadlines. Such comments should be provided on or before June 24, 2003.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26067; 812–12792]

AB Funds Trust, et al.; Notice of Application

June 4, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order that would permit certain registered open-end investment companies to participate in a joint lending and borrowing facility.

Applicants: AB Funds Trust (the ''Trust'') and SBC Financial Services, Inc. (''SBC Financial'').

Filing Dates: The application was filed on March 4, 2002, and amended on June 4, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 30, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Donald W. Smith, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Todd Kuehl, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company and is organized as a Delaware business trust. The Trust is composed of thirteen series; each series has separate investment objectives, policies, and assets (the ''Funds''). [1] SBC Financial, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for each Fund. An existing Commission order permits the non-money market Funds to invest uninvested cash balances in certain money market Funds that comply with rule 2a–7 under the Act (''Money Market Funds''). [2]

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed.

3. If the Funds were to borrow money from a bank, under their current credit arrangement the Funds would pay interest on the borrowed cash at a rate that would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the profit the bank would earn for serving as a middleman between a borrower and a lender. The borrowing Funds also pay commitment and facility fees to the bank.

4. Applicants request an order that would permit the Funds to enter into master interfund lending agreements (''Interfund Lending Agreements'') with each other that would permit the Funds to lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants state that the proposed credit facility would reduce potential borrowing Funds' costs and enhance lending Funds' ability to earn higher rates of interest on their short-term lendings. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to continue the existing lines of credit or establish new lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide borrowing Funds with significant savings when the cash position of the Funds is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). However, redemption requests normally are satisfied immediately. The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances beyond a Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Under such circumstances, the Fund could (i) fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or (ii) sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility would give the Funds access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those that would be payable under short-term loans offered by banks. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of a Money Market Fund. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any loan made pursuant to the proposed credit facility (the ''Interfund Loan Rate'') would be determined daily

[1] Applicants request that the relief also apply to any future series of the Trust and to any other registered open-end management investment company or series thereof that is advised by SBC Financial or any person controlling, controlled by, or under common control with SBC Financial (''Future Funds,'' included in the term ''Funds''). All Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

[2] AB Funds Trust, ICA Rel. Nos. 24999 (June 7, 2001) (notice) and 25054 (June 29, 2001) (order).

and would be the average of (i) the ''Repo Rate'' and (ii) the ''Bank Loan Rate,'' both as defined below. The Repo Rate on any day would be the highest rate available to a lending Fund from investments in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by SBC Financial according to a formula established by each Fund's board of trustees (''Board''), intended to approximate the lowest interest rate at which a bank short-term loan would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal funds plus 25 basis points) which rate would vary so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of the Fund's Board. The Board of each Fund periodically would review the continuing appropriateness of reliance on the publicly available rate used to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds.

9. The credit facility would be administered by staff members of SBC Financial who are not portfolio mangers (the ''Administrative Staff''). Under the credit facility, the portfolio managers for each participating Fund, or the staff of SBC Financial responsible for coordinating the portfolio managers and overseeing their management of each Fund, (who are not the Administrative Staff) could provide standing instructions to participate in the credit facility daily as a borrower or lender. On each business day, the Administrative Staff would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Fund's custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Administrative Staff would allocate loans among borrowing Funds without any further communication from portfolio managers. After the Administrative Staff has allocated cash for Interfund Loans, the Administrative Staff will invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts to the Funds.

10. The Administrative Staff would allocate borrowing demand and cash available for lending among the Funds on what the Administrative Staff believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as (i) the time of filing requests to participate, (ii) minimum loan lot sizes, and (iii) the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

11. SBC Financial would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Board of each Fund concerning any transactions by the Fund under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by the Board, including a majority of the Board members who are not ''interested persons'' of the Funds as that term is defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. SBC Financial would administer the credit facility as part of its duties under its existing advisory contract with each Fund and would receive no additional fee as compensation for its services. SBC Financial may collect standard pricing and record keeping, bookkeeping, and accounting fees associated with repurchase and lending transactions generally, including transactions effected through the credit facility. Fees paid to SBC Financial in connection with an Interfund Loan would be no higher than those associated with comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (i) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (ii) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or SAI; and (iii) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from sections 12(d)(1)(A) and (B) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with that company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having SBC Financial as their common investment adviser, and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment companies involved, as recited in their registration statements, and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (i) SBC Financial would administer the program as a disinterested fiduciary in the best interests of the Funds' shareholders; (ii) all Interfund Loans would consist only of uninvested cash reserves that a Fund otherwise would invest in short-term

repurchase agreements or other short-term instruments either directly or through a Money Market Fund; (iii) the Interfund Loans would not involve a greater risk than such other investments; (iv) a lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (v) a borrowing Fund would pay interest at a rate lower than otherwise available to it under bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions that applicants propose would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company, except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for purposes of sections 17(a)(1) and 12(d)(1) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders. SBC Financial would administer the credit facility under its existing advisory agreements with the Funds, and would receive no additional compensation for its services. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds and their shareholders.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security, except that a company is permitted to borrow from any bank, if immediately after the borrowing there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) of the Act is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, when acting as principal, from effecting any joint transaction unless the transaction is approved by the Commission. Rule 17d-1(b) under the Act provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from, or less advantageous than, that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by, and unfair advantage to, investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the proposed credit facility will be on terms no different from, or less advantageous than, that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, SBC Financial will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (i) more favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any Money Market Fund in which the lending Fund could otherwise invest and (ii) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (iv) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its

total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend funds through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

11. The Administrative Staff will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manger of the Funds. The Administrative Staff will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Administrative Staff will invest any amount remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

12. SBC Financial will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

13. The Fund's Board, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula, and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

14. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, SBC Financial will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds.[3] The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on overnight repurchase agreements and bank borrowings, the yield of any Money Market Fund in which the lending Fund could otherwise invest and such other information presented to the Fund's Board in connection with the review required by conditions 12 and 13.

16. SBC Financial will prepare and submit to the Board of each Fund for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, SBC Financial will report on the operations of the credit facility at the quarterly Board meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates SBC Financial's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, and if applicable, the yield of the Money Market Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and, (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, a Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the

[3] If the dispute involves Fund with different Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

17. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

18. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14562 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27684]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 4, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 27, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, *et al.* (70–9755)

Northeast Utilities (''NU''), located at 174 Brush Hill Avenue, West Springfield, MA 01090–0010, a registered holding company under the Act, Northeast Utilities Service Company (''NUSCO''), its wholly-owned service company subsidiary, located at 107 Selden Street, Berlin, CT 06307, and NU's wholly-owned public-utility subsidiaries, Western Massachusetts Electric Company (''WMECO''), located at 174 Brush Hill Avenue, West Springfield, MA 01090–0010, The Connecticut Light and Power Company (''CL&P''), located at 107 Selden Street, Berlin, CT 06307, Holyoke Water Power Company (''HWP''), located at One Canal Street, Holyoke, MA 01040, Public Service Company of New Hampshire (''PSNH'') and North Atlantic Energy Corporation (''NAEC''), both located at 780 North Commercial Street, Manchester, NH 03101, Northeast Nuclear Energy Company (''NNECO'') and NU's wholly-owned nonutility subsidiaries, NU Enterprises, Inc. (''NUEI''), a wholly-owned nonutility holding company subsidiary of NU and its direct and indirect wholly-owned subsidiaries, Northeast Generation Company (''NGC''), Northeast Generation Services Company (''NGS''), ES Boulos Company (''Boulos''), Woods Electrical Company, Inc. (''Woods''), Woods Network Services, Inc. (''Woods Network''), Select Energy, Inc. (''Select Energy''), Select Energy New York, Inc. (''SENY''), Mode 1 Communications, Inc. (''Mode 1''); Yankee Energy System, Inc. (''YES''), a wholly-owned holding company subsidiary exempt under 3(a)(1) of the Act by rule 2 and its wholly-owned subsidiaries, Yankee Gas Services Company (''Yankee Gas''), a gas public-utility, Yankee Energy Financial Services Company (''Yankee Financial''), Yankee Energy Services Company (''YESCO'') and NorConn Properties, Inc. (''NorConn''); The Rocky River Realty Company (''RR'') and The Quinnehtuk Company (''Quinnehtuk''), all located at 107 Selden Street, Berlin, CT 06307; Select Energy Services, Inc., (formerly HEC Inc.) (''SESI''), located at 24 Prime Parkway, Natick, MA 01760 (collectively, the ''Applicants''), have filed a post-effective amendment to their application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 32 and 33 of the Act and rules 43, 53 and 54.

I. Background

NU has seven public-utility company subsidiaries, CL&P, WMECO, PSNH, Yankee Gas, HWP, NAEC and NNECO. CL&P, WMECO and PSNH engage, among other things, in the sale of electric energy at retail and Yankee Gas engages in the sale of natural gas at retail. Prior to the sale by the NU system of all of its nuclear assets, NAEC and NNECO were an owner and a manager, respectively, of various nuclear generating assets. As noted above, YES is an intrastate exempt holding company subsidiary of NU. CL&P, WMECO, PSNH, YES and Yankee Gas are referred to collectively below as the ''Utility Borrowers.''

Applicant nonutility subsidiaries of NU are: NUSCO, the NU system service company; NGC, an exempt wholesale generator (''EWG''); NUEI, a nonutility holding company; RR, Quinnehtuk and NorConn, each a real estate company; SESI, an energy services company; Select, SENY, NGS, Woods, Boulos and YESCO, each a rule 58 company; Mode 1 and Woods Network, each an exempt telecommunications company under section 34 of the Act (''ETC''); and Yankee Financial, a financial services company. The Applicants, with the exception of NUSCO, are also referred to as ''Pool Participants'' and NU, YES, Mode 1, Woods Network and NGC are referred to as ''Non-borrowing Pool Participants.''

By order dated December 28, 2000 (the ''Prior Order''), the Commission authorized NU, CL&P, WMECO, PSNH, YES and Yankee Gas, among others, to enter into short-term unsecured debt within specified limits and parameters through June 30, 2003.[1] In addition, the Prior Order authorized all of the Applicants, except NUSCO, to enter into short-term debt transactions with NU and to extend credit to, and acquire promissory notes from, one another through their participation in the NU Money Pool. The Prior Order authorized NUSCO to administer the NU Money Pool.

Applicants now seek the following authorizations:

1. continuation through June 30, 2006 (the ''Authorization Period'') for NU and the Utility Borrowers to issue short-term unsecured debt to unaffiliated third parties;

2. amendment of the NU, utility and nonutility subsidiary dollar limitations imposed by the Prior Order upon the short-term borrowings of the respective company, whether from unaffiliated third parties or the NU Money Pool;

[1] Holding Co. Act Release No. 27328.

3. authorization through the Authorization Period for the Utility Borrowers to issue short-term secured debt, pending completion of the record;

4. authorization for NU and the Utility Borrowers to enter into interest rate hedging transactions (''Interest Rate Hedges'') related to their short-term debt transactions;

5. continuation through June 30, 2004 of the NU Money Pool, with NUSCO as the administrator;

6. participation in the NU Money Pool by those companies authorized to participate by the requested order and previous orders, subject to (a) amendment of the NU Money Pool Agreement to provide for utility subsidiaries' borrowing priority over Nonutility Pool Participants and (b) the Applicants' submission to the Commission by December 31, 2003 of a feasibility study concerning the creation of a separate money pool for nonutility subsidiaries of NU;

7. participation of Boulos, Woods and SENY, each a nonutility subsidiary, in the NU Money Pool both as lenders and borrowers;

8. participation of Woods Network in the NU Money Pool solely as a lender; and

9. addition of any additional participants to the Money Pool.

II. The Proposed External Financings

A. General Terms and Conditions

Financings with third parties by NU and the Utility Borrowers will be subject to the following conditions (''Financing Parameters''): (i) the effective cost of capital on short-term debt financings will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality, provided that in no event will the effective cost of capital on short-term debt borrowings exceed 500 basis points over the comparable term London Interbank Offered Rate, and (ii) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities requested will not exceed the greater of 5% of the principal or total amount of the securities being issued.

B. Use of Proceeds

The proceeds from the short-term debt of NU and the Utility Borrowers authorized by the Commission pursuant to this Application will be used for (i) general corporate purposes, including investments by and capital expenditures of NU and its subsidiaries, including, without limitation, the funding of future investments in EWGs, foreign utility companies (each to the extent permitted under the Act or Commission order), rule 58 subsidiaries and ETCs, (ii) the repayment, redemption, refunding or purchase by NU or any subsidiary of any of its own securities from non-affiliates pursuant to rule 42, and (iii) financing working capital requirements of NU and its subsidiaries.

C. Short-Term Debt Limits

The Applicants seek external short-term debt financing authorization for NU and the five Utility Borrowers, subject to aggregate limits described below. The external financing authorization for HWP, NAEC and NNECO expires on June 30, 2003 and these utility subsidiaries' authorization will be limited to borrowings through the NU Money Pool, also described below. The short-term debt of NU, CL&P, WMECO, PSNH, HWP, NAEC, NNECO, YES and Yankee Gas outstanding at any one time, whether through external financings (which authorization expires on June 30, 2006) or borrowings through the NU Money Pool (which authorization expires on June 30, 2004), pursuant to the authority requested in this Application, will not exceed the following:

Company	Aggregate limits (millions)
NU	$400
CL&P	[2] 375
WMECO	200
PSNH	[3] 100
HWP	5
NAEC	10
NNECO	10
YES	50
Yankee Gas	100

[2] CL&P's aggregate unsecured debt is also restricted by charter provisions relating to its preferred stock. CL&P is authorized by its preferred stockholders, through March 31, 2004, to issue securities representing unsecured indebtedness to a maximum of 20% of its capitalization. Based on its capitalization as of December 31, 2002, CL&P is limited to $480 million of unsecured indebtedness, which exceeds the authorization sought here.

[3] PSNH aggregate short-term debt is restricted by New Hampshire law to an amount equal to 10% of its net fixed plant without further New Hampshire Public Utilities Commission (''NHPUC'') approval. Any short-term debt of PSNH in excess of 10% of net fixed plant would require NHPUC approval and would be exempt from this Commission's jurisdiction pursuant to rule 52(a). PSNH currently has approval from NHPUC to issue up to $100 million in short-term debt, which is in excess of 10% of net fixed plant debt limit, for general corporate purposes. NHPUC Order 23,841, November 9, 2001. However, in the event the NHPUC order is revoked, lapses or its rescinded or issuance of short-term debt in an amount to $100 million is not exempt pursuant to rule 52, PSNH wishes to have the flexibility to issue such debt pursuant to this Commission's authorization.

With respect to the Utility Borrowers, as described below, these limitations would include both unsecured and secured debt amounts.

D. Northeast Utilities Short-Term Debt

NU requests authority to issue and sell, through the Authorization Period, short-term unsecured debt in an aggregate principal amount at any time outstanding not to exceed $400 million. The short-term unsecured debt of NU will take a variety of forms, including commercial paper and notes to banks or other financial institutions, and will be on terms that are generally available to borrowers with comparable credit ratings. All NU short-term unsecured debt will have maturities of less than one year from the date of issuance.

Subject to its short-term debt limit and the Financing Parameters, NU intends to renew and extend outstanding short-term debt as it matures, to refund such short-term debt with other similar short-term debt, to repay such short-term debt or to increase the amount of its short-term debt from time to time.

E. Utility Borrowers' Short-Term Unsecured and Secured Debt

The Utility Borrowers request authority to issue and sell, through the Authorization Period, short-term unsecured debt, on terms that are generally available to borrowers with comparable credit ratings, subject to the applicable debt limits, Financing Parameters and the same terms as are applicable to NU, described above. In addition, the Utility Borrowers request the Commission to reserve jurisdiction, through the Authorization Period, over their request to issue and sell short-term secured debt, on terms that are generally available to borrowers with comparable credit ratings, pending their completion of the record. In all other respects the proposed short-term secured debt would be subject to the applicable debt limits, Financing Parameters and, to the extent

appropriate, the same terms as are applicable to NU.

Subject to the applicable short-term debt limits and the Financing Parameters, discussed above, as in the case of NU, the Utility Borrowers intend to renew and extend outstanding short-term debt as it matures, to refund such short-term debt with other similar short-term debt, to repay such short-term debt or to increase the amount of their short-term debt from time to time.

III. Authorization to Engage in Interest Rate Hedge Transactions

NU and the Utility Borrowers also request authorization to enter into interest rate hedging transactions with respect to its outstanding indebtedness (''Interest Rate Hedges''), subject to the limitations and restrictions below, in order to reduce or manage the effective interest rate cost. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior debt ratings, or those of any credit support providers guaranteeing the Approved Counterparties, as published by Standard & Poor's Rating Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investor Service or Fitch IBCA, or through on-exchange transactions.

Interest Rate Hedges will involve the use of financial instruments commonly used in the capital markets, such as options, interest rate swaps, locks, caps, collars, floors, exchange-traded futures and options, and other similar appropriate instruments. The transactions would be for fixed periods and stated notional amounts as are generally accepted as prudent in the capital markets. In no case will the notional principal amount of any Interest Rate Hedge exceed that of the underlying debt instrument. Neither NU nor the Utility Borrowers will engage in speculative transactions within the meaning of such term in Statement of Financial Accounting Standard 133, as amended. Transaction fees, commissions and other amounts payable to brokers in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

IV. The NU Money Pool

The Applicants request authorization to continue the NU Money Pool through June 30, 2004, with NUSCO as the NU Money Pool administrator. The Applicants also request continued participation in the NU Money Pool by those companies authorized to participate, subject to (a) amendment of the NU Money Pool Agreement to provide for utility subsidiaries' borrowing priority over Nonutility Pool Participants and (b) the Applicants' submission to the Commission by December 31, 2003 of a feasibility study concerning the creation of a separate money pool for nonutility subsidiaries of NU.

The Pool Participants, other than the Non-borrowing Pool Participants, request authority to continue to enter into, from time to time, short-term unsecured debt transactions through the NU Money Pool, to contribute surplus funds to the NU Money Pool and to lend to (and acquire promissory notes from) one another through the NU Money Pool. The Non-borrowing Pool Participants also request authority solely to contribute surplus funds and to lend to the Pool Participants through the NU Money Pool.

In addition, the Applicants seek authorization for Boulos, Woods and SENY to participate in the Money Pool, as both borrowers and lenders, and for Woods Network to participate in the NU Money Pool, solely as a lender, through June 30, 2004.

Finally, the Nonutility Pool Participants request authorization to borrow from the NU Money Pool to the following limits: Quinnehtuk to $10 million, NUEI to $100 million, NGS to $25 million, Select to $200 million, RR to $30 million, Yankee Financial to $10 million, NorConn to $10 million, YESCO to $10 million, SESI (formerly HEC, Inc.) to $35 million, Boulos to $10 million, Woods to $10 million and SENY to $10 million.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14563 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47956; File No. SR–Amex–2003–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Adoption of a Per Contract Licensing Fee for Transactions in Options on iShares Lehman 1–3 Year Treasury Bond Fund (SHY), iShares Lehman 7–10 Year Treasury Bond Fund (IEF), and iShares Lehman 20+ Year Treasury Bond Fund (TLT)

May 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on April 22, 2003, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend its options fee schedule by adopting a per contract license fee in connection with specialist and registered options traders (''ROTs'') transactions in options on iShares Lehman 1–3 Year Treasury Bond Fund (SHY), iShares Lehman 7–10 Year Treasury Bond Fund (IEF), and iShares Lehman 20+ Year Treasury Bond Fund (TLT) (collectively, the ''iShares Lehman Treasury Funds'').

The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

The Exchange has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on certain exchange-traded funds (''ETFs''). Many agreements require the Exchange to pay a significant licensing fee to issuers or index owners as a condition to the listing and trading of these ETF options that may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange has previously established a per contract licensing fee for specialists and ROTs that is collected on every transaction in designated products in which a specialist or a ROT is a party. The licensing fee currently imposed on specialists and ROTs is as follows: (1) $0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX), and the iShares Goldman Sachs Corporate Bond Fund (LQD); (2) $0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF); and (3) $0.05 per contract side for options on the S&P 100 iShares (OEF).[3]

The purpose of the proposed fee is for the Exchange to recoup its costs in connection with the index license fee for the trading of options on the iShares Lehman Treasury Funds. The proposed licensing fee will be collected on every option transaction of the iShares Lehman Treasury Funds in which the specialist or ROT is a party. The Exchange proposes to charge $0.10 per contract side for options on the iShares Lehman Treasury Funds. Accordingly, Amex believes that requiring the payment of a per contract licensing fee by those specialists units and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that passing the license fee (on a per contract basis) along to the specialist(s) allocated the iShares Lehman Treasury Fund options and the ROTs trading such products is efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

Amex notes that in recent years it has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and to reduce Exchange subsidies of such services.[4] Amex believes that implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange asserts that the proposed license fee will provide additional revenue for the purpose of recouping Amex's costs associated with the trading of options on the iShares Lehman Treasury Funds. In addition, Amex believes that this fee will help allocate, to those specialists and ROTs transacting in options on the iShares Lehman Treasury Funds, a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.[5]

2. Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,[6] in general, and with section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of April 22, 2003, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2003–29 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14567 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47971; File No. SR–CHX–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Decrease Certain Technology and Connectivity Fees

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

[3] *See* Securities Exchange Act Release Nos. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001), 47432 (March 3, 2003), 68 FR 11420 (March 10, 2003) and 47431 (March 3, 2003), 68 FR 11882 (March 12, 2003).

[4] *See* Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002), and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

[5] The Exchange represents that it will not impose the proposed license fee on any transaction if the non-reimbursed licensing or other third-party fee is recouped by the Exchange via another Exchange fee or assessment. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on May 22, 2003.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] *See* 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2003, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (''Schedule'') to decrease certain technology and connectivity fees charged to the Exchange's on-floor member firms, and to waive those fees for the month of June 2003. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend the Schedule by decreasing the charges assessed to on-floor member firms for the computer equipment and connectivity that the Exchange provides, and by waiving the fees for this technology for the month of June 2003.

The Exchange made changes to this section of the Schedule in February 2003, decreasing many of the fees and instituting new connectivity fees.[4] The new charges set forth in the instant proposed rule change reflect a further decrease in the amounts charged for this equipment and connectivity to better reflect the costs to the Exchange of providing both this technology and the services associated with it, and to ensure that these fees do not have an unintended financial impact on the Exchange's member firms. The Exchange also seeks to waive these otherwise-applicable fees for the month of June 2003, to counteract, to some extent, the impact of the initially higher fees instituted in February 2003.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–2003–14, and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14564 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 47369 (February 14, 2003), 68 FR 8788 (February 25, 2003)(SR–CHX–2003–01).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47970; File No. SR–NASD–2003–88]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

June 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through December 1, 2003, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 (''IM–3350'').[5] Without such an extension this standard would terminate on May 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through December 1, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[6] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[7] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on May 31, 2003.[8] Nasdaq now proposes to extend, through December 1, 2003, that pilot program. Extension until December 1st, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[9] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect ''legal'' short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] In its filing, Nasdaq inadvertently referred to text changes in subparagraph (b)(1) of IM–3350 instead of subparagraph (b)(2). Recent changes to NASD Rule 3350 and IM–3350 renumbered subparagraph (b)(1) as subparagraph (b)(2). *See* Securities Exchange Act Release No. 46999 (December 13, 2002), 67 FR 78534 (December 24, 2002). Telephone call between Gregory J. Dumark, Division of Market Regulation, Commission, and Thomas P. Moran, Office of General Counsel, Nasdaq.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[8] Securities Exchange Act Release No. 47309 (February 4, 2003), 68 FR 6981 (February 11, 2003).

[9] *See* SR–NASD 2002–09.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2003–88 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14565 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47965; File No. SR–NYSE–2003–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Program To Disengage NYSE Direct+® in Five Actively Traded Stocks

June 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2003, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act,[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to extend its pilot to disengage NYSE Direct+[6] in five actively-traded stocks to assess the impact of autoquoting[7] of bids and offers in connection with the Exchange's initiative to disseminate NYSE LiquidityQuote.[8] NYSE also proposes to amend the language in NYSE Rule 1000, which originally restricted the pilot to a one-week period. Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are bracketed.

* * * * *

Rule 1000

Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i)–(vi) No change.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. An auto ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.

During a [one-week] pilot program in 2003, NYSE Direct+ shall not be available in the following five stocks: American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange will announce in advance to its membership the *time* [week] the pilot will run.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–NYSE–2003–10, the Commission approved the Exchange's proposed rule change to conduct a one-week pilot to disengage NYSE Direct+ in five actively-traded stocks.[9] The purpose of the pilot was to assess the impact of autoquoting bids and offers in connection with the Exchange's initiative to disseminate NYSE LiquidityQuote.[10] According to the NYSE, the pilot was initially scheduled to run from May 21, 2003 until May 28, 2003, and NYSE LiquidityQuote was initially scheduled to begin on May 21, 2003. However, the Commission issued an order granting an interim stay on the implementation of NYSE LiquidityQuote until June 6, 2003.[11]

To assess the impact of autoquoting bids and offers in connection with the liquidity quote initiative, the NYSE is proposing to extend the pilot until June 20, 2003. The NYSE believes that continuing the pilot will provide continuity and avoid starting and stopping the disengagement of NYSE Direct+. According to the NYSE, this continuity should aid in the learning process for NYSE Floor personnel.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The NYSE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] NYSE Rules 1000–1005 provide for the automatic execution of limit orders of 1,099 shares or less against the Exchange's disseminated bid or offer. NYSE Direct+ was originally filed as a one-year pilot. *See* Securities Exchange Act Release No. 43767 (Dec. 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–00–18). The Direct+ pilot was subsequently extended for an additional year by Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50), and recently extended for an additional year by Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47).

[7] The Exchange will autoquote or automatically update the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer).

[8] For further details on LiquidityQuote, *see* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR–NYSE–2002–55).

[9] *See* Securities Exchange Act Release No. 47793 (May 2, 2003), 68 FR 25071 (May 9, 2003). The stocks are American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C).

[10] *See supra* note 7.

[11] *See In the Matter of the Application of Bloomberg L. P.,* Securities Exchange Act Release No. 47891 (May 20, 2003).

Further, NYSE proposes to amend NYSE Rule 1000 to reflect that the pilot is not limited to a one-week period.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is Section 6(b)(5) of the Act,[12] which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NYSE has requested a waiver of the five-day written notice and the 30-day operative delay requirements. The Commission believes that waiving the five day pre-filing requirement and the 30-day operative delay will allow the NYSE to continue, without undue interruption, to assess the impact on the autoquoting of bids and offers in connection with the LiquidityQuote initiative in five actively-traded stocks without the impact of NYSE Direct+.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to SR–NYSE–2003–20 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14491 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47975; File No. SR–Phlx–2003–25]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Buy Orders in Securities Exempt for the Short Sale Rule

June 4, 2003.

I. Introduction

On April 3, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Supplementary Material .07 to Phlx Rule 229 to modify the Exchange's Automatic Price Improvement (''API'') program to allow specialists to choose to improve buy orders in securities that are exempted from or otherwise not subject to the ''tick'' requirements of Rule 10a–1 under the Act [3] (the ''Short Sale Rule''). The proposed rule change was published for comment in the **Federal Register** on April 28, 2003.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange's API program allows specialists to provide automatic price improvement to automatically executable market and marketable limit orders in New York Stock Exchange, Inc. and American Stock Exchange LLC (''Amex'') listed securities received through Phlx's Automated Communication and Execution System (''PACE'') [5] for 599 shares or less of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10a–1. Paragraph (a) of Rule 10a–1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported pursuant to an ''effective transaction reporting plan'' (''Reported Securities''). A short sale of a Reported Security listed on a national securities exchange may not be effected at a price either: (1) below the last reported price of a transaction reported in the consolidated transaction reporting system (''minus tick''); or (2) at the last reported price if that price is lower than the last reported different price (''zero-minus tick'').''

[4] *See* Securities Exchange Act Release No. 47714 (April 22, 2003), 68 FR 22447.

[5] PACE is the Exchange's automated order routing, delivery, execution and reporting system for listed securities. *See* Phlx Rule 229.

either $.01 or a percentage of the PACE Quote when the order is received.[6] Specialists may choose to offer API in each individual specialty security. If a specialist offers API in an individual security, then the specialist must offer it to all customers and all eligible market orders in that security. Participation in the API program and PACE is voluntary.

Currently, API is not available to certain buy orders if the execution price of those buy orders would be on a minus or zero-minus tick.[7] The Exchange has proposed to amend Supplementary Material .07 to Phlx Rule 229 to modify the Exchange's API program to allow specialists to choose to improve buy orders in securities that are exempted from or otherwise not subject to the ''tick'' requirements of the Short Sale Rule.[8]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that expanding the types of securities that may receive API to include those securities that are not subject to the ''tick'' requirements of the Short Sale Rule should allow customers to receive more opportunities for price improvement.

The Exchange has stated that it will issue a regulatory circular informing its members which securities are currently exempt from the ''tick'' requirements of the Short Sale Rule and thus available for API under the rule change. At this time, securities that trade on the Exchange that the Commission has exempted from the ''tick'' requirements of the Short Sale Rule include Exchange-Traded Funds (''ETFs'')[11] and certain Trust Issued Receipts (''TIRs'').[12]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–2003–25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14566 Filed 6–9–03; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Supplementary Material .07 to Phlx Rule 229.

[7] *See* Supplementary Material .07(c)(i)(A) to Phlx Rule 229.

[8] 17 CFR 240.10a–1.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See, e.g.*, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation (''Division''), Commission, to Claire P. McGrath, Vice President, Amex, dated August 17, 2001(''Amex Letter''); letter from Nancy J. Sanow, Assistant Director, Division, Commission, to James F. Duffy, General Counsel, Amex, dated January 22, 1993 (regarding SPDRs listed on the Amex); letter from James A. Brigagliano, Assistant Director, Division, Commission, to James F. Duffy, General Counsel, Amex, dated March 3, 1999 (regarding QQQs listed on the Amex).

[12] *See* letter from James A. Brigagliano, Assistant Director, Division, Commission, to Janet L. Fisher, Cleary, Gottlieb, Steen & Hamilton, dated March 19, 2002 (regarding the Biotech Basket Opportunity Exchangeable Securities series (''BOXES'') traded on the Amex and Phlx). In order to be exempt from the Short Sale Rule, a TIR must meet certain size, concentration, and ADTV criteria.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3505]

State of Illinois

(Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 3, 2003, the above numbered declaration is hereby amended to include Union County as a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on May 6 through May 11, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Jackson in the State of Illinois; and Perry County in the State of Missouri may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 14, 2003, and for economic injury the deadline is February 17, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 4, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14541 Filed 6–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3496]

State of Kansas

(Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 22, 2003, the above numbered declaration is hereby amended to include Haskell, Meade and Seward Counties in the State of Kansas as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clark, Finney, Ford, Grant, Gray, Kearny and Stevens in the State of Kansas; and Beaver and Texas Counties in the State of Oklahoma may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 23, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14542 Filed 6–9–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF SPECIAL COUNSEL

Proposed Information Collection Activities; Request for Comment

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork

Reduction Act of 1995 (44 U.S.C. chapter 35), and implementing regulations at 5 CFR part 1320, this is the second Federal Register notice published by the U.S. Office of Special Counsel (OSC) about proposed information collection activities, consisting of two forms for the collection of information pursuant to OSC regulations at 5 CFR 1800.1 (Filing complaint of prohibited personnel practices or other prohibited activities) and 5 CFR 1800.2 (Filing disclosures of information). OSC is requesting approval from the Office of Management and Budget (OMB) to extend the use of two previously approved information collections: (1) Form OSC–11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity); and (2) Form OSC–12 (Disclosure of Information), as revised. Both forms to be submitted include minor technical edits previously approved by OMB. Form OSC–11 (complaint form) also includes: (1) revisions to three consent statements in the form; (2) the addition of information on OSC's jurisdiction over employees of the Transportation Security Administration; (3) revision of the format of the cover sheet providing information on how to file a complaint; and (4) revision of the format for providing information on disclosures alleged to have been the basis for whistleblower retaliation. OMB's current approval for these collections of information expires on August 31, 2003.

On March 10, 2003, notice of this request for OMB approval with a request for public comment was published in the Federal Register at 68 FR 11442. The notice and the proposed forms were also posted on OSC's Web site (at *http://www.osc.gov*) on March 10, 2003. No comments on these information collections were received.

Federal employees, other federal agencies, and the general public are invited to comment on OSC's information collection activities relating to possible prohibited employment practices and whistleblower disclosures.

DATES: Comments should be received on or before July 10, 2003.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs at the Office of Management and Budget, 725 Seventeenth Street, NW, Attention: Desk Officer for U.S. Office of Special Counsel, Washington, DC 20503. A copy of any comments should also be sent to Kathryn Stackhouse, General Law Counsel, Legal Counsel and Policy Division, U.S. Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036–4505.

FOR FURTHER INFORMATION CONTACT: Copies of the collections of information and supporting documentation are available from Kathryn Stackhouse, General Law Counsel, Legal Counsel and Policy Division, U.S. Office of Special Counsel, Planning and Advice Division, 1730 M Street, NW, Suite 300, Washington, DC 20036–4505; telephone (202) 653–8971; facsimile (202) 653–5151.

SUPPLEMENTARY INFORMATION: Comment is requested on the following two collections of information:

1. Title of Collection: Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity.

Agency Form Number: OSC–11 (OMB Control Number 3255–0002).

Summary of the Collection of Information: This complaint form is required for use by current and former Federal employees and applicants for Federal employment, under 5 CFR 1800.1, to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, except for allegations involving the Hatch Act, which may be submitted by providing the information described at 5 CFR 1800.1.

Need for Information and Proposed Use: This information is needed by OSC to investigate and seek any appropriate remedies for allegations of prohibited personnel practices and other prohibited activity, pursuant to its statutory authority at 5 U.S.C. 1211, *et seq.*

Likely Respondents: Current and former federal employees, and applicants for federal employment.

Estimated Annual Number of Respondents: 1771.

Frequency: On occasion.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Estimated Annual Burden: 2214 hours.

2. Title of Collection: Disclosure of Information.

Agency Form Number: OSC–12 (OMB Control Number 3255–0002).

Summary of the Collection of Information: This form is intended for use by current and former federal employees, and applicants for federal employment, in making whistleblower disclosures of violations of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

Need for Information and Proposed Use: This information is needed by OSC to review whistleblower disclosures of wrongdoing in federal agencies, and to refer disclosures in appropriate cases to the head of the agency involved for investigation, pursuant to its statutory authority at 5 U.S.C. 1211, *et seq.*

Likely Respondents: Current and former federal employees, and applicants for federal employment.

Estimated Annual Number of Respondents: 475.

Frequency: On occasion.

Estimated Average Burden Per Respondent: 1 hour.

Estimated Annual Burden: 475 hours.

The two proposed forms described above are available on OSC's Web site (at *http://www.osc.gov*). Consistent with §§ 1703 and 1705 of the Government Paperwork Elimination Act, Public Law 105–277, Title XVII, OSC plans to provide submitters with the option of filing complaints and disclosures electronically, after completion of the necessary planning and implementation measures, no later than October 21, 2003.

Dated: June 2, 2003.

William E. Reukauf,

Acting Special Counsel.

[FR Doc. 03–14552 Filed 6–9–03; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF STATE

[Public Notice 4381]

Culturally Significant Objects Imported for Exhibition Determinations: ''Marc Chagall''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Marc Chagall,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the San Francisco Museum of Modern Art, San Francisco, CA from on or about July 26, 2003 to on or about November 4, 2003, and at possible additional venues yet to be determined,

is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 30, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–14576 Filed 6–9–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 30, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15275.

Date Filed: May 27, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC31 South 0141 dated 23 May 2003, TC31 South Pacific Expedited Resolution 015v, Intended effective date: July 1, 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–14584 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–15361]

Ultrawideband Compatibility Testing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The Federal Aviation Administration, Office of Spectrum Policy and Management, is conducting bench tests to investigate the impact of ultrawideband emissions on selected aeronautical systems which operate below 1 GHz and on the global positioning system (GPS). Public comment is being sought on the test plans, and therefore a two week comment period will follow the date of posting of this notice. Three draft test plans cover (1) global positioning system (GPS) receiver, (2) Air Traffic Control communication receiver, and (3) other navigation receivers. The three test plans may be viewed and downloaded from the World Wide Web at: *http:www.faa.gov/ats/aaf/asr/library/downloads.htm.* Click on ''ultrawideband''. The documents are available in both MS Word and Acrobat 5 format.

Comments should be directed to: UWB Test Plan Comments, FAA, ASR–1, 800 Independence Avenue, SW., Washington, DC 21591.

Comments can also be send by e-mail to *Oscar.Alvarez@faa.gov.*

DATES: Comments will be accepted during the two week period following publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Alvarez, FAA Spectrum Policy and Management, ASR–2, 800 Independence Ave., SW., Washington, DC 20591, (202) 267–7531, e-mail *oscar.alvarez@faa.gov.*

Issued in Washington, DC, on June 4, 2003.

Donald Willis,

Manager, Spectrum Planning and International Division, ASR–200, Spectrum Policy and Management.

[FR Doc. 03–14587 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Environmental Impact Statement: Pitkin, Eagle and Garfield Counties, CO

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) and, DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA and FTA are jointly issuing this Revised Notice of Intent to advise the public that an Environmental Impact Statement (EIS) will not be prepared for a proposed transportation improvement project along State Highway 82 in the counties of Pitkin, Eagle and Garfield, Colorado.

FOR FURTHER INFORMATION CONTACT: Eva LaDow or Edrie Vinson, FHWA Colorado Division, 555 Zang Street, Room 250, Lakewood, Colorado 80228. Telephone (303) 969–6730 Extensions 341 and 378, respectively. Dave Beckhouse, FTA Region VIII, 216 16th Street, Suite 650, Denver, Colorado 80202. Telephone (303) 844–4266. Tom Mauser, CDOT Modal Planning, 4201 E. Arkansas Ave., DTD B–606, Denver, Colorado 80222. Telephone (303) 757–9768.

SUPPLEMENTARY INFORMATION: On December 31, 1997 the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for proposed transportation improvements in Pitkin, Eagle, and Garfield Counties. As a result of the study effort to date, no major federal action is being proposed, therefore the FTA and FHWA are terminating their involvement in the preparation of an EIS.

Comments or questions concerning this proposed action should be directed to the Colorado Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 23, 2003.

William C. Jones,

Division Administrator, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

Charles Dolby,

Assistant Regional Administrator, Federal Transit Administration, Region VIII, Denver, Colorado.

[FR Doc. 03–14138 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–14793 (Notice No. 03–6)]

Hazardous Materials: Regulations for the Safe Transport of Radioactive Material (TS–R–1); Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting and request for written comments.

SUMMARY: RSPA will conduct a public meeting and accept written comments pertaining to 63 proposed changes to the International Atomic Energy Agency's (IAEA) Regulations for the Safe Transport of Radioactive Materials, TS–R–1, scheduled for revision in the year 2005. Interested persons are invited to attend.

DATES: *Public meeting.* The public meeting will be held on July 22, 2003 from 9:30 a.m. to 11:30 a.m.

Comments. Comments must be received by August 8, 2003.

ADDRESSES: *Public meeting.* The meeting will be held at Department of Transportation Headquarters, Nassif Building, 400 Seventh Street, SW., Washington DC, 20590–0001, in room 6244.

Comments. You may submit comments identified by the docket number (RSPA–03–14793 (Notice No. 03–6)) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: At the public meeting held July 22, 2003 or to the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9:00 am and 5:00 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Supplementary Information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management System (*see* **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Boyle, Office of Hazardous Material Technology, U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington DC, 20590–0001; (202) 366–2993; *rick.boyle@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this meeting is to receive public comments on the transport regulation changes proposed by the International Atomic Energy Agency (IAEA) as part of its ongoing regulatory review process. These comments will be used to develop U.S. positions on the 63 proposed changes for the IAEA regulatory review meeting scheduled for November 10–14, 2003, in Bonn, Germany. The public is invited to attend without prior notification. Due to heightened security measures at DOT Headquarters, participants are encouraged to arrive early to allow time to undergo the security checks necessary to obtain access to the building.

The regulatory changes proposed by IAEA are available on the Internet at *http://hazmat.dot.gov/files/IAEA_TS-R-1_rev_prop.pdf*. A consolidated draft of the endorsed proposed TS–R–1 revision may be downloaded at *http://hazmat.dot.gov/files/IAEA_TS-R-1_rev_draft.pdf*. Although not required, electronic submission using the standard comment form that can be downloaded at *http://hazmat.dot.gov/files/comment_form_prop_chgs.doc* is preferred.

II. Public Participation

Comments should identify the docket number (RSPA–03–14793 (Notice No. 03–6)) and if sent by mail, comments are to be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Internet users may access all comments received by the U.S. Department of Transportation at *http://dms.dot.gov*.

III. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or may visit *http://dms.dot.gov*.

Issued in Washington, DC, on June 4, 2003.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–14585 Filed 6–9–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB–167 (Sub–No. 1094)A]

Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing in this case on Thursday, July 24, 2003, in New York City, NY. The hearing will provide a forum for interested persons to express their views on the matters at issue in this proceeding. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Thursday, July 24, 2003. Persons wishing to speak at the hearing should file with the Board a written notice of intent to participate (and should indicate a requested time allotment) as soon as possible but no later than July 15, 2003. Written statements by persons participating in the hearing may be submitted prior to the hearing but are not required. Persons wishing to submit written statements should do so by July 17, 2003.

ADDRESSES: An original and 10 copies of all notices of intent to participate and any written statements should refer to Docket No. AB–167 (Sub-No. 1094)A, and should be sent to: Surface Transportation Board, Attn: Docket No. AB–167 (Sub-No. 1094)A, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Joseph Dettmar, (202) 565–1609. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

SUPPLEMENTARY INFORMATION: In 1992, the Board's predecessor, the Interstate Commerce Commission (ICC), agreed to withdraw its jurisdiction over the Highline,[1] a 1.45-mile elevated viaduct owned by Consolidated Rail Corporation (Conrail) in New York City, NY.[2] Chelsea Property Owners, a group

[1] *Chelsea Property Owners—Aban.—The Consol. R. Corp.,* 8 I.C.C.2d 773 (1992) *(Chelsea), aff'd sub nom. Consolidated Rail Corp.* v. *I.C.C.,* 29 F.3d 706 (D.C. Cir. 1994) *(Conrail).*

[2] The Highline is an elevated steel and concrete viaduct built in Lower Manhattan in 1930. The Highline rises from grade level on steel columns near the corner of 34th Street and Eleventh Avenue just to the north of the Caemmerrer West Side Yard; loops around the Yard before turning south at 30th Street near Tenth Avenue; and extends south mostly to the west of Tenth Avenue until

comprised of owners of property crossed by the Highline, had sought the withdrawal to enable them to pursue condemnation and demolition of the viaduct. The ICC conditioned its order on CPO agreeing to indemnify Conrail for all demolition costs in excess of $7 million.

Ten years later in August 2002, CPO advised the Board that it had negotiated a proposed settlement agreement with Conrail, CSX Transportation, Inc. (CSX), and the other rail interests, and with the involved governmental interests. CPO asked the Board to find that this agreement satisfies the indemnity condition imposed by the ICC. Friends of the Highline, Inc. has filed a petition to reopen the *Chelsea* decision based on historic and environmental grounds. The City of New York, which CPO evidently expected to be a signatory to the proposed agreement, has asked the Board instead to issue a certificate of interim trail use (CITU) in this case. A CITU would permit the City to negotiate with Conrail to preserve, *i.e.*, ''rail bank'' the Highline pending the viaduct's possible future restoration to rail service. Conrail and CSX have asked the Board to determine whether it has the authority to issue a CITU in these circumstances.

Date of Hearing. The hearing will begin at 2 p.m. on Thursday, July 24, 2003, in the Federal Conference Center, in the Jacob Javits Federal Building, 26 Federal Plaza, New York, New York, and will extend, if necessary for every person scheduled to speak to be heard, for 2 hours.

Notice of Intent To Participate. Persons wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than July 15, 2003.

Written Statements. Persons wishing to submit written statements should do so by July 17, 2003.

Paper Copies. Persons intending to speak at the hearing and/or to submit written statements prior to the hearing should submit an original and 10 paper copies, respectively, of their notices and/or written statements.

Board Releases Available via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: June 4, 2003.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14412 Filed 6–9–03; 8:45 am]

BILLING CODE 4915–00–P

terminating at Gansevoort Street. The Highline was constructed pursuant to easements that require Conrail to absorb all demolition costs when the easements terminate. Abandonment constitutes termination under the easements. For a history of the Highline, *see Chelsea Property Owners—Aban.—The Consol. R. Corp.,* 7 I.C.C.2d 991, 992–94 (1991).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–POL

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–POL, U.S. Income Tax Return for Certain Political Organizations.

DATES: Written comments should be received on or before August 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Certain Political Organizations.

OMB Number: 1545–0129.

Form Number: 1120–POL.

Abstract: Certain political organizations file Form 1120–POL to report the tax imposed by Internal Revenue Code section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under Code section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 6,527.

Estimated Time Per Respondent: 36 hours., 38 min.

Estimated Total Annual Burden Hours: 239,150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14605 Filed 6–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Guidance to Federal Financial Assistance Recipients: Providing Meaningful Access to Individuals Who Have Limited English Proficiency in Compliance With Title VI of the Civil Rights Act of 1964

AGENCY: Department of Veterans Affairs.

ACTION: Notice and request for comments.

SUMMARY: In accordance with Executive Order 13166, Improving Access to Service for Persons with Limited English Proficiency (LEP), this notice requests comments on the Department of Veterans Affairs (VA) draft guidance on improving access for persons with limited English proficiency to VA assisted programs and activities. Executive Order 13166, requires each Federal agency that awards Federal financial assistance to publish in the **Federal Register** a notice containing Departmental guidance that assists recipients in complying with obligations under Title VI of the Civil Rights Act of 1964 and Title VI regulations to ensure meaningful access to Federally assisted programs and activities for LEP persons.

DATES: Comments must be received on or before July 10, 2003

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''LEP Guidance''. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call 202 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Tyrone Eddins, Office of Resolution Management (08), at (202) 501–2801; or Royce Smith, Office of General Counsel (024), at (202) 273–6374, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The purpose of Executive Order 13166 is to eliminate, under Title VI, to the maximum extent possible, limited English proficiency (LEP) as an artificial barrier to full and meaningful participation by beneficiaries in all Federally assisted and Federally conducted programs and activities. The purpose of this policy is to further clarify the responsibilities of recipients of Federal financial assistance from VA, and assist them in fulfilling their responsibilities to LEP persons, pursuant to Title VI and Title VI regulations. The policy guidance explains that to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that LEP persons have meaningful access to the programs, activities, benefits, services, and information those recipients provide, free of charge.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report To Congress titled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' The report made several recommendations designed to minimize confusion and ensure that funds dedicated to LEP services will provide meaningful access for LEP individuals. One significant recommendation was the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients.

In a memorandum to all Federal funding agencies, dated July 8, 2002, Assistant Attorney General Ralph Boyd of the Department of Justice's (DOJ) Civil Rights Division requested that agencies model their agency-specific guidance for recipients after Sections I–VIII of DOJ's June 18, 2002 guidance. Therefore, this proposed guidance is modeled after the language and format of DOJ's revised, final guidance, ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons'', published June 18, 2002, 67 FR 41455.

Because this Guidance must adhere to the Federal-wide compliance standards and framework detailed in the model DOJ LEP Guidance issued on June 18, 2002, VA specifically solicits comments on the nature, scope and appropriateness of the VA specific examples set out in this guidance explaining and/or highlighting how those consistent Federal-wide compliance standards are applicable to recipients of Federal financial assistance through VA.

It has been determined that the guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

The text of the complete guidance document appears below.

Approved: May 28, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

Guidance on Executive Order 13166, Limited English Proficiency (LEP) Title VI Prohibition Against National Origin Discrimination In Federally Assisted Programs

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient (LEP). While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English ''not well'' or ''not at all'' in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

[1] VA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This guidance provides a uniform framework for a recipient to

This policy guidance clarifies responsibilities, under existing law, of recipients of Federal financial assistance from the Department of Veterans Affairs (VA) to provide meaningful access to LEP persons. The purpose is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria VA will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that Federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in Federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal Government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in Federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the VA, in conjunction with the Department of Justice (DOJ), plans to continue to provide assistance and guidance in this important area. In addition, the VA plans to work with DOJ, recipients, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches and to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own Federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. The Department of Justice and the VA have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that Federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

VA is comprised of three distinct benefits administrations: Veterans Health Administration (VHA), Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA). Each of these administrations has programs that provide Federal financial assistance to recipients. Each has existing Title VI program responsibilities that are administered independent of each other.

VHA administers several programs and activities that receive Federal financial assistance from the VA. With more than 163 VA medical centers nationwide, VHA manages one of the largest health care systems in the United States. VA medical centers within a Veterans Integrated Service Network (VISN) work together to provide efficient, accessible health care to veterans in their areas. VHA also conducts research and education and provides emergency medical preparedness.

VBA is responsible for ensuring compliance in proprietary, non-college educational institutions approved to train veterans and/or their beneficiaries. VBA also provides benefits and services to veterans and their beneficiaries through more than 50 VA regional offices. Some of the benefits and services provided by VBA include compensation and pension, education, loan guaranty, and insurance.

NCA provides Federal assistance to States to establish, expand, or improve state owned or established veterans cemeteries. The State Cemetery Grants Program (SCGP) provides these services to eligible state veterans cemeteries. NCA is responsible for providing burial benefits to veterans and eligible dependents. The delivery of these benefits involves operating 120 national cemeteries in the United States and Puerto Rico, providing headstones and grave markers worldwide, administering the State Cemetery Grants program that complements the national cemeteries, and administering the Presidential Memorial Certificate Program, which provides certificates bearing the President's signature to the next of kin of honorably discharged, deceased veterans.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability. 42 U.S.C. 2000d–1.

VA regulations implementing Title VI, provide in 38 CFR at part 18.3(b) that

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on grounds of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual, which is different, or is provided in a different manner, from that provided to others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which such services,

integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP population it encounters, and its prior experience in providing language services in the community it serves.

[2] This policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

financial aid or other benefits, or facilities will be provided may not directly, or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination, because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects to individuals of a particular race, color or national origin.'' (Emphasis added. 104(b)(2)).

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In Lau, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs.

Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency,'' 65 FR 50121 (August 16, 2000), was issued on August 11, 2000. Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to Agency Civil Rights Officers setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order and enforcement of Title VI of the Civil Rights Act of 1964, ''National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (''DOJ LEP Guidance''). The Department of Justice's role under Executive Order 13166 is unique. The Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address.

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for ''Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of Sandoval.[3] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities—the Executive Order remains in force.

VA's policy guidance is consistent with and is issued under the Title VI and the Title VI regulations, and is also consistent with the August 11, 2000, DOJ ''Policy Guidance Document on Enforcement of National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000); Executive Order 13166; and the DOJ LEP guidance issued on June 18, 2002. 67 FR 41457 (June 18, 2002).

[3] The memorandum noted that some commentators have interpreted Sandoval as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. See, *e.g.,* Sandoval, 532 U.S. at 286, 286 n.6 (''[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are inspired by, at the service of, and inseparably intertwined with ''Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid.''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations.

III. Who Is Covered?

All entities that receive Federal financial assistance from the VA, either directly or indirectly, through a grant, contract or subcontract, are covered by this policy guidance (*see* list 38 CFR, part 18, appendix A). Covered entities include (1) any state or local agency, private institution or organization, or (2) any public or private individual that operates, provides, or engages in activities, and that receives Federal financial assistance.[4]

The term Federal financial assistance to which Title VI applies includes, but is not limited to, grants and loans of Federal funds, grants or donations of Federal property, details of Federal personnel, or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRA) was enacted. The CRRA provides that, in most cases, when a recipient/covered entity receives Federal financial assistance for a particular program or activity, the recipient's entire operation is covered. This is true even if only one part of the recipient receives the Federal assistance.

Example: VA provides assistance to a state agency to improve a particular cemetery. All of the operations of the entire state agency, not just the particular cemetery are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted services to persons with limited English proficiency.

VHA administers several programs and activities that receive Federal financial assistance from the VA. All entities that receive Federal financial assistance from VA are listed in 38 CFR, part 18, appendix A, either directly or indirectly, through a grant, contract, or subcontract, are covered by this policy guidance. Covered entities include (1)

[4] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the VA LEP Guidance are to additionally apply to the programs and activities of federal agencies, including the VA.

any state or local agency, private institution or organization, or (2) any public or private individual that operates, provides, or engages in health, or social service programs and activities, and that receives Federal financial assistance from VA directly or through another recipient/covered entity.

Examples of covered entities include, but are not limited to hospitals; nursing homes; home health agencies; managed care organizations; universities and other entities with health or social service research programs; state, county, and local health agencies; state Medicaid agencies; state, county, and local welfare agencies; programs for families, youth and children; Head Start programs; physicians; and other providers who receive Federal financial assistance from VA.

VBA is responsible for ensuring compliance in proprietary, non-college degree granting educational institutions approved to train veterans and/or their beneficiaries. In 1968, the Attorney General ruled that recipients of tuition or other payments from veterans for education programs are receiving Federal financial assistance. The U.S. District Court upheld this principle in *Bob Jones University, et at,* v. *Donald E. Johnson,* 396 F. Supp. 597 (D.S.C. 1974), aff'd 529 F.2d 514 (4th Cir. 1975).

VBA is also responsible for ensuring Title VI compliance in certain education and training programs funded by the U.S. Department of Education (ED). Under a delegation agreement, VA has Title VI compliance responsibilities for ED-funded proprietary educational institutions, except those operated by a hospital. VA is also delegated Title VI responsibility for post-secondary, nonprofit educational institutions, other than colleges and universities, except if operated by a college, university, hospital, or a unit of State or local government. VA's LEP guidance applies only to recipients for whom VA has compliance responsibility.

VBA's Title VI compliance responsibility also applies to recognized national service organizations whose representatives assist veterans in the preparation, presentation and prosecution of claims for VA benefits. In December 1975, DOJ's ''Interagency Report: Evaluation of Title VI Enforcement at the Veterans Administration,'' concluded that representatives of recognized service organizations afforded the use of Federally-owned property provided by VA without charge are recipients of Federal assistance. These service organizations are considered recipients within the meaning of Title VI. Recognized national veterans' service organizations and State employment services both use VA office space and, therefore, VA's LEP guidance applies to those entities.

VBA recipients receiving Federal financial assistance, and covered by the LEP policy guidance include but are:

Educational institutions whose programs are approved for training under 38 U.S.C., chapters 30, 31, 32, 35 and 10 U.S.C., chapter 1613.

Representatives of recognized national veterans service organizations who utilize VBA space and office facilities (38 U.S.C. 5902(a)(2)).

Representatives of State employment services who utilize VBA space and office facilities (38 U.S.C. 7725(1)).

NCA administers the State Cemetery Grants Program (SCGP). Examples of covered entities include, but are not limited to: Cemeteries; state, county and local agencies; and other providers who receive Federal financial assistance from VA.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not read, write, speak, or understand English can be limited English proficient, or ''LEP'' entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by VA recipients and should be considered when planning language services include, but are not limited to, for example:

—Persons seeking healthcare services or benefits;

—Persons seeking access to veterans cemeteries, including family members and friends of deceased veterans and others who are eligible for burial in such cemeteries;

—Persons seeking educational, training, including spouses and children;

—Persons seeking assistance in the preparation, presentation, and prosecution of claims for VA benefits;

—Other persons who encounter or seek services, benefits, or information from entities receiving Federal financial assistance from VA.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to find a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for different types of programs or activities. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. VA recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ''eligible to be served, or likely to be directly affected, by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a VA facility serves a large LEP population, the appropriate service area is most likely the area serviced by the facility, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may

be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be under served because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.

The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak those languages speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using census data, for instance, it is important to focus in on the languages spoken by those who are not proficient in English. Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves a LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If a LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligation to communicate with a person seeking medical services differs, for example, from those to provide voluntary recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, state, or local entity to make an activity compulsory, such as access to important benefits and services can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

However, resource and cost issues can often be reduced by technological advances, the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies, and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and videoconferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be late and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs. Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a healthcare recipient

operating in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a veterans' social facility—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: Oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

—Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

—Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person; [5]

—Understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

—Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of hearings, the provision of healthcare, or the provision of other vital services or exchange of vital information, the use of certified interpreters is strongly encouraged. For those languages in which no formal accreditation or certification currently exists, such entities should consider a formal process for establishing the credentials of the interpreter. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a prison hospital emergency room, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety class need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition of ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DOJ recipients providing law enforcement, health, and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staff person available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as 911 operators, police officers, guards, or program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages.

Contracting for Interpreters. Contract interpreters may be a cost-effective

[5] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages, which do not have an appropriate direct interpretation of some medical or benefits-related terms, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical, medical, or legal terms specific to the program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for recipients' less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting applicable confidentiality and impartiality rules.

Use of Family Members or Friends as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative interest in accurate interpretation. In many circumstances, family members (especially children), or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interests may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, mental health, family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For VA recipient programs and activities, this is particularly true in situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when an LEP person seeks medical care from a VA funded recipient. In such a case, use of family members or neighbors to interpret for the LEP patient may raise serious issues of competency, confidentiality, and conflict of interest and be inappropriate. While issues of competency, confidentiality, and conflicts of interest in the use of family members (especially children), or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary.

An example of this is a voluntary educational tour of a VA facility offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, a LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for adjudicatory, medical, administrative, or other reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take extra care to ensure that the LEP person's choice is voluntary that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

Written Language Services (Translation) Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, recipients may determine that an effective LEP plan ensures that certain vital written materials are translated into the

language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. Such written materials could include, for example:

—Consent and complaint forms
—Forms with the potential for important consequences
—Written notices of rights, denial, loss, or decreases in benefits or services, and hearings
—Notices advising LEP persons of free language assistance
—Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
—Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for certain recreational programs should not generally be considered vital, whereas applications for drug and alcohol counseling should be considered vital. Where appropriate, recipients are encourage to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. To have meaningful access, service, benefit, or information, LEP persons may need to be aware of their existence. Thus, vital information may include, for instance, documents indicating how to obtain oral assistance in understanding other information not contained in the translated documents. Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message. Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between the more frequent languages encountered by a recipient and less common languages. Many recipients serve communities in large cities or across the country. These recipients may serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently encountered languages and to set benchmarks for continued translations over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely life span of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether, and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of a recipient's program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral

interpreters where oral language services are needed and are reasonable.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary. Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs.

There may be languages that do not have an appropriate direct translation of some terms, and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may require translators that are less skilled than important documents with technical legal, medical, or other information upon which reliance has important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner their plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of an effective written implementation plan, however, the absence of them does not necessarily mean there is non-compliance.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish,'' in English and Spanish or ''I speak Vietnamese in English and Vietnamese'', etc. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan includes information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

—Types of language services available.
—How staff can obtain those services.
—How to respond to LEP callers.
—How to respond to written communications from LEP persons.
—How to respond to LEP individuals who have in-person contact with recipient staff.
—How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP

persons. An effective LEP plan includes training to ensure that:

—Staff knows about LEP policies and procedures.

—Staff having contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by their staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to services or activities provided by VA recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language. The Social Security Administration has made such signs available on their Web site. These signs could be modified for recipient use.

Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.

Working with community-based organizations and other stakeholders to inform LEP individuals of the recipient.

Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

Including notices in local newspapers in languages other than English.

Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

—Current LEP populations in service area or population affected or encountered.

—Frequency of encounters with LEP language groups.

—Nature and importance of activities to LEP persons.

—Availability of resources, including technological advances and sources of additional resources, and the costs imposed.

—Whether existing assistance is meeting the needs of LEP persons.

—Whether staff knows and understands the LEP plan and how to implement it.

—Whether identified sources for assistance are still available and viable.

—In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by VA through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that VA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, VA will inform the recipient/covered entity in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, VA must inform the recipient/covered entity of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, VA must secure compliance through: (a) Federal assistance after the recipient/covered entity has been given an opportunity for an administrative hearing and/or (b) referral to a DOJ litigation section to for injunctive relief or other enforcement proceedings; or (c) any other means authorized by law.

As the Title VI regulations set forth above indicate, VA has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. VA will engage in voluntary compliance efforts, and will provide technical assistance to recipients at all stages of its investigation. During these efforts to secure voluntary compliance, VA will propose reasonable timetables for achieving compliance and will consult with and assist recipient/covered entities in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with Title VI and the regulations, VA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, VA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically

reevaluated. As recipients take reasonable steps to provide meaningful access to Federally assisted programs and activities for LEP persons, VA will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonable require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.

[FR Doc. 03–14414 Filed 6–9–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
June 10, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Blackburn's Sphinx Moth; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH94

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Blackburn's Sphinx Moth

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Blackburn's sphinx moth *(Manduca blackburni)*, pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 22,440 hectares (55,451 acres) fall within the boundaries of the 9 critical habitat units designated on the Hawaiian islands of Hawaii, Kahoolawe, Maui, and Molokai for Blackburn's sphinx moth. This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of our proposal, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on July 10, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.''

Currently, only 306 species or 25% of the 1,211 listed species in the U. S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA, all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions. Sidle, J.G. 1987. Critical Habitat Designation: Is it Prudent? Environmental Management 11(4):429–437.

Background

Blackburn's sphinx moth (moth) (*Manduca blackburni*) is one of Hawaii's largest native insects. We provided a detailed species description as well as a biogeographical overview of the Hawaiian islands in the proposed rule (67 FR 40633), we incorporate that information by reference in this final designation.

Blackburn's Sphinx Moth Biology and Status

Very few specimens of the moth have been seen since 1940, and after a concerted effort by staff at the Bishop Museum to relocate this species in the late 1970s, it was considered to be extinct (Gagné and Howarth 1985). In

1984, a single population was rediscovered on Maui (Riotte 1986), and subsequently, populations on two other islands were rediscovered. Currently, the moth is known only from populations on Maui, Kahoolawe, and Hawaii. Moth population numbers are known to be small based upon past sampling results; however, no reasonably accurate estimate of population sizes has been determinable at this point because of the adult moth's wide-ranging behavior and overall rarity (Arthur Medeiros, U.S. Geological Survey-Biological Resources Division (USGS–BRD), pers. comm. 1998; Van Gelder and Conant 1998). Before humans arrived, dry and mesic shrubland and forest covered about 823,283 hectares (ha) (2,034,369 acres (ac)) on all the main islands (Hawaii Natural Heritage Program (HHP) 2000), and it is likely that the Blackburn's sphinx moth inhabited much of that area (Riotte 1986). Reports by early naturalists indicate the species was once widespread and abundant, at least during early European settlement on nearly all the main Hawaiian islands (Riotte 1986).

The moth has been recorded from the islands of Kauai, Kahoolawe, Oahu, Molokai, Maui, and Hawaii, and has been observed from sea level to 1,525 m (5,000 ft) elevation. Most historical records were from coastal or lowland dry forest habitats in areas receiving less than 127 cm (50 in) of annual rainfall. On the island of Kauai, the moth was recorded only from the coastal area of Nawiliwili. Populations were known from Honolulu, Honouliuli, and Makua on leeward Oahu, and Kamalo, Mapulehu, and Keopu on Molokai. On Hawaii, it was known from Hilo, Pahala, Kalaoa, Kona, and Hamakua. It appears that this moth was historically most common on Maui, where it was recorded on Kahului, Spreckelsville, Makena, Wailuku, Kula, Lahaina, and West Maui.

Blackburn's sphinx moth larvae feed on plants in the nightshade family (Solanaceae). The natural host plants are native trees within the genus *Nothocestrum* (aiea), on which the larvae consume leaves, stems, flowers, and buds. However, many of the plants recorded for this species are not native to the Hawaiian Islands, and include *Nicotiana tabacum* (commercial tobacco), *Nicotiana glauca* (tree tobacco), *Solanum melongena* (eggplant), *Lycopersicon esculentum* (tomato), and possibly *Datura stramonium* (Jimson weed). Sphingid moths are known to exploit nutritious but low-density, low-apparency host plants such as vines and sapling trees. Development from egg to adult can take as little as 56 days, but pupae may remain in a state of torpor (inactivity) in the soil for up to a year. The growth rates of larvae for many closely related sphingid species are reported to decrease when their host plants lack suitable water content. In fact, suitable host plant water content can improve the later fecundity of the adult stage (Murugan and George 1992).

Adult moths have been found throughout the year, and have been observed feeding on nectar from *Ipomoea indica* (koaliawa). Other likely native nectar-providing plants for the moth are other *Ipomea* species (spp.), *Capparis sandwichiana* (maiapilo), and *Plubago zeylancia* (iliee). Many sphingid studies have shown that air temperature restricts adult feeding activity above a certain temperature (usually 30 degrees Celsius (86 degrees Fahrenheit)) (Herrera 1992). During Van Gelder and Conant's captive-rearing study (1998), adult moth feeding was not observed and captive-reared adult moths lived no longer than 12 days. In general, sphingids are known to live longer than most moths because of their ability to feed and take in water from a variety of sources, rather than relying only upon stored fat reserves. Because they live longer than most moths, female sphingid moths have less time pressure to mate and lay eggs, and often will take more time in locating the best host plants for egg laying (B. Gagné, pers. comm. 1994; David Hopper, Service, *in litt.* 2000, 2002; Williams 1931, 1947; Riotte 1986; Van Gelder and Conant 1998; Kitching and Cadiou 2000). Because there are no studies showing any sphingid-species adults being short-lived, we believe that some unknown factor contributed to the brief adulthood of the Blackburn's sphinx moths observed during Van Gelder and Conant's (1998) study.

Blackburn's Sphinx Moth Habitat and Range

Plant species composition in the moth's habitat varies considerably depending on location and elevation, but some of the most common native plants in areas where the moth occurs are the trees *Diospyros sandwicensis* (lama), *Rauvolfia sandwicensis* (hao), *Reynoldsia sandwicensis* (ohe), *Pouteria sandwicensis* (alaa), the shrubs *Erythrina sandwicensis* (wiliwili), *Dodonaea viscosa* (aalii), and *Myoporum sandwicense* (naio) (Roderick and Gillespie 1997; Van Gelder and Conant 1998; Wagner *et al.* 1999; Cabin *et al.* 2000; Wood 2001a, 2001b).

The largest populations of Blackburn's sphinx moths, on Maui and Hawaii, are associated with trees in the genus *Nothocestrum* (Van Gelder and Conant 1998). For example, the large stand of *Nothocestrum* trees within the Ka naio Natural Area Reserve (NAR), Maui, is likely the largest in the State (Medeiros *et al.* 1993), and this fact may explain why the moth occurs with such regularity in the Ka naio area (A. Medeiros, pers. comm. 1994). *Nothocestrum* is a genus of four species endemic to the Hawaiian Islands (Simon 1999) which currently occur on Kauai, Oahu, Molokai, Lanai, Hawaii, and Maui. One species, *N. longifolium*, primarily occurs in wet forests, but can occur in mesic forests as well. Three species, *N. latifolium, N. brevifolium*, and *N. peltatum*, occur in dry to mesic forests, the habitat in which the moth has been most frequently recorded. Moth larvae have been documented feeding on two *Nothocestrum* spp., *N. latifolium*, and *N. brevifolium*; it is likely that *N. peltatum* and *N. longifolium* are suitable host plants for larval moths as well. This is supported not only by the fact that these two species are closely related to known larval hosts, but also because past historical records document the moth as occurring on the islands of Kauai and Oahu, where *N. latifolium* is not abundant and *N. brevifolium* does not occur. Furthermore, the species is known to feed on a variety of native and nonnative Solanaceae.

On Molokai, moth habitat includes vegetation consisting primarily of mixed-species mesic and dry forest communities composed of native and introduced plants (HHP 2000). Although Molokai is not known to currently contain a moth population, past moth sightings on Molokai have been reported. The island does contain native *Nothocestrum* larval host plants, including *N. longifolium* and *N. latifolium*, as well as adult host plants and restorable, manageable areas associated with these existing host plants (Wood 2001a). Because of its proximity to Maui (currently and historically home to the most persistent and largest population) and the fact that Molokai has in the past and presently supports *N. latifolium*, many researchers believe the moth could re-establish itself on the island and become a viable population(s) in the future (Frank Howarth, Bishop Museum, pers. comm. 2001).

The endangered larval host plant, *Nothocestrum brevifolium*, as well as adult host plants, occur in the areas on Hawaii Island that support populations of the moth (Marie Bruegmann, Service,

pers. comm. 1998), where there are many recorded associations of eggs, larvae, and adult moths with this plant species. This tree species is primarily threatened by habitat conversion associated with development; competition from nonnative species such as *Schinus terebinthifolius* (Christmas berry), *Pennisetum setaceum* (fountain grass), *Lantana camera* (lantana), and *Leucaena leucocephala* (Kona hao le); browsing by cattle; fire; random environmental events such as prolonged drought; and reduced reproductive potential resulting from the small number of existing individuals (59 FR 10325).

Although *Nothocestrum* spp. are not currently reported from Kahoolawe, there were very few surveys of this island prior to the intense ranching activities, which began in the middle of the last century, and the subsequent use of the island as a weapons range for 50 years. Prior to their removal, goats also played a major role in the destruction of vegetation on Kahoolawe (Cheetah and Stone 1990). It is likely that the reappearance of some vegetation as a result of the removal of the goats and the cessation of military bombing activities have allowed the moth to inhabit the island. On Kahoolawe, moth larvae feed on the nonnative *Nicotiana glauca*, which appears to adequately support production and growth of the larval stage during nondrought years. However, the native *Nothocestrum* are more stable and drought-resistant than the *Nicotiana glauca*, which dies back significantly during especially dry years (A. Medeiros, pers. comm. 2001). Therefore, it appears likely that long-term survival of the moth on Kahoolawe will require the planting of *Nothocestrum latifolium* (A. Medeiros, pers. comm. 1998).

Threats to the Conservation of Blackburn's Sphinx Moth

Habitat Loss and Degradation

Dry to mesic forest habitats in Hawaii have been severely degraded by past and present land management practices, including ranching, the impacts of introduced plants and animals, wildfire, and agricultural development (Cheetah and Stone 1990). Because of these factors, *Nothocestrum peltatum* on Kauai and *N. brevifolium* on Hawaii are now federally listed as endangered species (59 FR 9327; 59 FR 10325). Although all *Nothocestrum* spp. are not presently listed as endangered or threatened, the entire genus is declining and considered uncommon (Medeiros *et al.* 1993; HHP 2000). For example, while *N. latifolium* presently occurs at moderate densities at Ka naio NEAR (HHP 1993), there has been a complete lack of seedling survival and the stand is being degraded by goats (F. Howarth, pers. comm. 1994; Steven Montgomery, pers. comm. 1994; Medeiros *et al.* 1993). Goats have played a major role in the destruction of dryland and mesic forests throughout the Hawaiian Islands (Van Riper and Van Riper 1982; Stone 1985).

Because the moth was once so widespread and sphinx moths are known to be strong fliers, we believe it is likely that inter-island dispersal of the species occurred to some degree prior to the loss of much of its historical habitat. Currently, the areas of dry to mesic shrub and forest habitats below 1,525 m (5,000 ft) elevation that are suitable for Blackburn's sphinx moth are approximately 148,585 ha (367,161 ac).

Localized Extirpation

In addition to, or perhaps because of, habitat loss and fragmentation, Blackburn's sphinx moths are also susceptible to seasonal variations and weather fluctuations affecting their quality and quantity of available habitat and food. For example, during times of drought, nectar availability for adult moths are expected to decrease. During times of decreased nectar availability, life spans of individuals may not be affected, but studies with butterflies have shown marked decreases in reproductive capacity for many species (Center for Conservation Biology 1994). In another study, Jansen (1984) reported that host plant availability directly affected sphingid reproductive activity. In fact, for some lepidopteran (butterflies and moths) species, if nectar intake is cut in half, reproduction is also cut approximately in half. Such resource stress may occur on any time scale, ranging from a few days to an entire season, and a pattern of continuous long-term adult feeding stress could affect the future viability of a population (Center for Conservation Biology 1994).

Often, habitat suitability for herbivorous insects is determined by factors other than host plant occurrence or density. Microclimatic conditions (Thomas 1991; Solbreck 1995) and predator pressure (Roland 1993; Roland and Taylor 1995; Walde 1995) are two such widely reported factors. In a study of moth population structure, habitat patch size and the level of sun exposure were shown to affect species occupancy, while patch size and the distance from the ocean coast were reported to affect moth density. Moth populations in small habitat patches were more likely to become extinct (Forare and Solbreck 1997).

Nonnative Arthropods

The geographic isolation of the Hawaiian Islands restricted the number of original successful colonizing arthropods and resulted in the development of an unusual fauna. Only 15 percent of the known insect families are represented by the native insects of Hawaii (Howarth 1990). Some groups that often dominate continental arthropod faunas, such as social Hymenoptera (group-nesting ants, bees, and wasps), are entirely absent from the native Hawaiian fauna. Accidental introductions from commercial shipping and air cargo to Hawaii have now resulted in the establishment of over 2,500 species of alien arthropods (Howarth 1990; Howarth *et al.* 1994), with a continuing establishment rate of 10 to 20 new arthropod species per year (Nishida 1997). In addition to the accidental establishment of nonnative species, private individuals and government agencies began importing and releasing nonnative predators and parasites for biological control of pests as early as 1865. This resulted in the introduction of 243 nonnative species between 1890 and 1985, in some cases with the specific intent of reducing populations of native Hawaiian insects (Funasaki *et al.* 1988; Lai 1988). Alien arthropods, whether purposefully or accidentally introduced, pose a serious threat to Hawaii's native insects, through direct predation, parasitism, and competition for food or space (Howarth and Medeiros 1989; Howarth and Ramsay 1991).

Ants

Ants are not a natural component of Hawaii's arthropod fauna, and native species evolved in the absence of predation pressure from ants. Ants can be particularly destructive predators because of their high densities, recruitment behavior, aggressiveness, and broad range of diet (Reimer 1993). Because they are often generalist feeders, ants may affect prey populations independent of prey density, and may locate and destroy isolated individuals and populations (Nafus 1993a). At least 36 species of ants have become established in the Hawaiian Islands, and three particularly aggressive species have severely affected the native insect fauna (Zimmerman 1948).

For example, in areas where the big-headed ant (*Pheidole megacephala*) is present, native insects, including most moths, have been eliminated (Perkins 1913; Gagné 1979; Gillespie and Reimer 1993). The big-headed ant generally does not occur at elevations higher than

610 m (2,000 ft), and is also restricted by rainfall, rarely being found in particularly dry (less than 35 to 50 cm (15 to 20 in) annually) or wet (more than 250 cm (100 in) annually) areas (Reimer *et al.* 1990). The big-headed ant is also known to be a predator of eggs and caterpillars of native Lepidoptera, and can completely exterminate populations (Zimmerman 1958). This ant occurs on all the major Hawaiian Islands, including those currently inhabited by Blackburn's sphinx moth and is a direct threat to these populations (Neil Reimer, Hawaii Department of Agriculture (HDOA), pers. comm. 2001; Medeiros *et al.* 1993; Nishida 1997).

Several additional ant species threaten the conservation of Blackburn's sphinx moth. The Argentine ant (*Linepithema humilis*) has been reported on several islands, including Maui, Kahoolawe, and Hawaii (Adam Asquith, Service, pers. comm. 1998; A. Medeiros, pers. comm. 1998; Nishida 1997). The long-legged ant (*Anoplolepis longipes*) is reported on several islands, including Hawaii and Maui (Hardy 1979). At least two species of fire ants, *Solenopsis geminata* and *S. papuana*, are also important threats (Reagan 1986; Gillespie and Reimer 1993) and occur on many of the major islands (Reimer *et al.* 1990; Nishida 1997). *Ochetellus glaber*, a recently reported ant introduction, occurs on Maui, Hawaii, and Kahoolawe (A. Medeiros, pers. comm. 1998; N. Reimer, pers. comm. 2001; Nishida 1997).

Parasitic Wasps

Hawaii also has a limited fauna of native Hymenopteran wasp species, with only two native species in the family Braconidae (Beardsley 1961), neither of which is known to parasitize Blackburn's sphinx moth. In contrast, other species of Braconidae are common predators (parasitoids) on the larvae of the tobacco hornworm and the tomato hornworm in North America (Gilmore 1938). There are now at least 74 nonnative species, in 41 genera, of braconid wasps established in Hawaii, of which at least 35 species were purposefully introduced as biological control agents (Nishida 1997). Most species of alien braconid and ichneumonid wasps that parasitize moths are not host-specific, but attack the caterpillars or pupae of a variety of moths and have become the dominant larval parasitoids even in intact, high-elevation, native forest areas of the Hawaiian Islands (Zimmerman 1948, 1978; Funasaki *et al.* 1988; Howarth *et al.* 1994). These wasps lay their eggs within the eggs or caterpillars of Lepidoptera. Upon hatching, the wasp larvae consume internal tissues, eventually killing the host. At least one species established in Hawaii, *Hyposeter exiguae*, is known to attack the tobacco hornworm and the related tomato hornworm in North America (Carlson 1979). This wasp is recorded from all of the main islands except Kahoolawe and Lanai (Nishida 1997) and is a recorded parasitoid of the lawn armyworm (*Spodoptera maurita*) on tree tobacco on Maui (Swezey 1927). Because of the rarity of Blackburn's sphinx moths, no documentation exists of alien braconid and ichneumonid wasps parasitizing the species. However, given the abundance and the breadth of available hosts of these wasps, they are considered significant threats to the moth (F. Howarth, pers. comm. 1994; Howarth 1983; Gagné and Howarth 1985; Howarth *et al.* 1994).

Small wasps in the family Trichogrammatidae parasitize insect eggs, with numerous adults sometimes developing within a single host egg. The taxonomy of this group is confusing, and it is unclear if Hawaii has any native species (John Beardsley, University of Hawaii, pers. comm. 1994; Nishida 1997). Several alien species are established in Hawaii (Nishida 1997), including *Trichogramma minutum*, which is known to attack the sweet potato hornworm in Hawaii (Fullaway and Krauss 1945). In 1929, the wasp *Trichogramma chilonis* was purposefully introduced into Hawaii as a biological control agent for the Asiatic rice borer (*Chilo suppressalis*). This wasp parasitizes the eggs of a variety of Lepidoptera in Hawaii, including sphinx moths (Funasaki *et al.* 1988). Williams (1947) found 70 percent of the eggs of Blackburn's sphinx moth to be parasitized by a *Trichogramma* wasp that was probably *T. chilonis*. Over 80 percent of the eggs of the alien grasswebworm (*Herpetogramma licarsisalis*) in Hawaii are parasitized by these wasps (Davis 1969). In Guam, *Trichogramma chilonis* effectively limits populations of the sweet potato hornworm (Nafus and Schreiner 1986), and is considered under complete biological control by this wasp in Hawaii (Lai 1988). While this wasp probably affects Blackburn's sphinx moth in a density-dependent manner (Nafus 1993a), and theoretically is unlikely to directly cause extinction of a population or the species, the availability of more abundant alternate hosts (any other lepidopteran eggs) may allow for the extirpation of Blackburn's sphinx moth by this or other egg parasites as part of a broader host base (Tothill *et al.* 1930; Howarth 1991; Nafus 1993b).

Parasitic Flies

Hawaii has no native parasitic flies in the family Tachinidae (Nishida 1997). Two species of tachinid flies, *Lespesia archippivora* and *Chaetogaedia monticola*, were purposefully introduced to Hawaii for control of army worms (Funasaki *et al.* 1988; Nishida 1997). These flies lay their eggs externally on caterpillars, and upon hatching, the larvae burrow into the host, attach to the inside surface of the cuticle, and consume the soft tissues (Etchegaray and Nishida 1975b). In North America, *C. monticola* is known to attack at least 36 species of Lepidoptera in eight families, including sphinx moths; *L. archippivora* is known to attack over 60 species of Lepidoptera in 13 families, including sphinx moths (Arnaud 1978). These species are on record as parasites of a variety of Lepidoptera in Hawaii and are believed to depress populations of at least two native species of moths (Lai 1988). Over 40 percent of the caterpillars of the monarch butterfly (*Danaus plexippus*) on Oahu are parasitized by *Lespesia archippivora* (Etchegaray and Nishida 1975a), and the introduction of a related species to Fiji resulted in the extinction of a native moth there (Tothill *et al.* 1930; Howarth 1991). Both of these species occur on Maui and Hawaii (Nishida 1997) and are direct threats to the Blackburn's sphinx moth.

Based on the findings discussed above, nonnative predatory and parasitic insects are considered important factors contributing to the reduction in range and abundance of the Blackburn's sphinx moth, and in combination with habitat loss and fragmentation, are a serious threat to its continued existence. Some of these nonnative species were intentionally introduced by HDOA or other agricultural agencies (Funasaki *et al.* 1988) and importations and augmentations of lepidopteran parasitoids continues. Although the State of Hawaii requires new introductions to be reviewed before release (HDOA 1994), post-release biology and host range cannot be predicted from laboratory studies (Gonzalez and Gilstrap 1992; Roderick 1992), and the purposeful release or augmentation of any lepidopteran parasitoid is a potential threat to the conservation of the Blackburn's sphinx moth (Gagné and Howarth 1985; Simberloff 1992).

As Table 1 indicates, the assemblage of potential alien predators and parasites on each island may differ.

TABLE 1.—POTENTIAL NONNATIVE INSECT PREDATORS AND PARASITES OF BLACKBURN'S SPHINX MOTH

Order/family	Genus/species	Major island(s) on which the species has been reported	Major island(s) on which the species has not been reported
Diptera/Tachinidae	Chaetogaedia monticola (fly)	Hawaii, Kauai, Lanai, Maui, Molokai, Oahu.	Kahoolawe.
Diptera/Tachinidae	Lespesia archippivora (fly)	Hawaii, Kauai, Maui, Molokai, Oahu	Kahoolawe, Lanai.
Hymenoptera/Formicidae	Anoplolepis longipes (long-legged ant).	Hawaii, Kauai, Maui, Oahu	Kahoolawe, Lanai, Molokai.
Hymenoptera/Formicidae	Linepithema humilis (Argentine ant)	Hawaii, Kahoolawe, Kauai, Lanai, Maui.	Molokai, Oahu.
Hymenoptera/Formicidae	Ochetellus glaber (ant)	Hawaii, Kahoolawe, Kauai, Maui, Oahu.	Lanai, Molokai.
Hymenoptera/Formicidae	Pheidole megacephala (big-headed ant).	Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Oahu.	none.
Hymenoptera/Formicidae	Solenopsis geminita (fire ant)	Hawaii, Kauai, Lanai, Maui, Molokai, Oahu.	Kahoolawe.
Hymenoptera/Formicidae	Solenopsis papuana (fire ant)	Hawaii, Kauai, Lanai, Maui, Molokai, Oahu.	Kahoolawe.
Hymenoptera/Vespidae	Vespula pennsylvanica (yellow jacket wasp).	Hawaii, Kauai, Maui, Oahu	Kahoolawe, Molokai.
Hymenoptera/Ichneumonidae	Hyposeter exiguae (wasp)	Hawaii, Kauai, Maui, Molokai, Oahu	Kahoolawe, Lanai.
Hymenoptera/ Trichogrammatidae.	Trichogramma chilonis (wasp)	Kauai, Oahu	Hawaii, Maui, Kahoolawe, Lanai, Molokai.
Hymenoptera/ Trichogrammatidae.	Trichogramma minutum (wasp)	Hawaii, Lanai, Molokai, Oahu	Kauai, Kahoolawe, Maui.

Furthermore, the arthropod community may differ from one area to another, even on the same island, based upon elevation, temperature, prevailing wind pattern, precipitation, or other factors (Nishida 1997). Conserving and restoring Blackburn's sphinx moth populations in multiple locations should decrease the likelihood that the effect of any single alien parasite or predator, or the combined pressure of such species, could result in the diminished vigor or extinction of the moth.

Because of the threats discussed above, we do not believe the existing habitats containing Blackburn's sphinx moth populations are sufficient to ensure the long-term survival of the species. A diverse set of habitats and climates within its former range is necessary to remove the long-term risk of rangewide extinction of the species. Threats to the moth identified in the final listing rule include vandalism and collection, predation/parasitism by alien arthropods, and habitat alteration and loss from nonnative plant and ungulate invasion (65 FR 4770; February 1, 2000). Considering the rarity of the moth, small population size is also believed to be a factor that threatens the long-term survival of the species, since random population fluctuations and catastrophic events are more likely to result in the extirpation of local populations. Wildfire and feral ungulate pressure on the moth's habitat, along with direct pressure of alien predators and parasites, are important factors currently reducing the moth's range and abundance and threatening the species' continued existence (Funasaki *et al.* 1988).

Previous Federal Action

A summary of previous Federal actions on this species up to the time we proposed this critical habitat designation is found in the **Federal Register** notice proposing designation of this critical habitat (67 FR beginning page 40638).

On June 13, 2002, we published a proposed rule for designation of critical habitat for Blackburn's sphinx moth on approximately 40,240 ha (99,433 ac) of land on the islands of Hawaii, Kahoolawe, Maui, and Molokai (67 FR 40633). The publication of the proposed rule opened a 60-day public comment period, which closed on August 12, 2002.

Subsequently, we determined that an additional extension of time was needed to complete this designation process. On August 21, 2002, the District Court in Hawaii approved another joint stipulation extending the date for the final rule designating critical habitat for Blackburn's sphinx moth to May 30, 2003.

On August 26, 2002, we published a notice (67 FR 54763) announcing the reopening of the comment period until December 30, 2002, and notice of a public hearing on the proposed rule to be held on the island of Maui. On September 12, 2002, we held a public hearing at the Maui Arts and Cultural Center Meeting Room, Kahului.

On October 10, 2002, we published a notice of a public hearing on the proposed rule to be held on the island of Hawaii (67 FR 63064). On October 29, 2002, we held a public hearing in Kailua-Kona, Hawaii.

On November 15, 2002, we published a notice of the availability of, and invitation for, comments on the draft economic analysis (DEA) for the proposed rule (67 FR 69179). The second public comment period closed on December 30, 2002.

Summary of Comments and Recommendations

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited, during a prepublication peer review process, independent opinions from 15 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, the geographic region that the species occurs in, and the principles of conservation biology. We received comments from five reviewers. After publication of the proposed rule, we solicited independent opinions from 27 knowledgeable individuals with similar expertise. We received 8 written responses from those 27 individuals. All eight reviewers generally supported our methodology and conclusion, and supported the proposed critical habitat designation, although they recognized the limitations of scientific knowledge of life history and population characteristics of the Blackburn's sphinx moth. All of the reviewers supported including currently unoccupied habitat

within the designation. Several reviewers suggested specific locations where critical habitat should have been expanded; in most cases this was to include additional mesic habitat areas for the moth. Several reviewers specifically expressed concern with the identified primary constituent elements, particularly pertaining to the fact that nonnative tree tobacco (*Nicotiana glauca*) was not identified as such. We summarize and address comments received from the peer reviewers in the following section. We considered all reviewers' comments in developing the final rule.

In the June 13, 2002, proposed critical habitat designation (67 FR 40633), we requested all interested parties submit comments on the specifics of the proposal, including information related to biological justification, policy, economics, and proposed critical habitat boundaries. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. The comment period was scheduled to close on August 12, 2002. To allow for additional comments on the proposed designation and to allow for comments on the DEA of the proposed critical habitat, we extended the comment period until December 30, 2002 (67 FR 54763). We received 30 individually written letters, from 10 designated peer reviewers, 4 State agencies, and 16 individuals or organizations. Approximately 715 additional letters were submitted as part of a mailing campaign, all of which supported the proposed designation.

We received three requests for a public hearing. We announced the date and time of the public hearings and invited comments in letters to appropriate elected officials; Federal, State, and local agencies; scientific organizations; and other interested parties. We also published notices in several news sources, including the **Federal Register**, Star Bulletin, West Hawaii Today, Hawaii Tribune Herald, Honolulu Advertiser, Molokai Advertiser News, and the Maui News. Five individuals at the October 2002 Kahului, Maui, public hearing and 5 individuals at the November 2002 Kailua-Kona, Hawaii, public hearing, gave testimony on the Blackburn's sphinx moth critical habitat proposal.

We provided notification of the DEA through letters and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We also published notice of its availability in the **Federal Register** (67 FR 69179; November 15, 2002), and the DEA and associated material were made available on our Region 1 Fish and Wildlife Office Internet site following its release on November 15, 2002.

We reviewed all comments received for substantive issues and new information regarding the Blackburn's sphinx moth. Similar comments were grouped into six general issue categories relating specifically to the proposed critical habitat determination and DEA on the proposed determination. Comments have been incorporated directly into the final rule or final addendum to the economic analysis, and/or they have been addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* Multiple commenters, including one official with HDOA, stated that the Service should not designate unoccupied habitat for the moth, and that unoccupied areas should be excluded from the designation. However, all peer reviewers of the proposed rule, including one with the Hawaii Division of Forestry and Wildlife (DOFAW) and one with HDOA, were in support of the designation of unoccupied habitat. Many of the peer reviewers stated that unoccupied habitat is essential since currently occupied areas would be inadequate for conservation of the species.

Our Response: Because of the comparatively limited current range of this species, designating only occupied areas would not meet the conservation requirements of the species. Many peer reviewers agreed with this and stated that currently occupied areas, as well as the similar habitat around them within the designated units of critical habitat that may be occupied in the future, cannot provide all of the essential life-cycle needs of the species, nor provide all of the habitat components essential for the conservation (primary constituent elements) of this species. Therefore, providing the opportunity for expansion of this species to areas that were known to have been historically occupied (*i.e.*, Molokai) is essential to its conservation, and should help to prevent the possibility of the species' extinction in the event that some populations are extirpated by catastrophes such as large wildfires or hurricanes.

When designating currently unoccupied habitat for this species, we first evaluated lands that are suitable. Of this suitable habitat, we then identified those areas essential for the conservation of the species if they contained one or more of the primary constituent elements; were either in acceptable condition for conservation efforts, or could be made acceptable through appropriate management actions; and would provide the space and distribution needed by the moth to sustain itself in the future.

The one unoccupied area designated in this final rule is located on the island of Molokai. Although currently unoccupied by the moth, the area contains both larval stage and adult moth native host plants. The area is close enough in proximity to the Maui moth population that many peer reviewers stated it is feasible that the area may again be repopulated by the moth on its own. However, because it is a separate island, some additional protection from a potential natural catastrophe affecting, for example, the Maui population, may be afforded a future moth population on Molokai. Furthermore, as Molokai is the closest island to Oahu, we believe that allowing for a future moth population on Molokai may facilitate the species' dispersal and provide a flight corridor for moths eventually dispersing to the island of Oahu, which is also part of its historical range.

Molokai was designated as critical habitat in lieu of, or rather than, other suitable unoccupied areas, because we determined, to the best of our abilities, that it is the highest quality unoccupied habitat essential to the conservation of the moth. Lastly, the designated unoccupied area on Molokai may lack some of the serious potential threats to the moth (see Table 1). Conserving and restoring Blackburn's sphinx moth populations in multiple locations decreases the likelihood that the effect of any single alien parasite or predator, or the combined pressure of such species and other threats, could result in the diminished vigor or extinction of the species.

(2) *Comment:* Critical habitat designation should consider the following: (1) The importance of designating the best remaining elements of ecosystems for multispecies conservation; (2) the practicality of managing and protecting scattered units without apparent physical boundaries; and (3) the importance of public/private partnerships for species conservation.

Our Response: We agree that all these factors are important for the conservation of listed species. We have designated only areas that are essential for the conservation of the Blackburn's sphinx moth, and which contain primary constituent elements within the highest quality remaining habitats. We also agree that public/private partnerships are often essential for species conservation. As an example,

we are excluding portions of proposed Units 1 and 2 because some private landowners are managing portions of their lands for the conservation benefit of the moth and numerous other listed species. We believe that the benefits of exclusion outweigh the benefits of including these areas as critical habitat because there is a higher likelihood of beneficial conservation activities occurring in those two areas without designated critical habitat. *See*-Exclusions Under Section 4(b)(2) for a more detailed discussion of the excluded areas.

(3) *Comment:* The majority of peer reviewers noted the lack of knowledge regarding basic biology of the species. They noted that little peer-reviewed biological and ecological information is available for the Blackburn's sphinx moth, and that much of the technical information used for the critical habitat designation is based on unpublished reports and field observations by Service staff, State biologists, and university researchers. One peer reviewer with DOFAW stated that the use of information from studies of other sphinx moths or butterflies is probably not valid for Blackburn's sphinx moth. Another peer reviewer suggested the use of studies for other lepidopterans could be problematic. However, other peer reviewers agreed that it was acceptable and appropriate for the Service to use studies and information on other lepidopterans, especially since there is limited information on the moth.

Our Response: As noted in the Background section of this rule, we recognize the limited amount of scientific data available for this species, especially the very limited amount of information that is available in a peer-reviewed format. However, the Act requires us to use the best available scientific and commercial information in undertaking species listing and conservation actions, including the designation of critical habitat as set forth in this rule.

Prior to the rulemaking process associated with listing the Blackburn's sphinx moth as endangered, we participated in, led, or sponsored a number of surveys and studies in numerous habitat areas on several islands to document the presence or absence of the moth or its essential host plant species at these locations. In addition, other natural resource agencies and organizations, including the University of Hawaii, USGS-BRD, DLNR, and the National Botanical Garden, provided us with reports of field observations at many sites on several islands. While we acknowledge the limited amount of peer-reviewed published information regarding the Blackburn's sphinx moth, as required by law we have used the best scientific and commercial data available to identify and delineate the critical habitat boundaries. Furthermore, we believe that we have been cautious in using information from studies of other, similar lepidoptera in identifying critical habitat for this moth species. For example, throughout this rule, we have explicitly identified where we were making comparisons between Blackburn's sphinx moth and related taxa rather than making assumptions outright about the moth. We have also acknowledged throughout the rule that additional studies are needed to confirm certain aspects of the species's biology, including, but not limited to, its host plant co-interactions.

(4) *Comment:* Some commenters stated that the Service did not adequately consider recovery science and management in its proposed critical habitat designation.

Our Response: When developing the rule to designate critical habitat for the moth, we have used the best scientific and commercial data available. This included, but is not limited to, documented locations of known Blackburn's sphinx moth populations and locations of the primary constituent elements, including peer-reviewed scientific publications; unpublished reports by researchers; the rule listing the species (65 FR 4770); the Blackburn's sphinx moth Recovery Outline (Service 2000); the HHP's current database; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, landownership); information received during the public comment periods and public hearings; recent biological surveys and reports; information received in response to outreach materials and requests for species and management information that we sent to all landowners, land managers, and interested parties; responses to the published Blackburn's sphinx moth critical habitat proposed rule; and the DEA.

The critical habitat unit approach in this rule addresses the numerous risks to the long-term survival and conservation of Blackburn's sphinx moth by employing two widely recognized and scientifically accepted methods for promoting viable populations of imperiled species—(1) creation or maintenance of multiple populations to reduce the possibility that a single or series of catastrophic events could threaten to extirpate the species; and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Tear *et al.* 1995; Meffe and Carroll 1996; Service 1997a).

In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Blackburn's sphinx moth. By maintaining viable populations in the designated critical habitat units, the threats represented by a fluctuating environment are reduced and the species has a greater likelihood of achieving conservation. Conversely, loss of a Blackburn's sphinx moth critical habitat unit will result in an appreciable increase in the risk that the species may not recover and survive.

Re-establishing the species to a diverse set of habitats and climates within its former range is necessary to remove the long-term risk of rangewide extinction due to catastrophic events and the numerous direct threats to the species and its habitat (Service 1997a). We are keenly aware that simply designating an area as critical habitat will not ensure its long-term conservation and recovery and, in fact, we know and recognize that active management actions and proven recovery science methods will be far more important in the long run for the moth. In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we also solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our designation methodology of critical habitat for the Blackburn's sphinx moth was based on scientifically sound data, assumptions, and analysis, and recovery science. The comments of all of the peer reviewers were taken into consideration in the development of this final designation. Furthermore, we are in the process of developing a draft recovery plan for the moth, and all peer reviewers, stakeholders, and other interested parties will have an opportunity to provide input to ensure that the best recovery science is outlined for the moth's long-term conservation and recovery.

(5) *Comment:* Numerous comments were submitted regarding the Service's identification of the Blackburn's sphinx moth's primary constituent elements. Most peer reviewers stated that the Service had properly identified the primary constituent elements for this species. However, several reviewers,

including one with HDOA and one with DOFAW, expressed concern with the Service's decision not to include tree tobacco (*Nicotiana glauca*) as a primary constituent element because the adult moth often lays eggs on this plant species, and the moth's larval stage appears to feed readily and successfully on it. In addition, *N. glauca* is believed to be the only larval stage host plant that the Kahoolawe island Blackburn's sphinx moth population is utilizing.

Our Response: Although Blackburn's sphinx moth larvae feed on the nonnative *Nicotiana glauca,* we do not consider this plant to be a primary constituent element for the designation of critical habitat. As previously discussed, the native *Nothocestrum* spp. are more stable and persistent components of dry-to-mesic forest habitats than *N. glauca*. *Nicotiana glauca* is a short-lived species that may disappear from areas during prolonged drought (A. Medeiros, pers. comm. 1998) or during successional changes in the plant community (F. Howarth, pers. comm. 2001; Simon 1999). Many studies have shown that insects, and particularly lepidopteran larvae, consume more food when the food has a relatively high water content (Murugan and George 1992). Relative consumption rate and growth have been reported to decrease for many sphingids closely related to the Blackburn's sphinx moth when raised on host plants or diets with a relatively low water content (Murugan and George 1992). The vulnerability of *N. glauca* to drought conditions suggests that its water content frequently may not be suitable for optimal growth of Blackburn's sphinx moth larvae.

Numerous conservation and restoration plans for particular areas throughout the State of Hawaii have identified as primary goals the restoration of native plants, including the native host plants for the Blackburn's sphinx moth and other endangered species. Achieving these restoration goals may also require the control or elimination of nonnative vegetation, potentially including *Nicotiana* spp. (*See also* Comment #22).

Additionally, unlike the *Nothocestrum* spp., *Nicotiana glauca* is more likely to occur in habitats less suitable because of their occupation by alien insect predators (D. Hopper, *in litt.* 2000, 2002; Simon 1999). Therefore, in comparison with *N. glauca*, the native *Nothocestrum* spp. better fulfill the primary biological needs of the moth larvae. For all of these reasons, we are not considering *N. glauca* as a primary constituent element for the designation of critical habitat.

(6) *Comment:* Several reviewers stated that the native *Nothocestrum* spp. host plant populations are currently very rare and most of them are not demonstrating regeneration, so that reviewers questioned the likelihood of the Blackburn's sphinx moth's eventual recovery. Several reviewers also pointed out that the few existing *Nothocestrum* populations are highly vulnerable to extirpation by catastrophic events such as large wild fires or hurricanes. Reviewers recommended that *Nothocestrum* populations be aggressively managed using techniques that include fencing and weed and feral ungulate control; otherwise, the decline of *Nothocestrum* populations would continue. Furthermore, it was suggested that existing *Nothocestrum* populations be augmented and new populations be established with techniques including outplanting and propagation.

Our Response: We agree that active management of the remaining *Nothocestrum* spp. populations will be necessary to prevent their continued decline and thereby facilitate the moth's long-term conservation. This critical habitat designation and the draft recovery plan, which we are currently preparing, identify these needs.

(7) *Comment:* One peer reviewer questioned whether it was prudent to identify nectar food source plants for the adult Blackburn's sphinx moths as primary constituent elements because these plants, especially *Ipomea* spp., are more widespread than the native larval stage host plants identified as primary constituent elements, and they are found outside of the boundaries of proposed critical habitat. The reviewer noted that some areas proposed as critical habitat, *i.e.,* proposed Unit 2, were selected partly because the areas are known to contain adult moth primary constituent elements, even if currently devoid of native *Nothocestrum* spp.

Our Response: We agree that known and likely native nectar food sources for adult Blackburn's sphinx moths are more widespread and abundant than known native food sources for larval moths. We included native nectar food sources as primary constituent elements for the moth to identify the specific habitat components needed for the species to complete its entire life cycle. We determined that identifying critical habitat based solely on the existing locations of larval stage primary constituent elements, *i.e., Nothocestrum* spp., would not meet the species' needs essential for its conservation. Some critical habitat areas were selected because they are known to contain adult moth primary constituent elements, even if currently devoid of native *Nothocestrum* spp. We included such areas when we determined that the areas were: (1) Within the moth's current or historic range; and/or (2) known or believed to have been occupied by *Nothocestrum* spp. in the past and capable of supporting *Nothocestrum* spp. again if properly protected or restored.

(8) *Comment:* One peer reviewer suggested that some areas currently occupied by the Blackburn's sphinx moth and proposed as critical habitat may actually be suboptimal habitat for the species. It was hypothesized that these same areas are occupied currently only because some threats, such as ants or certain *Trichogramma* parasitic wasp species, are either lacking or present in sufficiently low levels to allow the moth to persist there. The same peer reviewer also suggested that soil substrate is an important habitat component that may have been overlooked in the proposed rule. It was noted that the moth has often been found in areas with rocky, cinderlike, and relatively barren substrate. It was hypothesized that the moth may prefer such a loose, uncompacted substrate for the purpose of burrowing to complete pupation. However, it was also noted that moth occurrences in these areas may be due to the fact that such substrates are somewhat comparatively abiotic and sparsely vegetated, and may thus yield lower moth parasite and predator populations.

Our Response: The best available information, both historic and current, was used from a variety of sources (see Methods section) to determine the primary constituent elements for the Blackburn's sphinx moth and its current and former range. As pointed out by reviewers, historic information is extremely scant for the species, but the only information currently available indicates the species is restricted to somewhat dry and leeward areas. While we acknowledge that additional studies are needed to better understand the moth's long-term conservation needs, the designated lands represent, to the best of our current knowledge, the areas essential to the species' conservation. We are currently preparing a draft recovery plan for the moth, and this plan identifies several priority research tasks such as the investigation of substrate preferences and effects of various predators and parasites on the species. We may revise this critical habitat designation in the future if new information indicates revisions are warranted.

(9) *Comment:* One peer reviewer recommended that the Service conduct

a genetic analysis of moth populations from both Kahoolawe and Maui to determine if the moth has perhaps evolved either a preference for, or an adaptation to, feeding on *Nicotiana glauca*. It was suggested that the Service might learn whether the Kahoolawe moth population is dependent upon Maui moth populations for recruitment. Furthermore, genetic analysis might reveal that *Nicotiana glauca* raised moth populations are dependent upon *Nothocestrum* spp. plants or that such moth populations are genetically distinct from those moth populations that appear to be *Nothocestrum* spp. dependent.

Our Response: We agree that a greater understanding of the moth's genetics is needed to better address its long-term conservation needs. However, researching this aspect of the moth's biology is beyond the scope of this document. We are currently preparing a draft recovery plan for the moth that will identify a genetics study, in addition to other priority research objectives.

(10) *Comment:* Most of the peer reviewers stated that the proposed critical habitat areas seem suitable in size and that they are ecologically appropriate, provided that: (1) The proposed areas are protected from their primary threats, and (2) the excluded lands are properly managed and of large enough size to be ecologically sustainable.

Our Response: We believe the core area of suitable habitat has been demarcated by the critical habitat boundaries as presented in this final rule. Moreover, the designated critical habitat units were chosen to create an array of multiple discrete populations across the four islands to reduce the risk of extinction resulting from catastrophic natural events, such as hurricanes, and to enhance the likelihood of conservation. Furthermore, the units were chosen because they are the highest quality native habitats essential to the moth's conservation and all are identified as manageable, restorable, and sufficient in size to capably support self-sustaining moth populations. Our conclusion is that 9 sites located within historic range on four islands are sufficient to achieve these goals. If provided with new information, we may revise the critical habitat designation in the future.

(11a) *Comment:* Three peer reviewers and one commenter noted that the proposed rule did not contain a great deal of information about the distribution of the mesic habitat plant, *Nothocestrum longifolium* nor its potential as a host plant for the larval stage of the moth. It was recommended that the Service map the distribution of *N. longifolium* by island. (11b) *Comment:* Two reviewers and one commenter, including one with HDOA, noted that very little mesic habitat, other than on Molokai, was proposed as critical habitat for the Blackburn's sphinx moth. They recommended that the Service include more mesic habitat in the final designation, especially in light of the fact that the islands have undergone, and often undergo, long periods of drought. (11c) *Comment:* One peer reviewer with HDOA provided additional observational data for the moth at light traps located near Olinda, East Maui, and suggested that the moths were either flying long distances from known habitat areas, or represented adults from an undocumented population potentially utilizing *N. longifolium* plants in mesic forests of northwest Haleakala. (11d) *Comment:* Another peer reviewer with DOFAW provided additional observational data for the moth on Maui that may indicate a distinct seasonal pattern to its appearances on that island. It was suggested that these respective periods of moth appearance coincided with annual regional precipitation patterns, and might indicate the moth was taking advantage of appropriate opportunities for larval development and flower (*e.g.,* nectar) foraging. (11e) *Comment:* The same reviewer recommended the inclusion of an altogether new unit on West Maui that was not proposed as critical habitat. The unit was justified since it would include additional mesic habitat and was persistently and strongly occupied by the moth. Additionally, the area contained adult Blackburn's sphinx moth primary constituent elements, specifically *Plumbago* spp. and *Ipomea* spp., as well as other potential larval stage host plants (not identified as primary constituent elements) such as *Solanum nelsoni* and *Scaevola sericea.* Lastly, it was suggested that the new unit might provide an important corridor for adult moths migrating toward the proposed Unit 7 on Molokai because of its proximity to Molokai and the area's relative lack of strong winds like those found in the isthmus area of Maui between West Maui and Haleakala.

Our Response: We did not designate additional mesic land on East or West Maui because those lands are not essential for the conservation of the moth. This conclusion is based on available information concerning the status of the Blackburn's sphinx species in specific areas and/or the level of habitat degradation. We agree that some mesic forest areas not designated as critical habitat, especially on Maui, may potentially harbor undocumented populations of Blackburn's sphinx moth. We also acknowledge that additional survey efforts are needed to ascertain the existence of these moth populations or potential host plant populations. In preparation of this rule, we did fund three surveys for moth host plants within mesic habitats (Perry 2001; Wood 2001a; 2001b). While new reports of moth sightings provided by reviewers will be useful in focusing future survey efforts and research needs, the fact remains that too little is known about the moth's potential mesic habitat requirements. For example, the potential host plant suitability of mesic habitat plants such as *Nothocestrum longifolium*, to warrant the designation of additional mesic habitat for the moth beyond what we have designated. Furthermore, the mesic habitat we designated on the island of Molokai was identified as the best quality mesic habitat essential for the conservation of the moth. Lastly, the two designated units within the Maui isthmus, Units 5 and 6 are expected to adequately serve as a corridor for moths migrating to the designated unit on Molokai (Unit 9).

(12) *Comment:* Two peer reviewers noted that the quality of 'darkness' (*i.e.*, absence of artificial lighting) could be an important factor in the Blackburn's sphinx moth's biology, and suggested this habitat quality be considered a primary constituent element. It was stated that 'darkness' may be important for the normal nocturnal foraging, biology, and movement behavior of the adult Blackburn's sphinx moth. Furthermore, it was noted that most of the proposed critical habitat units are still in relatively dark areas, with the exception of proposed Units 3, 5a, and 5b. One commenter provided information about two occasions in which the moth was observed flying to bright lights at the State Forestry Baseyard in Kahului, Maui. During one of the occasions, the moth became disoriented and was killed by a feral cat. Two reviewers and one commenter suggested that management for darkness may be an important issue for Blackburn's sphinx moth conservation, especially if specific critical habitat units became more developed, such as in proposed Units 3, 5a, and 5b. One reviewer suggested that low-intensity and/or shielded lighting strategies might help reduce attraction and disorientation of nocturnally migrating adult moths. One commenter recommended that proposed Unit 3 not be included in the designation because

of the absence of 'darkness.' Another reviewer with DOFAW questioned whether future development within the two proposed Kailua-Kona units, and the subsequent reduction of darkness, might negatively impact moth behavior within that area.

Our Response: We agree that the quality of darkness might be an important factor in the adult Blackburn's sphinx moth's behavior. However, at this time the we are unaware of prior studies on this issue. In the draft recovery plan for this species that we are currently preparing, we will include a research objective to explore the importance of the 'darkness' habitat quality to the moth. If provided with new information, we may revise the critical habitat designation in the future.

(13) *Comment:* One peer reviewer recommended the identification of additional primary constituent elements for the adult Blackburn's sphinx moth, *Scaevola sericea* and *S. coriacea,* located within coastal areas, and other *Scaevola* spp. located within montane areas. The reviewer had documented several observations of similar sphingid species taking nectar from *Scaevola* spp., although no Blackburn's sphinx moths were observed feeding upon these species. Furthermore, within coastal areas of proposed Unit 3, sphingid moths had been documented foraging during crepuscular (twilight) hours on *Scaevola* spp. within less than 50 m (164 ft) of *Nicotiana glauca* host plants containing Blackburn's sphinx moth larvae. It was suggested it was highly likely that some of the observed foraging adult moths could have been Blackburn's sphinx moth adults.

Our Response: We agree that *Scaevola* spp. could potentially serve as a nectar food source for foraging adult moths. Flowers produced by this plant group share many of the characteristics of the flowers of plants described as primary constituent elements in this rule. We will include a research objective to explore the suitability of *Scaevola* spp. as a moth nectar resource in the draft recovery plan for this species that is currently being prepared.

Issue 2: Effects of Designation

(14) *Comment:* Multiple commenters stated that the designation of critical habitat alone will not prevent the loss of remaining natural habitats, and that funds would be better spent on natural resource management activities. Additionally, some reviewers, including one with DOFAW, stated that if management is not realistic, it makes little sense to designate critical habitat.

Our Response: We are required under the Act to designate critical habitat on the basis of best available information. Management needs for the species will be addressed in the draft recovery plan that we are currently preparing.

(15) *Comment:* Multiple commenters expressed concern about the potential impacts to hunting activities and traditional gathering rights of native Hawaiians as a result of the proposed critical habitat designation. One commenter suggested the Service should involve hunter groups in any relevant discussions should it be determined that game animal management or hunting activities may be affected by the designation.

Our Response: We agree that in many circumstances a well-designed hunting program can be an important component in the conservation of native ecosystems in Hawaii by helping to control excessive damage caused by large populations of feral mammals. In preparation of this rule, we did conduct public information meetings with State agencies and hunting groups to address these kinds of concerns.

Unless there is Federal nexus to the activity, an activity by the State or private landowner or individual, such as farming, grazing, logging, and gathering, generally is not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat. Recreational, commercial, and subsistence activities on non-Federal lands, including hunting, are not regulated by this critical habitat designation. These activities may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat.

(16) *Comment:* Some commenters stated that critical habitat should be consistent with current and ongoing conservation efforts in priority areas so that resources are not directed elsewhere in an uncoordinated manner. It was suggested that the Service and landowners and managers work together to develop approaches that are more likely to lead to species conservation, rather than a passive designation lacking management.

Our Response: We agree and recognize that the ultimate purpose of critical habitat is to contribute to the conservation of listed species, a purpose that can be best reached by cooperation between ourselves and the community. As an example, we are excluding portions of proposed Units 1 and 2 because some private landowners are managing portions of their lands for the conservation benefit of Blackburn's sphinx moth and numerous other listed species. We believe there is a higher likelihood of beneficial conservation activities occurring in those two areas without designated critical habitat than there would be with designated critical habitat in those locations. See Exclusions Under Section 4(b)(2) for a more detailed discussion of the excluded areas.

Issue 3: Site-Specific Biological Comments

(17) *Comment:* One peer reviewer with DOFAW commented that the two proposed Kailua-Kona Units (5a and 5b) may be too small and urbanized to be effective for the long-term conservation of the Blackburn's sphinx moth. One commenter with the Housing and Development Corporation of Hawaii (HCDCH), a State agency, provided more recent survey data that indicated the proposed Unit 5b no longer contained living *Nothocestrum brevifolium* host plants. Another commenter questioned whether the proposed Unit 5a was actually essential to the species. It was suggested that the 1992 data used to indicate presence of the *N. brevifolium* host plants was outdated, and at any rate, the presence of only two known *N. brevifolium* host plants failed to prove the area would be capable of supporting a viable moth population. Furthermore, it was questioned whether inclusion of the area would actually facilitate dispersal of the moth to other proposed areas, and ultimately whether the unit would contribute to genetic exchange between moth populations on the island of Hawaii. The commenter inquired as to the number of past moth sightings within the unit. One commenter requested that the proposed Units 5a and 5b be excluded from the designation since the rule did not demonstrate that exclusion would result in extinction of the moth.

Our Response: We have excluded proposed Units 5a and 5b from the final designation. See the Summary of Changes from the Proposed Rule section for additional detail concerning the exclusion of these units.

(18) *Comment:* One peer reviewer suggested that it may be difficult to defend the inclusion of the Kahului Airport runway safety zone within Unit 3 because the area does not currently support native *Nothocestrum* spp. host plants. It is also unlikely to do so in the future since any potentially outplanted *Nothocestrum* spp. may not survive the strong winds and salt spray prevalent within the area. However, it was noted that the area could possibly support other native solanaceous plants such as

Solanum nelsoni, which may be suitable larval stage host plants.

Our Response: We were provided with additional information in the form of recently completed surveys for portions of the proposed Unit 3. The study, conducted by the Hawaii Biological Survey and the Bishop Museum, showed that areas on the western edge of the proposed Unit 3, encompassing and bordering some Kahului Airport lands, were in fact relatively devoid of identified primary constituent elements, and the area would therefore not appear to provide suitable long-term habitat for the moth. As a result of receiving the additional information on the proposed Unit 3, critical habitat in the area is now designated in the form of two smaller units that do not encompass the Kahului Airport runway safety zone, nor any other Kahului Airport lands other than that contained within the Kanaha Pond Wildlife Sanctuary boundaries. See the Summary of Changes from the Proposed Rule section for additional detail on the changes that were made to this unit.

We agree that *Solanum nelsoni* could potentially serve as an alternate coastal host plant food source for the moth's larval stage. We will include a research objective to explore the suitability of *Solanum nelsoni* as larval stage host plant in the draft recovery plan for this species, currently under preparation.

(19) *Comment:* One commenter pointed out that approximately 4 ha (10 ac) of proposed Unit 3 overlapped with a private parcel under a grazing lease. It was requested that the area in question be removed from the designation if the primary constituent elements were not present, or if the area did not warrant special management considerations.

Our Response: As a result of receiving additional information on proposed Unit 3, we excluded several portions of this proposed unit, including the area in question from critical habitat because we determined that those areas lacked the moth's primary constituent elements. *See* the Summary of Changes from the Proposed Rule section for additional detail on the changes we made to this unit.

(20) *Comment:* One peer reviewer with HDOA suggested that the lack of collection records for certain potential parasites and predators on Molokai does not mean those organisms are not present on the island. Rather it is possible that the lack of records is, in fact, an artifact of limited prior collecting work there. It was recommended that searches for these potential parasites and predators should be conducted on Molokai before special effort is put forth to utilize the island as a restoration site for the Blackburn's sphinx moth.

Our Response: We agree. The need to better document the presence of potential predator and parasites within identified habitat conservation areas for the Blackburn's sphinx moth will be addressed in the draft recovery plan currently being prepared for the species.

(21) *Comment:* One peer reviewer with DOFAW suggested that the proposed Units 1, 2, 6, and 7 would require fencing and large scale feral ungulate management to ensure conservation of the moth and its host plants in those areas. On a related note, one reviewer and one commenter suggested that the use of managed grazing could potentially aid moth habitat restoration through the suppression of invasive weeds and fire fuels.

Our Response: We agree with the reviewer regarding the identified fencing needs, yet we also acknowledge that managed grazing, and even highly managed game animal populations, may potentially serve as tools in the suppression of invasive weeds and fire fuels. Many of these concepts are explored in greater detail within the draft recovery plan currently being prepared for the moth. Furthermore, we look forward to developing and implementing innovative strategies to restore identified Blackburn's sphinx moth habitat conservation areas with our public and private partners involved in the management of game or livestock.

(22) *Comment:* One peer reviewer with DOFAW stated that a potential, but resolvable, conflict in land management could occur within proposed Unit 3, specifically within the boundaries of the Kanaha Pond Wildlife Sanctuary, based on current management plans to ultimately restore the 95 ha (235 ac) of sanctuary lands as much as possible to native pre-contact conditions. The planned removal of all alien plant species may entail the removal of all existing *Nicotiana glauca* plants, the nonnative host plant for the moth. It was suggested that planned experimental outplanting of native *Nothocestrum* spp. may be attempted within the sanctuary. However, it was noted that if the attempts were unsuccessful, there may then be a need to retain the *N. glauca* for the moth, an important change in both the sanctuary's management and management plans.

Our Response: We agree that the restoration of the Kanaha Pond area to a more native and pre-contact condition will benefit the remaining native components of that ecosystem, and that it should benefit the Blackburn's sphinx moth as well. We look forward to developing and implementing an innovative restoration strategy for this area with DOFAW. Determining if there are suitable, native coastal host plants that could be outflanked for the moth's larval stage is a research need that we will address in the draft recovery plan.

(23) *Comment:* One commenter provided additional information about the extent of grazing activities within proposed Unit 7 on Molokai, and questioned whether the area actually contained the Blackburn's sphinx moth's primary constituent elements. It was requested that the area be excluded from the designation.

Our Response: As a result of receiving the additional information on proposed Unit 7, several portions of the proposed unit were excluded from critical habitat because new information revealed some lands in that unit did not contain the primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species. *See* the Summary of Changes from the Proposed Rule section for additional detail on the changes that were made to this unit.

(24a) *Comment:* It was recommended by two commenters that some of the areas within proposed Unit 1 be excluded since they did not contain the moth's primary constituent elements. One peer reviewer suggested that proposed Unit 1 could be extended eastward of the southern Haleakala boundary to Kaupo, especially along the coast (*e.g.,* Nui coastline), to include additional areas containing the primary constituent elements. (24b) *Comment:* Another peer reviewer with DOFAW recommended that the boundaries of proposed Unit 3 be expanded by extending the unit to the south and southeast to include the area demarcated by Highway 36, and east along Highway 36 to the three-way intersection of Highway 37 with Old Haleakala Highway and Hana Highway. The reviewer noted that both Blackburn's sphinx moth adults and larvae had been observed on numerous occasions, often in good numbers within the area. Furthermore, the reviewer suggested that this expansion of proposed Unit 3 would provide additional windward and mesic habitat for the moth, a habitat type not highly represented in the proposed areas.

Our Response: As a result of receiving the additional information on proposed Unit 1, critical habitat in the area is now designated in the form of four smaller units. *See* the Summary of Changes from the Proposed Rule section for additional detail on the changes that were made to

this unit. In this final rule, several portions of proposed Unit 1 were excluded from critical habitat it was determined that these areas lacked the moth's primary constituent elements. Other portions of proposed Unit 1 were excluded because we decided that the benefits of excluding critical habitat outweighed the benefits of including critical habitat. *See* Exclusions Under Section 4(b)(2) for a more detailed discussion of the excluded areas.

We did not include these additional lands in critical habitat Units 1 and 3 because we concluded that they were not essential for the conservation of the Blackburn's sphinx moth. This was based on available information concerning the status of the species in specific areas and the level of habitat degradation. We agree that some of these additional lands may potentially harbor undocumented populations of Blackburn's sphinx moth, and we also acknowledge that additional survey efforts are needed to ascertain the existence of potential moth or host plant populations in these areas and likely in other areas as well. While new reports of moth sightings or other observations of potentially suitable habitat provided by reviewers will be useful in focusing future survey efforts and research needs, we believe we have identified for designation, the best quality habitat essential for the conservation of the moth.

Issue 4: Mapping

(25) *Comment:* Two commenters stated that greater precision is needed to identify manmade structures and features such as roads, houses, and buildings already present within the proposed critical habitat designation areas. The DEA conceded that a lack of clarity regarding excluded features and structures could force landowners to incur costs to investigate the implications of the regulations.

Our Response: The maps in the **Federal Register** are meant to provide a general location and shape of critical habitat. The legal descriptions are readily plotted and transferable to a variety of mapping formats, and are available electronically upon request for use with GIS programs. At the two public hearings, the maps were expanded to wall size to assist the public in better understanding the proposal. These larger scale maps were also provided to individuals upon request. Furthermore, we provided direct assistance in response to written or telephone questions with regard to mapping and landownership within the proposed designation.

As stated in the proposed rule and this final rule, existing manmade features and structures within the boundaries of the mapped areas. This includes features such as the following that do not contain one or more of the primary constituent elements, and therefore, are not included in the critical habitat designations: Buildings; roads; aqueducts and other water system features, including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gauging stations (section in a stream channel equipped with facilities for obtaining streamflow data), intakes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and associated rights-of-way; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines); airports; other paved areas; lawns; and other rural residential landscaped areas.

To further address concerns with the potential costs of identifying nondesignated areas, the Economic Analysis Addendum (Addendum) revisited the hour estimates presented in the DEA. Chapter VI, section 4.I of the DEA indicated that the landowners may want to learn how the designation may affect: (1) the use of their land (either through restrictions or new obligations), and (2) the value of their land. Since no commenters provided an estimate of time or cost incurred in order to investigate implications of critical habitat, and because of the reduction in acreage from proposed to designated, the Addendum revised the number of landowners downward, which resulted in a cost for landowners of $173,000 to $618,000 to investigate the implication of critical habitat.

While some landowners may expend time and money to investigate the implications of critical habitat on their land during the designation process, many landowners may not do so until after final designation is complete. Thus, the DEA and the Addendum treated these costs as a cost attributable to the final designation.

Issue 5: Policy and Regulations

(26) *Comment:* One commenter stated that excluding any areas from designation based on current management would violate 16 U.S.C. 1533(a)(3), and further stated that conservation efforts do not alter the habitat's critical nature or the need to ensure its protection. Multiple commenters stated that areas already subject to conservation measures, or which may be the subject of conservation agreements in the future, should not be excluded from critical habitat.

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. If an area is covered by a plan that already provides adequate management, we believe it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not considered to be in need of special management or protection. We considered a plan to be adequate when it provides: (1) A conservation benefit to the species, *i.e.,* the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan; (2) assurances that the management plan will be implemented, *i.e.,* those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule in place, and/or have adequate funding for the management plan; and (3) assurances that the conservation plan will be effective, *i.e.,* it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives. Therefore, if an area provides physical and biological features essential to the conservation of the species, and also is covered by a plan that meets these criteria, then such an area would not have constituted critical habitat, as defined by the Act, because the physical and biological features found there do not require special management. However, in the case of the moth no areas were found currently to be adequately managed, and therefore no areas have been excluded on that basis.

As to future conservation agreement, several owners have indicated that including their lands in a critical habitat designation would have a negative impact on their existing and future voluntary conservation efforts for the moth and other species. After weighing the benefits of including these areas as critical habitat with the benefits of excluding them, we concluded that the designation of critical habitat would have a net negative conservation effect in some situations, and we excluded some of these areas from the final designation of critical habitat. *See* our

discussion under *the Exclusions Under Section 4(b)(2) section.*

(27) *Comment:* Multiple commenters, including DLNR, a State agency, noted that the Service has stated critical habitat affects only activities that require Federal permits or funding, and does not require landowners to carry out special management or restrict use of their land. However, the commenters stated that this fails to address the breadth of Federal activities that affect private property in Hawaii, and the extent to which private landowners are required to obtain Federal approval before they can develop their property. Such requirements extend to all State agencies using Federal funds in connection with a proposed action, and community actions for which Federal approval or review is necessary. The requirements also extend to loan and grant programs such as Natural Resources Conservation Service (NRCS) loans and grants.

Our Response: Under section 7 of the Act, all Federal agencies must consult with the Service to insure that any action that they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. We have provided our best assessment of what may be the effects of this consultation requirement on private landowners as well as for State agencies. However, not every project, land use, and activity that has a Federal involvement has historically been subject to a formal or informal section 7 consultation with the Service. The draft economic analysis and Addendum were confined to those projects, land uses, and activities that are, in practice, likely to be subject to consultation and are based on review of past consultations, current practices, and the professional judgments of Service staff and other Federal agency staff.

If the Service finds that the proposed actions are likely to jeopardize the continued existence of an endangered or threatened species or result in destruction or adverse modification of critical habitat, we suggest reasonable and prudent alternatives that would allow the Federal agency to implement their proposed action without such adverse consequences. Again, we have provided our best assessment for what this may mean in terms of management actions or land uses and any associated costs in the draft economic analysis and Addendum.

(28) *Comment:* Two commenters, including the Hawaii Department of Transportation, Airports Division (DATA), stated that prudence cannot be determined without an analysis of the economic impacts of critical habitat. The prudence of critical habitat designation is a final conclusion based on weighing all relevant factors, including economic factors. While the Service promised to complete its economic impact analysis before it promulgates its final determination of critical habitat, it risks putting the decision before the analysis. The prior determination that critical habitat is prudent and is therefore required, is treated as a given, even though it ignored economic factors. The Service should revisit (*Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434, 440–443 (5th Cir. 2001).

Our Response: We determine whether critical habitat designation is prudent according to regulations found at 50 CFR 424.12(a)(1). In accordance with these regulations and recent case law, critical habitat designation is not prudent only when the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species. To determine whether critical habitat would be prudent for the species, we analyzed the potential threats and benefits to the species. The economic analysis is conducted after critical habitat has been proposed in a given area, as set forth in regulations found at 50 CFR 424.19. If designation of critical habitat is prudent, we look at all of the impacts of designating specific areas as critical habitat to see if the benefits of designation outweigh the benefits of excluding it from critical habitat. If we find that economic or other impacts outweigh the benefit of designating critical habitat in a given area, that area will be excluded. We concluded in the final rule listing the Blackburn's sphinx moth as endangered that there may be benefits of critical habitat designation that may outweigh the risks. Therefore, critical habitat is prudent for the species.

(29a) *Comment:* Multiple commenters stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with Hawaii Land Use Law. Critical habitat could result in changes to zoning under State law.

Our Response: Chapter VI, section 4.e. of the DEA and section 4.b. of the Addendum address costs involved in redistricting lands from the Urban, Rural and Agricultural Districts to the Conservation District. About 50,772 acres of Agricultural land, one acre of Rural land, and 430 acres of Urban land are included in the intended designation. Of this, approximately 12,352 acres of Agricultural land is owned by private landowners; one acre of Rural land is owned by private landowners; and 32 acres of Urban land is owned by private landowners. In the event that all of these private lands were redistricted to the Conservation District, the total economic cost could range from $80 million to $249 million. However, as discussed in the economic analysis, the redistricting of all lands to Conservation is not envisioned for several reasons.

HRS section 195D–5.1 states that the Department of Land and Natural Resources (DLNR) ''shall initiate amendments to the conservation district boundaries consistent with section 205–4 in order to include high quality native forests and the habitat of rare native species of flora and fauna within the conservation district.'' HRS section 205–2(e) specifies that ''conservation districts shall include areas necessary for * * * conserving indigenous or endemic plants, fish and wildlife, including those which are threatened or endangered * * *.'' Unlike the automatic conferral of State law protection for all federally listed species (see HRS 195D–4(a)), these provisions do not explicitly reference federally designated critical habitat and, to our knowledge, DLNR has not proposed amendments in the past to include all designated critical habitat in the Conservation District. Nevertheless, according to the Land Division of DLNR, DLNR is required by HRS 195D–5.1 to initiate amendments to reclassify critical habitat lands to the Conservation District (Deirdre Mamiya, Administrator, Land Division, in litt. 2002).

State law only permits other State departments or agencies, the county in which the land is situated, and any person with a property interest in the land to petition the State Land Use Commission (LUC) for a change in the boundary of a district. HRS section 205–4. The Hawaii Department of Business, Economic Development & Tourism's (DBEDT) Office of Planning also conducts a periodic review of district boundaries taking into account current land uses, environmental concerns and other factors and may propose changes to the LUC.

The State Land Use Commission determines whether changes proposed by DLNR, DBEDT, other state agencies, counties or landowners should be enacted. In doing so, State law requires LUC to take into account specific criteria, set forth at HRS 205–17. While the LUC is specifically directed to consider the impact of the proposed

reclassification on ''the preservation or maintenance of important natural systems or habitats,'' it is also specifically directed to consider five other impacts in its decision: (1) ''Maintenance of valued cultural, historical, or natural resources;'' (2) ''maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;'' (3) ''commitment of state funds and resources;'' (4) ''provision for employment opportunities and economic development;'' and (5) ''provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups.'' HRS 205.17. Approval of redistricting requires six affirmative votes from the nine commissioners, with the decision based on a ''clear preponderance of the evidence that the proposed boundary is reasonable.'' HRS 205–4.

Thus, even if all federally designated critical habitat is petitioned for redistricting, the likelihood of redistricting will vary parcel by parcel. While the LUC may redistrict some parcels, it is unlikely that lands with a high economic value to the community, such as lands with significant State investments, prime agricultural land, land planned for the economic and community development, and land planned for the provision of housing, would be redistricted. By way of illustration, in the last State district boundary review only five privately owned parcels were redistricted to Conservation even though several hundred parcels were proposed for redistricting. While concern has been expressed that a third party would challenge a decision by the LUC not to redistrict a critical habitat parcel in State court, State courts have been deferential to the LUC decisions if they are supported by the record, consistent with statutory provisions, and not affected by errors. *See, e.g., Kilauea Neighborhood Ass'n.* v. *Land Use Comm'n.* 751 P.2d 1031, 1035 (Haw. Ct. App. 1988) (finding that, although LUC's findings were poorly drawn, the record provided sufficient support for the decision); *Outdoor Circle* v. *Harold K.L. Castle Trust Estate,* 675 P.2d 784, 793 (Haw. Ct. App. 1983) (upholding LUC's decision as consistent with statutory provisions and not affected by errors).

In summary, while it is possible that the designation of critical habitat could trigger a petition to redistrict land designated as critical habitat to the Conservation District, the likelihood appears small, absent litigation, that these lands would be redistricted.

(29b) *Comment:* Multiple commenters stated that the Service did not adequately address the direct or indirect ''takings'' of private property as a result of designating critical habitat for the Blackburn's sphinx moth. If the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property. Also, the incremental impact of designating critical habitat, over and above the original listing, is that it creates a presumption that modification of the land will ''take'' members of the species. The Service is obliged to calculate the impact of deterring landowners use of their land. If any economic use of the land not already developed is prevented, the Service is liable to compensate the private landowner for such losses.

Our Response: Any redistricting of land to Conservation and any corresponding loss of economically beneficial use would be decided by the State Land Use Commission, not the Service, based on an array of state laws and other factors, including the extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan (*see* our response to comment 29a); the extent to which the proposed reclassification conforms to the applicable district standards; and the impacts of the proposed reclassification on the following: preservation or maintenance of important natural systems or habitats; maintenance of valued cultural, historical, or natural resources; maintenance of other natural resources relevant to Hawaii's economy; commitment of state funds and resources; provision for employment opportunities and economic development; and provision for housing opportunities for all income groups; and the representations and commitments made by the petitioner in securing a boundary change.

In chapter VI, section 4 of the November 2002 DEA under indirect costs and in section 4 of the Addendum, they examined the indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. The economic analysis did not conclude that designation of critical habitat on Agricultural lands would prevent a rancher from using those lands. Rather, the economic analysis recognized that many areas within the critical habitat designation have been grazed for tens or hundreds of years, yet still contain the primary constituent elements for Blackburn's sphinx moth. The DEA concluded that sustainable grazing does not adversely affect the moth, and in fact, may indirectly benefit the species by reducing fire danger and controlling nonnative weeds. Moreover, the DEA concluded that areas historically subject to grazing were unlikely to meet the standards of a natural ecosystem required to be put in the Protective Subzone (HAR § 13–5–11). As a result, even if Agricultural land within the critical habitat designation were redistricted to Conservation, the DEA anticipated that agricultural activities could continue because typical agricultural activities are allowed in all subzones, except the Protective Subzone, with permission of the State Board of Land and Natural Resources (BLNR).

(30) *Comment:* Multiple commenters stated the proposal fails to properly consider the importance of cooperation and goodwill between the Service and private landowners, and the impact critical habitat designations will have in discouraging voluntary partnerships on private lands.

Our Response: We recognize the importance of landowner cooperation for conservation of listed species. This is true for many of the lands designated for the Blackburn's sphinx moth that are under private ownership. We also recognize that critical habitat designations could potentially have a negative impact on voluntary partnerships with private landowners. Conservation of the moth requires control of threats from alien species and fire, and outplanting of host plant species that have been extirpated from the wild. Several owners have indicated that including their lands in a critical habitat designation would have a negative impact on their existing and future voluntary conservation efforts for the moth and other species. After weighing the benefits of including these areas as critical habitat with the benefits of excluding them, we concluded that the designation of critical habitat would have a net negative conservation effect in some situations, and we excluded some of these areas from the final designation of critical habitat. *See* our discussion under the Exclusions Under Section 4(b)(2) section.

(31) *Comment:* One commenter stated that although they support protection for endangered species, they are also concerned about protecting nonnative species. The current interpretation of critical habitat allows the Federal government and its partners to utilize any methodology they wish in dealing with feral animals, even though such

methods may be cruel and environmentally unsound.

Our Response: The designation of critical habitat does not give the Federal government and its partners the authority to utilize any methodology they wish in dealing with feral animals. Any potential animal control program would be subject to all applicable State, Federal, and local laws.

(32) *Comment:* DATA commented that the Service has provided inadequate support for its decision to reverse its prior determination that designation of critical habitat for the Blackburn's sphinx moth is not ''prudent.''

Our Response: Our reasoning for determining that the designation of critical habitat for the Blackburn's sphinx moth is prudent is thoroughly discussed in the final rule listing the moth as an endangered species (65 FR 4770), which was published in the **Federal Register** on February 1, 2000, and is consistent with recent case law.

(33) *Comment:* DATA stated that the proposed rule does not contain an analysis of the potential impacts to aviation safety that might result from the designation of certain areas contained within proposed Unit 3. The Service is required by law to analyze any relevant potential impacts when proposing a specific area as critical habitat. The commenter recommended that the proposed rule be withdrawn until an analysis of the potential impacts to aviation safety has been conducted.

Our Response: As discussed in the DEA (Chapter VI, section 3.h. Hawaii Department of Transportation, Airports Division expressed concern about designating critical habitat within the boundaries of Kahului Airport, due to possible conflicts with safety requirements. In this final rule, we have not included Kahului Airport lands from critical habitat designation due to a lack of primary constituent elements or because the areas were not essential to the moth's conservation (see Summary of Changes from the Proposed Rule section). We are unaware of any other areas in which aviation safety may be an issue as a result of the designation of critical habitat for the Blackburn's sphinx moth.

(34) *Comment:* The Service has misinterpreted the intent of the Act with exclusion of areas under 3(5)(A)(I). If a specific area of Blackburn's sphinx moth habitat is recognized to be critical to the extent that management is already taking place, the notion that such management renders designation unnecessary does not make sense. In fact, designation of these areas would seem more urgent.

Our Response: Although we disagree with the commenter, we have not found any areas that are currently adequately managed for the moth. Therefore, we have not excluded areas on that basis. Please also refer to our response to Comment 26.

(35) *Comment:* The proposal violates the ''commerce clause'' because the Blackburn's sphinx moth is not related to interstate commerce. Critical habitat designation, and the underlying decision to list the species as endangered, are the subject of the designation and exceed the constitutional limits of the Service's delegated authority. Congress enacted the Act as an exercise of its Commerce Clause power and delegated exercise of that Commerce Clause power to the Service to apply the Act by regulation. The listed species exists only in Hawaii and does not cross State lines. Nor is it in commerce as the subject of any economic endeavor and it lacks any commercial value. Therefore, the Service's regulations listing this species and designating critical habitat for it within Hawaii exceed the Federal power to regulate interstate commerce under the governing precedents interpreting the Commerce Clause.

Our Response: The Federal government has the authority under the Commerce Clause of the U.S. Constitution to apply the protections of the Act to species that occur within a single State. A number of court cases have specifically addressed this issue. The *National Association of Homebuilders* v. *Babbitt,* 130 F. 3d 1041 (D.C. Cir. 1997), *cert. denied,* 1185 S.Ct, 2340 (1998), involved a challenge to application of Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with the species at issue here, the Delhi Sands flower-loving fly is endemic to only one State. The court held that application of the ESA to this fly was a proper exercise of Commerce Clause power because it prevented loss of biodiversity and destructive interstate competition. Similar conclusions have been reached in other cases, *see Gibbs* v. *Babbitt,* No. 99–1218 (4th Cir. 2000) and *Rancho Viejo* v. *Norton,* No. 01–5373 (D.C. Cir. 2003).

Issue 6: Economic Issues

(36) *Comment:* HDOA suggested that the Service is required to conduct a cumulative impacts analysis to determine the economic impacts resulting from all critical habitat designations on all the islands.

Our Response: The commenter appears to be using the term ''cumulative impacts'' in the context of the National Environmental Policy Act (NEPA). We are required to consider only the effect of the designation of critical habitat for Blackburn's sphinx moth. The appropriate baseline for use in this analysis is the regulatory environment without this regulation. Against this baseline, we attempt to identify and measure the incremental costs and benefits associated with this designation of critical habitat. When critical habitat for other species has already been designated, it is properly considered part of the baseline for this analysis. Proposed and future critical habitat designations for other species in the area will be part of separate rulemaking, and consequently, their economic effects will be considered separately.

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

(37) *Comment:* The DEA lists economic impacts; however, there is no indication that the Service has identified appropriate critical habitat boundaries or modified the critical habitat boundaries in consideration of these economic impacts.

Our Response: We considered the economic impacts that were analyzed and summarized in the DEA, and addendum, and excluded two units (proposed Units 5a and 5b) from critical habitat (*see* Exclusions Under Section 4(b)(2)).

(38) *Comment:* The DEA fails to distinguish potential costs resulting from the designation from those costs resulting from listing the moth as endangered. Nowhere does the draft provide any analysis of what impacts, if any, designating critical habitat for the moth would impose above and beyond those associated with the species' listing. Because the DEA does not distinguish between these costs, it cannot exclude proposed critical habitat from a final critical habitat designation pursuant to section 4(b)(2).

Our Response: Our draft economic analysis evaluated potential future effects associated with the listing of Blackburn's sphinx moth as an endangered species under the Act, as

well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to section 7 implementation, including both the section 7 listing provisions and the proposed critical habitat designation, the analysis evaluated a ''without section 7'' baseline and compared it to a ''with section 7'' scenario. The ''without section 7'' baseline represented the current and expected economic activity under all modifications except those associated with section 7, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the implementation of section 7 for the Blackburn's sphinx moth. The categories of potential direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) potential delays associated with reinitiating completed consultations after critical habitat is finalized; (4) uncertainty and public perceptions resulting in loss of land value from the designation of critical habitat; (5) potential effects on property values including potential indirect costs resulting from the loss of hunting opportunities and increased regulation related costs due to the interaction of State and local laws; and (6) potential offsetting benefits associated with critical habitat, including educational benefits.

The majority of consultations resulting from the critical habitat designation for the Blackburn's sphinx moth are likely to address land development and road construction or road expansion activities. The planned road projects (proposed Ane Keohokalole Highway) within proposed Unit 5A is not in this designation. The final economic analysis estimates that, over the next 10 years, the designation may result in potential direct economic costs ranging from approximately $1,183,800 to $1,739,000, and concludes that economic impacts from the designation of critical habitat would not be significant.

A more detailed discussion of our analyses are contained in the November 15, 2002, DEA and the Addendum to the DEA. Both documents are available for inspection at the Pacific Islands Office (see **ADDRESSES** section).

(39) *Comment:* The Service has failed to consider the cascading impacts resulting from State-led regulatory activities that must, by law, be implemented as a result of critical habitat designation. Additional concerns include the broad interpretation of ''take'' under Hawaii's Endangered Species Act (ESA) (HRS Ch. 195D); mandatary ''downzoning'' of private lands under Hawaii's Land Use Law (HRS Ch. 205); unreasonably frequent requirements for full environmental impact statements for minor actions under Hawaii's Environmental Impact Statement Law (HRS Ch. 343); unreasonable permit delays for County-regulated Special Management Area permits under Hawaii's Coastal Zone Management Law (HRS Ch. 205A); and uncertainty of interpretation of the reach and extent of State regulatory authority under Hawaii's State Water Code (HRS Ch. 174C) and implications for water quality standards under Hawaii Administrative Rules Ch. 11–54, Water Quality Standards.

Our Response: Possible costs resulting from interplay of the Act and Hawaii State laws were discussed in Chapter VI, section 4 of the November 2002 DEA under indirect costs and in section 4 of the Addendum. They examine the indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. Take prohibitions under Hawaii law are attributable to a listing decision and they are not coextensively costs of critical habitat designations. Where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation and are not considered in the economic analysis of critical habitat designation. Other possible indirect impacts, such as the loss of development or loss in property values due to State redistricting of land from agricultural or rural to conservation were analyzed (see also our response to Comment 29a). However, there is considerable uncertainty as to whether any or all of these indirect impacts may occur since they depend on actions and decisions other than the source statute, and there is only limited history to serve as guidance.

(40) *Comment:* A commenter stated the following: The narrative exclusion of areas underlying currently developed areas such as buildings and driveways (''unmapped holes'') is too vague considering the cryptic nature of the moth and its habitat. Although the DEA concedes that the lack of clarity can force landowners to incur costs to investigate the implications of the regulations, it fails to fully consider the economic impacts of landowners' costs to properly demarcate ''unmapped holes'' in the process of obtaining necessary permits for development projects. The estimate that this will only take 15 to 40 hours is too low given the size of the designated areas, the vagueness of the regulatory exclusion, and the real costs of obtaining development approvals.

Another commenter also stated that the DEA's analysis of potential costs expected to be incurred by private landowners to investigate the implications of critical habitat on their lands was flawed, because the analysis failed to recognize that the costs to investigate the implications of critical habitat are associated with the designation process, not additional costs that the final designation would impose. The commenter further stated that any concerned party investigating the proposed designation of critical habitat on their lands would have already hired lawyers and consultants, and would have incurred the costs associated with figuring out the implications of designation on their lands. Moreover, were the private landowners' lands ultimately excluded from the final critical habitat designation, the landowners would still not recoup those costs; the money has already been spent. Thus, the commenter concluded that these costs should not be included in the analysis of future potential costs from designation since they have already been incurred, and were incurred, regardless of the final designation decision.

Our Response: Chapter VI, section 4.I of the DEA indicated that landowners may want to learn how the designation may affect (1) the use of their land (either through restrictions or new obligations), and (2) the value of their land. It is recognized that some landowners may spend a great deal of time investigating, while other landowners may not conduct any investigation. The estimate contained in the DEA is a range that reflects the total cost for all landowners based on an average cost per landowner. Public comment did not provide an alternative estimate of time or cost incurred in order to investigate implications of critical habitat sufficient to require changes to the estimated average cost per landowner. Thus, the Addendum does not revise the number of hours that the DEA estimated the landowner and/or his attorneys or professional staff would spend on investigating the issues.

However, the Addendum does revise the number of affected landowners to 65 because of the intended modifications to the critical habitat indicated by us. As described in section 4.e. of the Addendum, an estimate of the costs involved with investigation for the intended designation ranges from roughly $173,000 to $618,000.

While some landowners may expend time and money to investigate the implications of critical habitat on their land during the designation process, many landowners may not do so until after final designation is complete. Thus, the DEA and the Addendum conservatively treat these costs as costs attributable to the final designation.

(41) *Comment:* DOTA stated that project modification costs, such as those to roads, are underestimated, particularly the cascading effect of project realignment with the purpose of avoiding critical habitat.

Our Response: The project modification cost estimates were developed considering a wide array of projects, locations, and contingencies, as well as by examining the limited historical record of project modifications regarding the Blackburn's sphinx moth. The planned road project (proposed Ane Keohokalole Highway) within proposed Unit 5A is not in this designation.

(42) *Comment:* HCDCH stated the following: The DEA only partially considers the ''indirect impacts'' of critical habitat designation, and instead focuses on ''direct impacts'' resulting primarily from consultations under section 7 of the Act because of precedent set by *New Mexico Cattle Growers,* the Service must fully consider both types of impacts, and the DEA must present a thorough analysis of these economic effects. Several other commenters stated the DEA overemphasizes the direct costs attributable to critical habitat designation and ignores or omits other indirect impacts, such as: Impacts to housing supply, including affordable housing; decreases in public revenues as a result of lost construction and reduced economic activity; impacts to subsistence activities and their role in the local economy; and impacts to public infrastructure such as roads and water systems.

Our Response: An analysis of both direct and indirect impacts was presented in chapter VI of the DEA and sections 3 and 4 of the Addendum. With respect to indirect effects, there is considerable uncertainty regarding whether any or all of the indirect impacts may actually occur, because they depend upon actions and decisions by entities other than the Service under circumstances for which there is limited or no history that can be used to determine the likelihood of different outcomes. Thus, based on the available information, indirect impacts were discussed qualitatively in the DEA and Addendum. In addition, where possible, estimates were given of worst-case scenarios for illustrative purposes and a sense of the likelihood of occurrence was provided.

The impact to the supply of affordable housing was discussed in the DEA in chapter VI, section 4.e. The DEA recognized that some landowners feared the possibility of redistricting land within the critical habitat designation to the Conservation District, and discussed the impact to the affordable housing supply should redistricting occur and prevent planned development. Specifically, in regards to the planned Villages at Laiopua (VOLA), affordable housing development planned by the State in proposed Unit 5b (island of Hawaii), the DEA noted that the County of Hawaii requires developers to provide a certain number of affordable housing units, or pay $4,720 to the County for each unit not built. Using this value as a proxy for the social value of affordable housing, the DEA estimated that the loss of 570 affordable units in the VOLA development equates to a loss of almost $2.7 million to the community. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

Further, the DEA also addressed the potential impact on public revenues as a result of lost construction. In chapter VI, section 4.e., the DEA recognized that a loss in development can lead to economic losses due to the ''ripple-effect.'' For example, if a home cannot be built, both the developer and construction company who would have built the home would have reduced revenues. In addition, the lumber company and other companies supplying the construction company would have reduced revenues, an impact that would ''ripple'' through the regional economy and could result in reduced public revenues. However, due to the availability of suitable land outside the critical habitat designation, the DEA concluded that any economic activity displaced within critical habitat for the moth due to redistricting of land to the Conservation District would still be expected to occur, just in other locations. Thus, the DEA implicitly concluded that there would be no appreciable impact on public revenues.

The DEA addressed the impacts to subsistence and their role in the local economy in chapter VI, section 4.d. The DEA recognized that subsistence not only plays an important role in community life, but also provides important sustenance to many residents in communities on Maui, the island of Hawaii, and Molokai. The DEA estimated that restriction of access and prohibition of subsistence activities in all areas proposed for critical habitat designation was extremely unlikely, and that more likely to occur were restrictions in small, localized areas of significant biological importance. Because of the strong stewardship and conservation values associated with those practicing subsistence activities within the proposed critical habitat, as well as the traditional recognition of the value of protecting certain areas through the kapu system, the DEA concluded that the impact of critical habitat designation on subsistence activities would be minimal.

Finally, the economic analysis addressed impacts to public infrastructure such as roads and water systems in chapter VI, sections 3.I and 3.j. of the DEA, and section 3.j. of the Addendum. These sections addressed projects planned within the critical habitat designation. Final estimated potential section 7 costs for planned road projects are $32,600 for consultations and $985,000 to $1,230,000 for project modifications. Final estimated potential section 7 costs for planned water projects are $20,600 to $61,200 for consultations and up to $6,200 for project modifications.

(43) *Comment:* A commenter stated that the DEA acknowledges some or all lands designated as critical habitat may be redistricted/rezoned at the State or county level to preclude further development, and that the actual economic costs of redistricting could be very high. The commenter noted that while these estimates are mentioned in the text, they are not included in the summaries of the economic impacts.

Our Response: Tables ES–1 and VI–3 (''Summary Tables'') of the DEA and Table Add-2 of the Addendum summarize the economic impacts associated with the Blackburn's sphinx moth critical habitat designation are also discussed in detail in the response to Comment 29a. Although chapter VI, section 4 of the DEA, and section 4 of the Addendum provided general estimates of some of the potential indirect costs, including costs associated with State redistricting of land (chapter VI, section 4.e. of the DEA, section 4.b. of the Addendum), these estimates were not totaled in the Summary Tables because the probability that many of the indirect costs will occur is unknown. As noted on each of

the Summary Tables, the Tables instead reported qualitatively on the likelihood and the potential magnitude of each of the indirect costs. Moreover, the Summary Tables referred the reader to the narrative analyses for additional information on any of the indirect impacts.

(44) *Comment:* A commenter stated the following: The DEA does not account for investments and other expenditures already made on lands with the expectation that rezoning and redistricting will allow future development and hence a return on investment, nor does it account for the potential lost recapture of investment yields that may be foregone due to lost development potential for lands that have successfully been rezoned and permitted for development at a very high cost.

Our Response: Chapter VI, section 4.e.(6) of the DEA and section 4.b. of the Addendum specifically considered the investments and expenditures already made on lands within the critical habitat designation to facilitate future planned development, as well as the future profits that may be foregone due to lost development potential as a result of redistricting. The total cost associated with previous expenditures and estimated future profits for planned projects within the intended critical habitat designation ranges from $62.4 million to $74.4 million. Please refer to our response to Comment 29a for a detailed discussion of rezoning and redistricting.

(45) *Comment:* HDOA stated the following: The DEA underestimated economic costs because the costs are limited to what is likely to occur within 10 years. Critical habitat designation is permanent and not automatically revised if there is new evidence of the benefits of nondesignation, or if the species is delisted.

Our Response: A listed species is delisted when it is recovered or has gone extinct. Recovery is defined as no longer needing the protections provided by the Act, including critical habitat. Thus, when a species is delisted, critical habitat for that species would no longer be in effect.

Furthermore, a 10-year time horizon is used because many landowners and managers do not have specific plans for projects beyond 10 years, and timeframes beyond 10 years greatly increases the subjectivity of estimating potential economic impacts. In addition, the forecasts in the analysis of future economic activity are based on current socioeconomic trends and the current level of technology, both of which are likely to change over the long term.

(46) *Comment:* A commenter stated the following: The level of effort to document and analyze the potential economic impacts resulting from critical habitat designation greatly exceeded the level of effort to document and analyze the potential economic benefits due to designation, such as the benefits of watershed protection and improvement, protection of other stream and riparian biota, the value of the species as an indicator of ecological health, the value of protecting culturally significant species, the value that Hawaiians place on conservation of Hawaiian species, the benefit of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. The Service cannot exclude land from critical habitat designation if it considers only the costs, and not the benefits, of critical habitat designation. In failing to discuss these benefits, the Service missed an opportunity to educate the public regarding the value of protecting native species and native ecosystems. The Service must use the tools available, such as a study by the University of Hawaii (UH) Secretariat for Conservation Biology that estimated the value of ecosystem services, to quantify the benefits of critical habitat. The DEA results in an unbalanced overestimation of detrimental economic impacts, and an unfair under-estimation of economic benefits due to designation of critical habitat.

However, multiple other commenters stated the following: The benefits of species protection are overstated and speculative. The DEA does not present the expected circumstances or timeline for delisting the species, nor is there a quantifiable estimate of the economic benefits of delisting. Additionally, multiple commenters stated that the species themselves have no economic value. Any estimate of economic benefit derived from not fully developing lands proposed for critical habitat are speculative and unquantifiable, and the likelihood of new conservation dollars entering the State is speculative. Furthermore, in the DEA summary of costs and benefits, the benefits of designating critical habitat are ''difficult to estimate'' and are exceeded by the costs.

Our Response: The DEA discussed the benefits mentioned above. There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species. Such benefits have also been ascribed to preservation of open space, general biodiversity, and ecosystem function, all of which are associated with species conservation. Likewise, a regional economy can benefit from the preservation of healthy populations of endangered and threatened species, and the habitat on which these species depend.

It is not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the proposed critical habitat for Blackburn's sphinx moth because of the scarcity of available studies and information relating to the size and value of beneficial changes that area likely to occur as a result of listing the moth or designating critical habitat. In particular, the following information is not currently available: (1) Quantified data on the value of the moth or its critical habitat; and (2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation.

Although the UH study does value ecosystem services, it has limited applicability for valuing the benefits of the critical habitat designation for the moth for a number of reasons. First, the UH study had a different purpose, which was to estimate the total value of environmental benefits provided by the entire Koolau Mountains on the island of Oahu. Consistent with its purpose, the UH study provides no estimates of the changes in environmental conditions resulting from changes in land and stream management due to critical habitat designation. Furthermore, many of the assumptions and much of the analysis in the UH study are not transferable to the economic analysis for the critical habitat of the moth. For example, the Koolau Mountains were evaluated as a contiguous area, whereas the moth critical habitat is composed of separate areas on four different islands.

The value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu—conditions that are not applicable to Maui, Molokai, Kahoolawe, or the island of Hawaii due to the differences in size and population. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the manmade Ala Wai Canal. Since this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin, so must be dredged periodically. In addition, the recreational and ecotourism values provided in the UH study apply to areas that are accessible to most hikers, which

is not necessarily the case with the moth critical habitat. Delisting of the moth is not anticipated within the 10-year time horizon of this economic analysis, and it is beyond the scope of the economic analysis to forecast when delisting may occur beyond this period. The economic analysis does not conclude that the moth or critical habitat for the moth has no economic value; rather, it simply states that the value of the species cannot be quantified at this time. The economic analysis does not attempt to quantify the economic benefit derived from not fully developing lands proposed for critical habitat. Rather, the economic analysis acknowledges there may be benefits resulting from the preservation of open lands that might otherwise be developed, but concludes that because much of the critical habitat designation is already kept as open space and governed by existing State and local land use laws and county plans, these benefits may be insignificant. Finally, while the economic analysis concludes that many of the benefits of critical habitat designation are ''difficult to estimate,'' it does not necessarily lead to a conclusion that the benefits are exceeded by the costs. We believe that the benefits of the species and of critical habitat designation are best expressed in biological terms that can be weighed against the expected costs of the rulemaking.

(47) *Comment:* One commenter pointed out that critical habitat does not benefit ecotourism by creating new special places for people to visit, as the DEA suggested. Rather, it helps to protect the special places that already exist from degradation, ensuring that they will be around in the future to attract future ecotourists.

Our Response: Chapter VI, section 6.b.(1) of the DEA indicated that the proposed critical habitat may enhance the appeal of ecotourism by providing a marketing dimension. However, the DEA also stated that this benefit may be slight since these places may already be regarded as special due to the existing natural and cultural resources in the area.

(48) *Comment:* A commenter stated that assigning an economic value to preservation of ecosystem functions that may result from the designation of critical habitat (such as groundwater recharge, protection of coastal marine waters and fisheries, and other ecosystem services) is now an acceptable method of economic analysis, and that the dollar value of these services is high. The commenter noted that this analysis was done in a qualitative, narrative manner in the DEA and questioned why it was not done in a quantitative manner.

Our Response: The economic analysis recognized that the preservation of ecosystem functions may result from the designation of critical habitat for the Blackburn's sphinx moth. It was not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the proposed critical habitat for the moth because of the scarcity of available studies and information relating to the size and value of beneficial changes that are likely to occur as a result of listing the moth or designating critical habitat. In particular, the following information is not currently available: (1) Quantified data on the value of the moth or the moth's critical habitat; and (2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation.

(49) *Comment:* A commenter stated that there was no attempt in the DEA to quantify the value of open space (parks, preserves, even golf courses) surrounding real estate. The commenter noted that such increased property values are acknowledged but there was no attempt to estimate the corresponding increases in property values. Also, the commenter noted that some tourists prefer less developed areas.

Our Response: As discussed in the DEA and in the Addendum, there are only two areas where Blackburn's sphinx moth critical habitat could potentially increase the amount of open space. These areas include approximately 89 ha (220 ac) planned for single-family and multi-family homes in the Kaloko Properties development in proposed Unit 5a (island of Hawaii), and approximately 30 ha (75 ac) planned single-family and multi-family homes in the State VOLA project in proposed Unit 5b (island of Hawaii). (Note: this area was not included in this designation.) If these areas are redistricted to the Conservation District, the likelihood of which, as discussed in the Addendum, is considered small, they may remain open spaces but they will not necessarily be converted into golf courses and parks. Most golf courses and parks are not consistent with the regulations associated with the Conservation District. If the areas are left in the natural state or as preserves, the positive impact on surrounding real estate is likely to be minimal because much of the area is currently open and likely remain open over the next 10 years.

(50) *Comment:* Multiple commenters, including HDOA, opposed the designation of Agricultural land and lands needed to support agriculture and ranching. Commenters were concerned that designation would reduce property values and the ability to develop lands that were previously planned for development and also stated the following: Thirty-three percent of the proposed designated land is within the State Conservation District, which includes irrigation water essential to agriculture. The rest of the lands proposed for designation are primarily in the State Agricultural District. Designation of Agricultural lands could prevent a farmer or rancher from using those lands since the very nature of those uses would in all likelihood entail cutting, uprooting, or injuring plants to a certain extent. The DEA failed to examine the economic impact of a landowner not being able to use his own land for fear of injuring a species he doesn't even recognize. No protection is afforded to farmers who unwittingly ''harm'' the designated critical habitat.

Our Response: Chapter VI, section 4.e. of the DEA discussed potential indirect impacts to Agricultural land, including the potential reduction in property values and the impact of redistricting Agricultural land to the Conservation. Section 4.b. of the Addendum revised these estimates based upon the intended modifications to the critical habitat designation to remove areas for biological reasons. The Addendum estimated the loss in property value associated with an extreme scenario—that of all unplanned Agricultural land on Maui, Molokai, and the island of Hawaii being redistricted to Conservation—at $17 million to $169 million. The loss of development potential on the Agricultural land in proposed Unit 5a (island of Hawaii) is estimated at $13 million to $25 million. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)). Please refer to our responses to comment 29a for a detailed discussion of this issue. Additionally, it is important to note that the Land Use Commission considers the ''maintenance of other resources relevant to Hawaii's economy, including, but not limited to, agricultural resources'' as well as ''the preservation or maintenance of important natural systems or habitats'' when considering a petition for redistricting.

In addition, the economic analysis did not conclude that designation of critical habitat on Agricultural lands would prevent a rancher from using those lands. Rather, the economic analysis recognized that many areas within the critical habitat designation have been

grazed for tens or hundreds of years, yet still contain the primary constituent elements for Blackburn's sphinx moth. The DEA concluded that sustainable grazing does not adversely affect the moth, and in fact, may indirectly benefit the species by reducing fire danger and controlling nonnative weeds. Moreover, the DEA concluded that areas historically subject to grazing were unlikely to meet the standards of a natural ecosystem required to be put in the Protective Subzone (HAR § 13–5–11). As a result, even if Agricultural land within the critical habitat designation were redistricted to Conservation, the DEA anticipated that agricultural activities could continue because typical agricultural activities are allowed in all subzones, except the Protective Subzone, with permission of the State Board of Land and Natural Resources (BLNR).

(51) *Comment:* Several commenters were concerned about the potential for critical habitat to decrease the amount of available hunting lands and game animals. Frustration was expressed that governmental officials value plants and insects more than hunting, an important family and cultural tradition, means of subsistence, and way of life. In addition, commenters stated the following: Members of all ethnic groups hunt and depend on subsistence activities as a real part of their income. Hunting also contributes to the economy via money spent on pet foods, interisland trips, gasoline, supplies, etc. Additionally, DLNR will lose money as the demand for hunting licenses and tag fees dwindles. The DEA does not adequately reflect the costs associated with management of game mammals and loss of hunting lands.

Our Response: Chapter VI, section 4.b. of the DEA discussed the potential indirect impact of critical habitat on the management of game mammals on Molokai and the island of Hawaii, the only areas where the critical habitat designation overlaps with State-managed hunting units. The DEA noted that section 7 of the Act by itself does not require DLNR to manage State hunting lands to protect critical habitat; assure the survival and conservation of listed species; or participate in projects to recover species for which critical habitat has been established. Moreover, the DEA noted that critical habitat designation does not require: (1) Creating any reserve, refuge, or wilderness areas; (2) fencing for any reason; (3) removing ungulates; or (4) closing areas to hunters.

However, the DEA recognized that a change in game-management strategy as a result of a lawsuit or as a voluntary decision by DLNR is possible, but not likely.

Nonetheless, for illustration purposes, chapter VI, section 4.b. of the DEA presented potential costs that could result if DLNR removed areas within the intended designation from the State-managed hunting units. To illustrate the magnitude of the impacts on Molokai, if about half of those who hunt game mammals on the affected lands were to give up hunting, then hunting activity could drop by about 8 percent (half of 16 percent, which is the estimated percentage of the accessible State-managed hunting lands on Molokai proposed for designation). This translates into an annual decrease in economic activity related to hunting on Molokai of about $25,000 in direct sales; $45,000 in total direct and indirect sales; one job; and $15,000 in income. To illustrate the magnitude of the impacts on the island of Hawaii, if about half of those who hunt game mammals on the affected lands were to give up hunting, then hunting activity could drop by about 12.5 percent. While the proposed critical habitat covers only 3 percent of the total hunting area on the island of Hawaii, the actual hunting activity within the area proposed for designation is much higher than 3 percent. Based on information provided by DLNR regarding the popularity and the number of hunting trips in the Puu Waawaa area, it is assumed the area included in critical habitat supports approximately 25 percent of the hunting activity on the island of Hawaii. A reduction in hunting activity by half in this area would translate into an annual decrease in economic activity related to hunting on the island of Hawaii of about $425,000 in direct sales; $750,000 in total direct and indirect sales; 13 jobs; and $250,000 in income. However, the $450,000 ($25,000 + $425,000) decrease in expenditures by the displaced hunters would probably be spent on other activities, goods and services, so these figures are likely to overstate economic costs.

In addition to the change in economic activity discussed above, a reduction in hunting activity would also result in a loss in value or benefit to hunters (consumers' surplus). Chapter VI, section 4.b. of the DEA estimates this potential loss in value at $238,000 ($13,000 for hunting on Molokai and $225,000 for hunting on the island of Hawaii) annually and recognizes that benefits derived from recreational activities that replace game mammal hunting would partially offset this loss. Because the intended revisions did not significantly reduce the amount of overlap between State-managed hunting units and the intended designation, the Addendum made no changes to the conclusions reported in the DEA regarding hunting.

(52) *Comment:* DOTA stated that the proposed rule fails to adequately consider potential economic impacts to the Kahului Airport as a result of the designated airport lands.

Our Response: Chapter VI, section 3.h. of the DEA and section 3.i. of the Addendum discussed direct economic impacts associated with activity by DATA at Kahului Airport. Specifically, the DEA recognized that DOTA opposes designation of critical habitat in this area due to a possible conflict with safety requirements. In addition, the DEA noted that while DOTA receives Federal funding for transportation improvements, the Federal funds were not likely to be used for activities within the proposed critical habitat designation. Thus, while the possibility of a future Federal nexus was recognized, the DEA concluded that no section 7 consultations or project modifications were anticipated because there was no known Federal involvement for the existing activities.

During public comment, DOTA objected to designation of Kahului Airport and stated that the proposed designation failed to adequately consider the potential economic impacts to the Kahului Airport. As noted in the DEA, activities within the critical habitat designation primarily involve the clearance and cutting back of vegetation. These activities are not typically supported through Federal funds. However, based on discussions with DOTA, it is assumed that DOTA would avoid utilizing Federal funds, if they were available, to support activities within the area designated for critical habitat in order to avoid Federal involvement and section 7 consultation. As DOTA does not currently use or anticipate using Federal funds to support activities within the critical habitat designation, the economic impact of forgoing Federal funding sources is estimated to be zero.

DOTA did not provide any specific information demonstrating economic impact, identify any other activities that would be impacted by the designation, or raise any other Federal nexus. As discussed above, there is no anticipated Federal involvement for activities at Kahului Airport. Thus, no section 7 consultations or project modifications relating to Kahului Airport are anticipated.

(53) *Comment:* The MID Corporation and TSA Corporation (MID/TSA) stated that the DEA vastly understated potential economic impacts to its

various projects as a result of designation of lands in proposed proposed Unit 5a. The commenters suggested indirect costs approximating $415 million. Furthermore, the commenters stated that the DEA fails to address broader economic impacts to the community of Kailua-Kona and the State such as costs approximating $24 million as a result of potential loss of land development.

Our Response: We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

(54) *Comment:* Table ES–1: Under ''Residential Development,'' needs to add reference to Kaloko Properties Development.

Our Response: The Kaloko Properties development is referenced in section 3.e. of the Addendum and it is included in the heading ''Other Residential Development, Agricultural District'' in Table Add-1.

(55) *Comment:* Page VI–11, second to last paragraph: Based on maps supplied by the Service, MID/TSA estimates that 15 ha (37 ac) are in the Urban District (Kaloko Industrial Park, Phases III & IV). Assuming the referenced 5 ha (13 ac) refers to lands north of Hina Lani Street, the second sentence should be revised to reflect that there are plans to develop golf course and residential uses on Urban lands proposed for critical habitat designation. Page VI–13, 2nd paragraph: The second sentence should be revised to reflect that as part of the Kaloko Properties development, there are plans to develop golf course and residential uses on lands proposed for critical habitat designation. Development is planned within the next 10 years. Page VI–14, 2nd paragraph under 3.c: The paragraph should be revised to reflect that: (1) The developer is TSA Corporation, and (2) county zone change allowing for commercial-industrial mixed use development was granted. Page VI–28, section 3.i.(2) New Roads: In the first paragraph, the County of Hawaii no longer plans to extend Olowalu Street. As such, this paragraph should be deleted. Page VI–39, section 3.m.(2) Planned Golf Courses: The discussion should add the planned Kaloko Golf Course in proposed Unit 5a that has Urban zoning and is planned to be constructed on approximately 78 ha (194 ac) in TMK Parcel 7–3–09: 25.

Our Response: This information is included in section 3.l. of the Addendum; however, there is no change in the DEA cost estimate.

(56) *Comments:* Page VI–64, last paragraph: Need to also add reference to the Kaloko Properties development; Page VI–65, Previous Expenditures and Future Profits: Need to add reference to the economic impacts from Kaloko Properties development; Page VI–65, 7th paragraph regarding Kaloko Industrial Park: We estimate up to 33 lots would be affected, with an economic loss of $15 million based on property sales in the latest phase; Page VI–69, 3rd paragraph, Potential Redistricting Costs: The potential economic cost range of $255 million to $550 million appears to be grossly understated given our own estimate of the loss of $415 million on our Properties in proposed Unit 5a, but even then, this cost range (including Kaloko Properties costs) should be included in the summary tables, rather than being dismissed as ''speculative.''

Our Response: All of this information is included in section 4.b. of the Addendum. The potential economic impacts to the Kaloko Industrial Park expansion in proposed Unit 5a (island of Hawaii) include a loss of $500,000 in previous expenditures and $12 million in future profits. The potential impacts to the Kaloko Properties development in proposed Unit 5a (island of Hawaii) include $4.2 million in previous expenditures and $13 million to $25 million in future profits. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

(57) *Comment:* HCDCH commented that the DEA incorrectly concluded that economic impacts to the VOLA project would be moderate or modest because there is not likely to be any Federal involvement. The VOLA project may in the future request Federal funding to assist with development of affordable housing. The State would then lose money due to the direct impacts of various required consultations. Furthermore, the DEA does not acknowledge the cost of developing affordable housing at VOLA in lieu of Federal funding assistance.

Our Response: Section 3.c. of the Addendum specifically addresses HCDCH concerns. We did not include this area in this designation (*see* Exclusions Under Section 4(b)(2)).

(58) *Comment:* The DLNR identified five parcels (TMK (2) 1–8–001:005; TMK (2) 2–1–004:049; TMK (2) 2–1–006:076; TMK (2) 2–1–006:077; and TMK (2) 2–1–006:078) that should be excluded from designation because the DEA failed to establish that the benefits of including these parcels in the designation outweigh the costs of including these parcels in the designation.

Our Response: Two of the five parcels (TMK (2) 1–8–001:005 and TMK (2) 2–1–004:049) are leased for pasture purposes. The other three parcels (TMK (2) 2–1–006:076, TMK (2) 2–1–006:077, and TMK (2) 2–1–006:078) are identified as lands with either high land values or with development potential.

Section 3.g. of the Addendum evaluated the direct economic impact of critical habitat designation on these two parcels under lease for pasture purposes and concluded that no direct section 7 costs involving these leases are anticipated because there is no known Federal involvement.

Sections 4.a. and 4.b. of the Addendum discussed indirect costs, specifically the possibility of mandated conservation management measures that would interfere with the ability to lease these lands for pasture purposes, and the possibility of restrictions on the State's ability to develop the land in the future as a result of redistricting.

As discussed in section 4.a., mandated conservation management of all of the land in critical habitat is not reasonably foreseeable. The concern expressed by some is that the prohibition on taking endangered and threatened species could be triggered by designation of critical habitat if courts apply the principles of *Palila* v. *Hawaii Department of Land and Natural Resources* 471 F. Supp. 985 (D. Haw. 1979), *aff'd* 639 F.2d 495 (9th Cir. 1981) and *Palila* v. *Hawaii Department of Land and Natural Resources* 649 F. Supp. 1070 (D. Haw. 1986) *aff'd* 852 F.2d 1106 (9th Cir. 1988). While the circumstances considered by these cases happened to occur in the palila's critical habitat, the legal issues involved interpretation of ''harm'' in the Act's definition of ''take'' affirming that habitat degradation can constitute ''harm'' to a listed species. They did not announce a rule that degradation of designated critical habitat automatically constitutes take. While critical habitat may provide information to help a landowner identify where take through habitat modification may occur, the Federal and State take prohibitions are triggered by the listing of a species. These prohibitions apply whether or not critical habitat has been designated. In addition, there is legal interpretation Federal, State, or county law or regulation that mandates conservation management for critical habitat. As such, this analysis concludes that mandated conservation management based on critical habitat designation is not likely.

Section 4.b. of the Addendum discussed the possible impact on future development on the three parcels identified by DLNR. The Addendum recognized that while it is possible that redistricting of these parcels (should it occur) could restrict the ability of DLNR to develop these lands in the future, the economic impact of such a restriction

was impossible to estimate due to the speculative nature of such development at this time in light of the fact that there were no current plans for development of these parcels. In addition, section 4.b. concluded that while it is possible that the designation of critical habitat could trigger a petition to redistrict land designated as critical habitat to the Conservation District, the likelihood is small that the petition would actually result in redistricting any particular parcel of land into the Conservation District. This conclusion was based on the requirements for redistricting, including the requirement that the Land Use Commission consider the ''commitment of State funds and resources'' as well as ''the preservation or maintenance of important natural systems or habitats'' when considering a petition for redistricting.

(59) *Comment:* DOTA stated that the proposed designations on the islands of Maui and Hawaii would greatly increase costs to maintain and repair State Highway facilities. Specifically, the proposed Kanaha Pond-Spreckelsville unit would impact costs to the planned widening project for Route 36. The proposed Kailua-Kona Unit 5b will impact planned widening for Route 197, and the proposed Puu Waawaa Unit will impact planned improvements for Route 190. DOTA recommends that a buffer zone of 30 m (100 ft) on the sides of the State highway right of way lines be excluded from critical habitat units to eliminate or minimize designation-related additional costs for improvements, maintenance, and repair.

Our Response: Section 3.j. of the Addendum evaluated the impact of critical habitat designation on these three identified road projects. While the existing roadway of Route 36 (Hana Highway) is located outside of the Blackburn sphinx moth critical habitat designation, future widening of the roadway could possibly involve use of land inside the critical habitat designation. The widening of the area adjacent to the critical habitat designation was planned for construction between 1996 and 2000 in the 1997 Maui Long Range Transportation Plan. However, in the January 2002 Final Joint County/State Maui Interim Transportation Plan, the project is designated as a long-term project with no anticipated date of construction. Given the circumstances and the number of other priority projects listed before it, it is deemed unlikely that widening of Hana Highway will occur within the next 10 years.

The Mamalahoa Highway (Route 190) safety improvements in proposed Unit 6 (Unit 8, island of Hawaii) involve simple reading and resurfacing of the existing roadway. As mentioned in the DEA, the critical habitat provisions of section 7 do not apply to the operation and maintenance of existing manmade features and structures because these features are excluded from the designation. Although we are unable to individually map out every road and other manmade features and structures, they have been excluded in narrative form. Thus, the reading and resurfacing of the existing roadway planned for Mamalahoa Highway in proposed Unit 6 (Unit 8, island of Hawaii) would not be subject to section 7 consultation for critical habitat because they would not occur within designated critical habitat.

Finally, because proposed Kailua-Kona Unit 5b is not included the proposed widening of Kealakehe Parkway (Route 197) will not be affected by this critical habitat designation.

(60) *Comment:* Multiple commenters stated the following: The DEA failed to consider economic impacts of critical habitat that result through interaction with Hawaii's Land Use Law. Critical habitat could result in changes to zoning under State law. There is an overriding directive under State law that endangered plant species are to be protected in the State's planning and zoning process. HRS § 205–2(e) states that Conservation Districts shall include areas necessary for conserving endangered species. HRS 195D–5.1 states that DLNR shall initiate amendments in order to include the habitat of rare species. Even if DLNR does not act, the Land Use Commission may initiate such changes, or they may be forced by citizen lawsuits. Areas for endangered species are placed in the protected Subzone with the most severe restrictions. While existing uses can be grandfathered in, downzoning will prevent landowners from being able to shift uses in the future, will reduce market value, increase property tax, and make the land unmortgageable. Although the Service acknowledges that there could be substantial indirect costs relating to redistricting of land to the Conservation District, several commentators disagreed with the characterization of these costs as ''minor'' and with the statement that the probabilities of redistricting as ''slight to small.''

Our Response: As indicated in the section 4.b. of the Addendum, about 20,547 ha (50,772 ac) of Agricultural land, 0.4 ha (1 ac) of Rural land, and 174 ha (430 ac) of Urban land are included in the intended designation. Of this, approximately 5,099 ha (12,600 ac) of Agricultural land is owned by private landowners; 0.4 ha (1 ac) of Rural land is owned by private landowners; and 18 ha (45 ac) of Urban land is owned by private landowners. Assuming a most extreme scenario, the potential cost to agricultural activities could range from $250,000 to $3 million. Reduction in land values for unplanned land due to redistricting from the Agricultural, Rural, or Urban District to Conservation District could range from $17 million to $169 million, and the cost of contesting redistricting could reach $2.5 million. Under this scenario, even if a landowner has no plans to sell the land, the loss in land value could reduce potential mortgage financing. However, as discussed more fully in section 4.b., while it is possible that the designation of critical habitat could trigger a petition to redistrict land designated as critical habitat to the Conservation District, the likelihood is small that the petition would actually result in redistricting any particular parcel of land into the Conservation District.

In addition, under a most extreme scenario, planned development on the privately owned Agricultural and Urban land would be stopped. The economic impact to the developer would include the amount of money already invested in the project plus the expected profits that would not be realized due to redistricting. The potential cost associated with such a scenario is approximately $62.4 million to $74.4 million. Combined with the impacts mentioned above, the total economic cost associated with redistricting could range from $80 million to $249 million. Again, and as discussed more fully in section 4.b., while it is possible that the designation of critical habitat could trigger a petition to redistrict land designated as critical habitat to the Conservation District, the likelihood is small that the petition would actually result in redistricting any particular parcel of land into the Conservation District.

(61) *Comment:* Multiple commenters stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Environmental Impact Statement Law. HRS 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR 11–200–12 apply. One of these criteria is that an action is significant if it ''substantially affects a rare, threatened or endangered species or its habitat.'' This will result in costly procedural requirements and delays.

Our Response: Chapter VI, section 4.f. of the DEA discussed the concern that

critical habitat will result in more expensive environmental studies. The DEA noted that subject to certain exemptions, a State Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required for projects that: (1) Use State or county lands or funds; (2) are in the Conservation District; (3) are in the Shoreline Setback Area (usually 12 m (40 ft) inland from the certified shoreline); (4) require an amendment to a county plan that would designate land to some category other than Agriculture, Conservation or preservation; or (5) involve reclassification of State Conservation District lands. If a project ''substantially affects a rare, threatened, or endangered species, or its habitat,'' then a State EIS might be required instead of the simpler and less expensive EA.

Based on a review of projects planned within the critical habitat designation, the DEA concluded that five projects could be affected: Makena State Park; Kanaha Beach Park improvements; Kahoolawe Island Reserve Commission projects; and water tank installation and fire control at Puu Waawaa. The DEA reported that if all these projects subsequently require EISs, the additional cost to prepare them could be between $125,000 and $375,000. However, the DEA also recognized that this estimate may overstate costs, because other aspects of these projects may compel the preparation of an EIS rather than an EA. Because the areas surrounding these five projects remain within the intended designation, the Addendum made no changes to the conclusions reported in the DEA.

(62) *Comment:* Multiple commenters stated that the DEA fails to evaluate the practical effect critical habitat designation will have on development. One commenter speculated that Special Management Area permits administered by Maui County as required by Hawaii's Coastal Zone Management Act will be harder to get, will result in delays, will cause a decline in property values, and may make it impossible to develop. This economic impact disappears because the DEA's bottom line erroneously counts only so-called ''direct'' costs of consultation.

Another commenter expressed concern that the Service may get involved in county permitting processes, stating: ''[r]egardless of whether there is a Federal nexus for a proposed action, State and local agencies can and will require consultations with the Service (whether formal or informal) on actions that they approve in areas within or near critical habitat, and are likely to place restrictions on those actions as a result of such consultations. For example, a recent informal consultation between the County of Maui and the Service, pursuant to issuance of a County Special Management Area Permit for a proposed A & B project near BSM habitat in Kahului, resulted in the incorporation of permit conditions requiring the planting of three native *Nothocestrum latifolium* trees for every tree tobacco plant removed from the project area. The proposed project would not have impacted any BSM critical habitat, nor would it have resulted in the take of any BSM. Mandatory compensatory measures therefore do not appear to have been warranted for this project under any provisions of the Endangered Species Act.''

Finally, another commenter stated the following: The Service has taken the position in other states that it has a right to intervene in local land use proceedings if they affect endangered species on private property. For example, the Service petitioned the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property even though no Federal approval was being sought. The failure of the Service to address this type of activity in the DEA is a fundamental error of the analysis.

Our Response: The DEA acknowledged that if a proposed project requires major State or county approvals and is within critical habitat, developers are likely to be required by State and county agencies to request comments from us on the project. If we indicate that the project would have a negative impact on the habitat of listed species, then State and county agencies may require project mitigation to address our concerns. This would be expected even with no Federal involvement. The DEA concluded that the cost of the potential mitigation would depend upon the circumstances. Because there were no anticipated projects within the proposed critical habitat for the moth that would require major discretionary approvals by the State or county, there was no specific discussion in the DEA of what mitigation measures might be required by the State or county as a condition of receiving the discretionary approvals for projects within the critical habitat designation.

During public comment, a landowner in proposed Unit 5a (island of Hawaii) indicated that the Kaloko Properties development in critical habitat will require major discretionary approvals from the State and county, including Land Use District Boundary Amendment and a county zone change. (Note: this area was not included in this designation.) Section 4.c. of the Addendum addresses the costs of potential State and county mitigation measures that could be associated with approvals for this project. For example, as a mitigation measure for this project, the State or county may require the landowner to use native vegetation that is beneficial to the moth in the residential and golf course construction. The cost of this mitigation measure is estimated at $720,000 to $750,000. In a most extreme scenario, if the State or county did not grant the discretionary approvals as a result of the moth critical habitat designation, the landowner may not be able to continue with the current plans for residential and golf course development. In this case, the total cost for the Kaloko Properties development would be $4.2 million in previous expenditures and $13 million to $25 million in the potential loss of future profits. The specific likelihood of either occurrence is unknown, as it depends upon the actions of the State or county agency with permit approval under circumstances for which there is no prior history. In addition, the State or county may develop their own mitigation measures based on the particular circumstances before them when reviewing the permit. Based on the professional judgment of the team of economists preparing the economic analysis, it is not deemed likely that discretionary approval for the Kaloko Properties project would be denied solely on the basis of moth critical habitat designation. However, for illustrative purposes, costs associated with this most extreme scenario are reported.

(63) *Comment:* Multiple commenters stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS 174C–2 states ''adequate provision shall be made for protection of fish and wildlife.'' HRS 174C–71 instructs the Commission of Water Resource Management to establish an instream use protection program to protect fish and wildlife. Multiple commenters were concerned that water resource development would be greatly restricted leading to many indirect costs. The proposed rule states that activities such as watershed alteration or water diversion may trigger section 7 consultations if there is Federal involvement. If the ability to divert or take water from these sources or systems is restricted or limited, the impact

would be far reaching and affect all lands served by such water sources or systems. The Service has an obligation to thoroughly investigate this issue, and refrain from designating critical habitat until it has determined whether its actions will affect water use and balance this against any benefit to the species. One commenter stated that opponents of water diversions may use critical habitat as a tool to delay, and effectively stop, many worthwhile water diversion projects.

Our Response: Future (*i.e.,* currently unplanned) water diversion projects are most likely to be planned in mountainous areas with significant rainfall or existing water resources. In other words, they are most likely to occur in areas already in the Conservation District and thus, would be subject to discretionary approval by the BLNR. While development is already limited within the Conservation District, the designation of critical habitat would be relevant to BLNR's determination of whether to grant a permit. More specifically, the designation of critical habitat could make it more likely that BLNR would find that a proposed land use would cause substantial adverse impact to existing natural resources within the surrounding area (Hawaii Administrative Rules 13–5–30). Therefore, it is possible that critical habitat designation could result in additional environmental studies, project delays, project modifications, and potential project denials (as discussed generally in chapter VI, section 4.f. of the DEA). However, without more specific information on the scope and location of a future (and currently unplanned) water diversion project, it is not possible to meaningfully estimate the potential indirect costs associated with these events.

Moreover, no costs would be expected to occur from such impacts to water systems, because neither the Blackburn's sphinx moth nor the host plants on which it relies are stream-dependent for their survival and, therefore, would not cause a reduction in existing water diversions.

(64) *Comment:* A commenter stated the following: The DEA failed to consider the more restrictive Habitat Conservation Plan (HCP) guidelines under the Hawaii Endangered Species Law (HRS 195D–4, HRS 195D–21) that required the State HCP permittee show a net benefit to the species. The DEA failed to analyze impacts due to the circumstance in which a landowner qualifies for a Federal HCP but is unable to obtain a State HCP.

Our Response: As discussed in chapter III of the DEA, the Act allows us to permit take by private applicants that would otherwise be prohibited, provided such taking is ''incidental to, and not [for] the purpose of, the carrying out of an otherwise lawful activity.'' Section 10(a)(1)(B) of the Act allows non-Federal parties planning activities that have no Federal involvement, but which could result in the incidental taking of listed animals, to apply for an incidental take permit. The application must include an HCP laying out the proposed actions, determining the effects of those actions on affected fish and wildlife species and their habitats (often including proposed or candidate species), and defining measures to minimize and mitigate adverse effects. We must issue an incidental take permit if the incidental take is to be minimized by reasonable and prudent measures and implementing terms and conditions that are stipulated in the permit. The HESA has a comparable incidental take provision that also requires the permittee to show a net benefit to the species to receive the permit.

The economic analysis considers the economic impacts of section 7 consultations related to critical habitat, even if they are attributable co-extensively to the listed status of the species. In addition, the economic analysis examines any indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level (*e.g.,* further regulating the take of federally listed species), the impacts are not attributable to critical habitat designation and are not appropriately considered in the economic analysis of critical habitat designation. Take prohibitions under Hawaii law are tied to the Federal listing of the species and do not co-extensively occur because of critical habitat designation. Thus, the circumstance in which a landowner qualifies for a Federal HCP but is unable to obtain a State HCP is outside the scope of the economic analysis and was not addressed by it.

Summary of Changes From the Proposed Rule

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

(1) We revised the list of manmade features that are excluded from the designation in order to exclude additional features based on information received during the public comment periods. The revised list is described in the Criteria Used to Identify Critical Habitat section, and in regulatory language for section 17.95, ''Critical habitat— fish and wildlife,'' described at the end of this document.

(2) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, which indicated: (1) The primary constituent elements were not present in certain portions of the proposed units; (2) certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements; or (3) the areas were not essential to the conservation of the species. Specifically, private landowners on the islands of Molokai, Maui, and Hawaii provided us with new information regarding current land uses or prior land changes to some to the proposed areas that allowed us to identify certain lands as not essential or unsuitable for the long-term conservation of the Blackburn's sphinx moth. Likewise, the State provided us with new information regarding current land uses or prior land changes to some proposed areas on islands of Maui, Kahoolawe, and Hawaii that allowed us to identify portions of some proposed units as not essential or unsuitable for the long-term conservation of the moth. In addition, information obtained during the process of finalizing critical habitat designations for plants on the islands of Maui, Molokai, and Hawaii helped us to identify some proposed areas on those islands that are lacking the primary constituent elements, or are unsuitable for the long-term conservation of the moth. Lastly, some areas were excluded based on weighing the benefits of inclusion versus exclusion pursuant to section 4(b)(2) of the Act (*see* Economic Analysis section). A brief summary of the modifications made to each unit is given below (*see* also Figures 1–4).

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Figure 1 - Summary of Changes from Proposed Rule to Final Rule

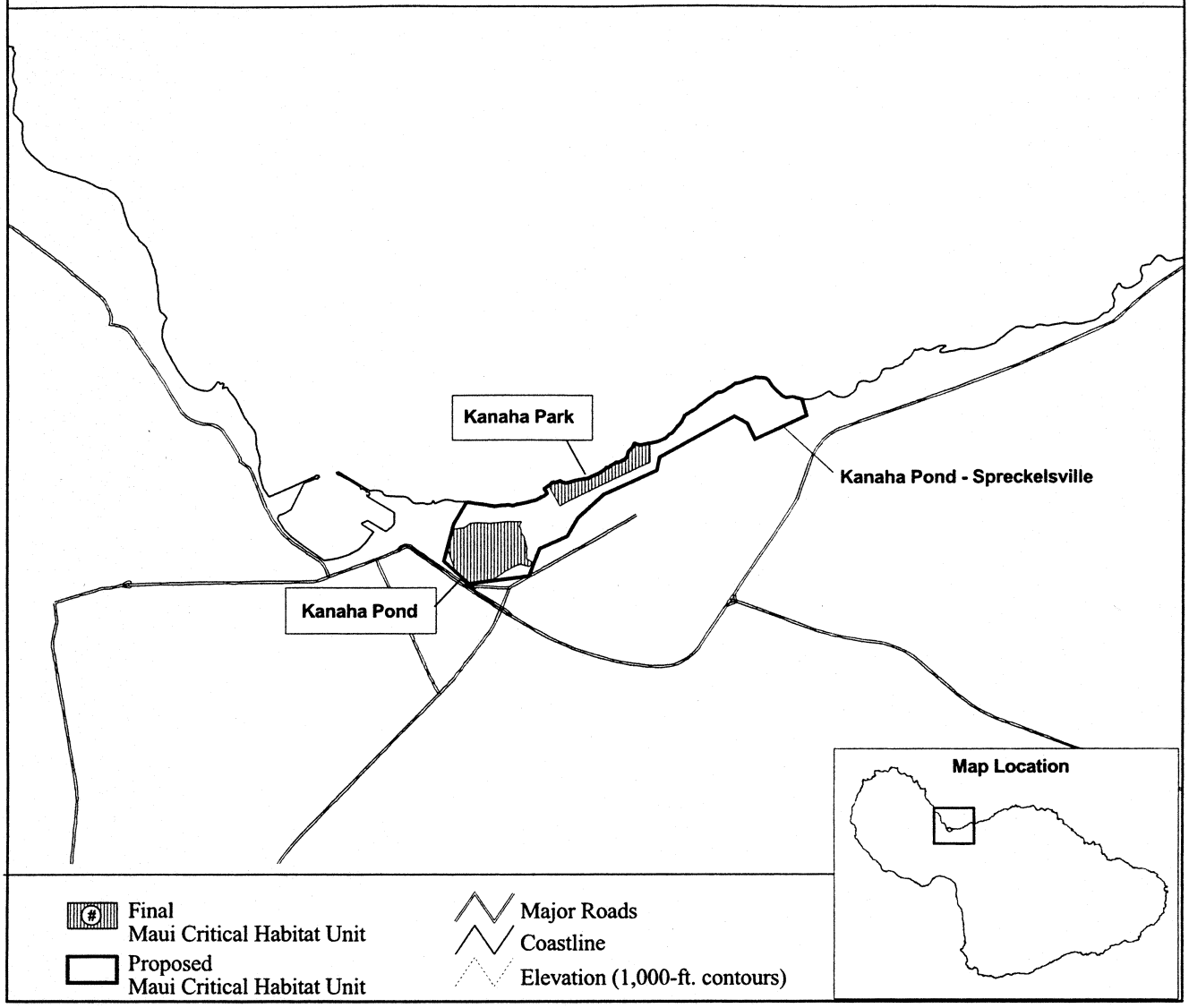


Figure 2 - Summary of Changes from Proposed Rule to Final Rule

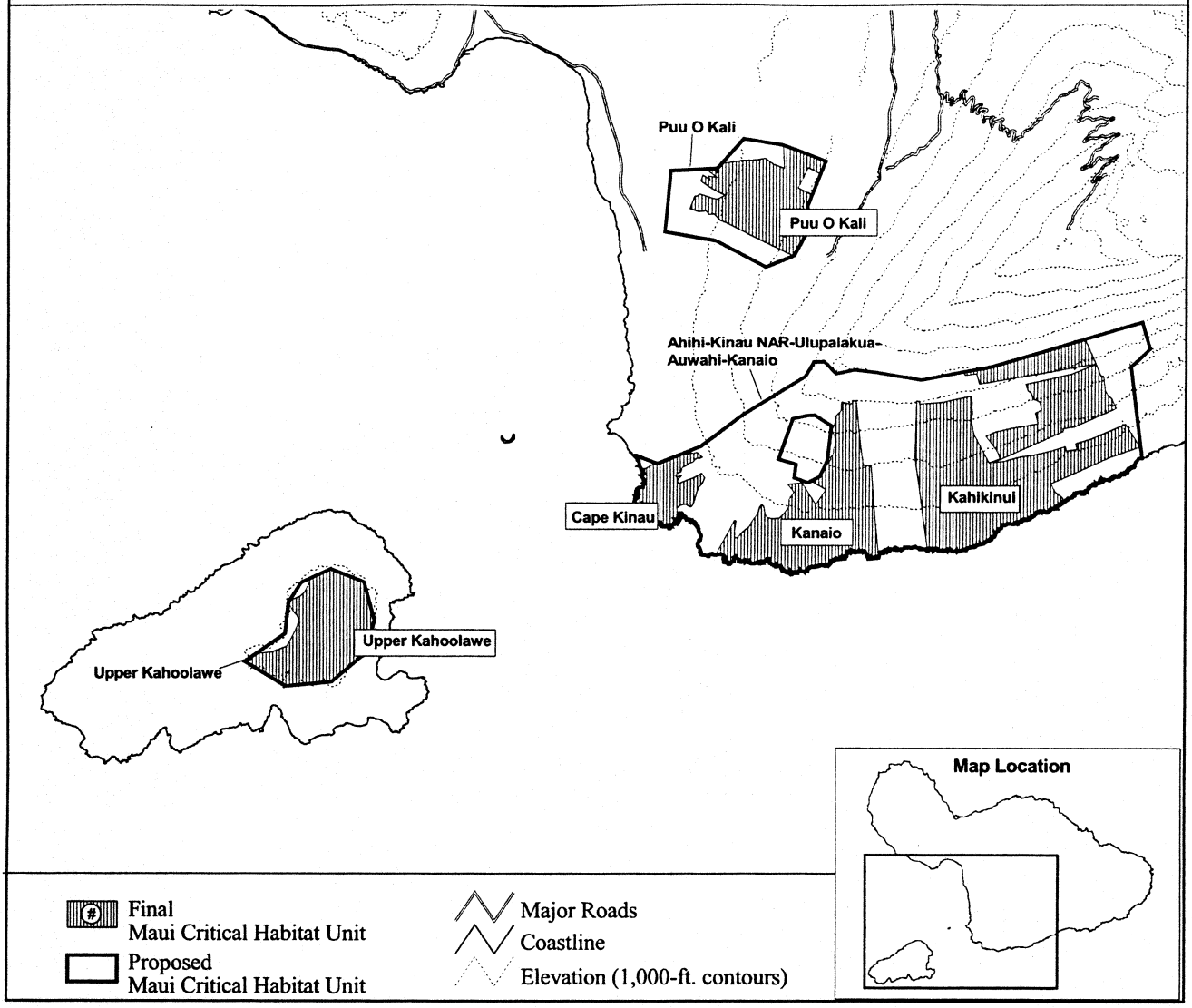


Figure 3 - Summary of Changes from Proposed Rule to Final Rule

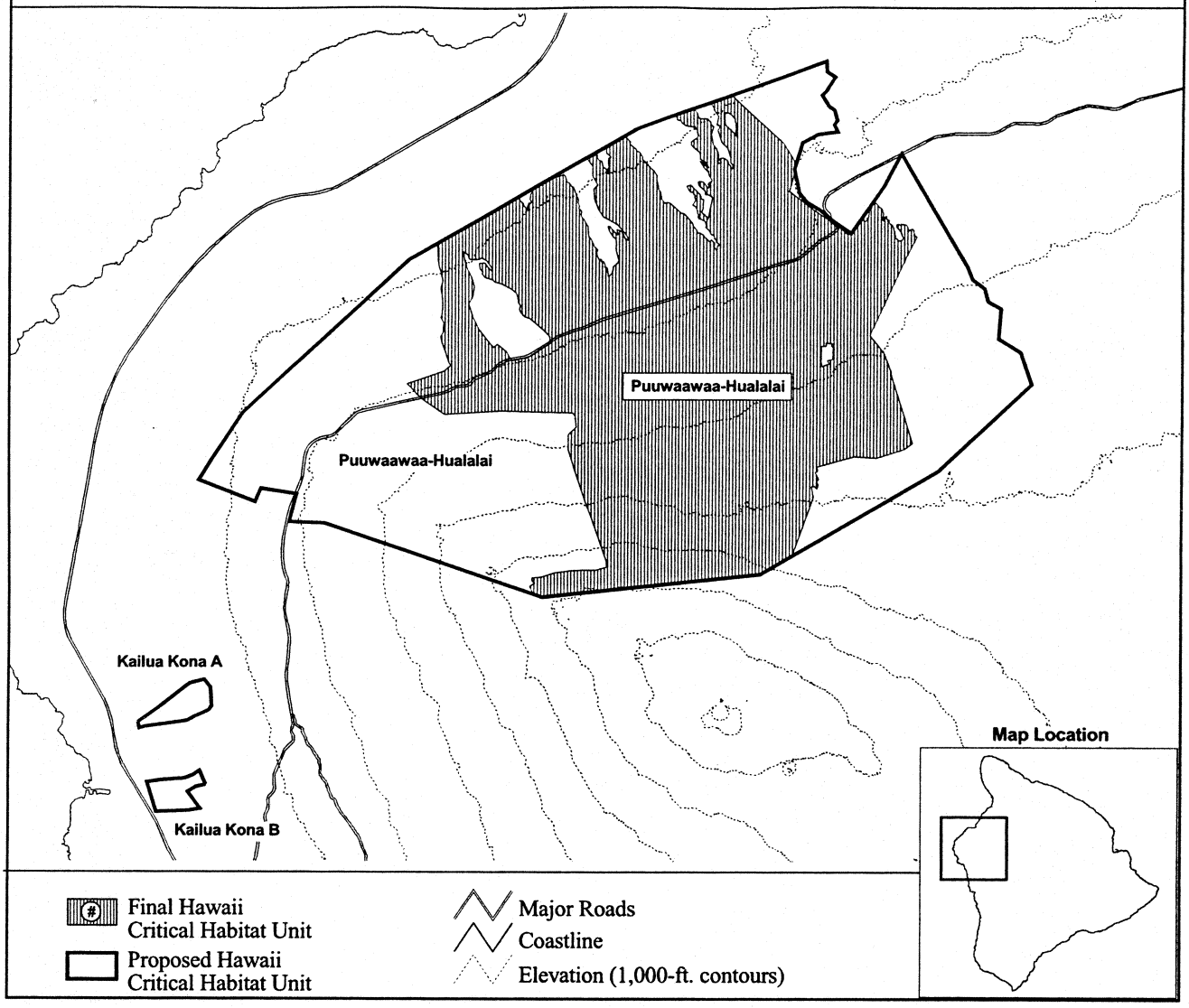
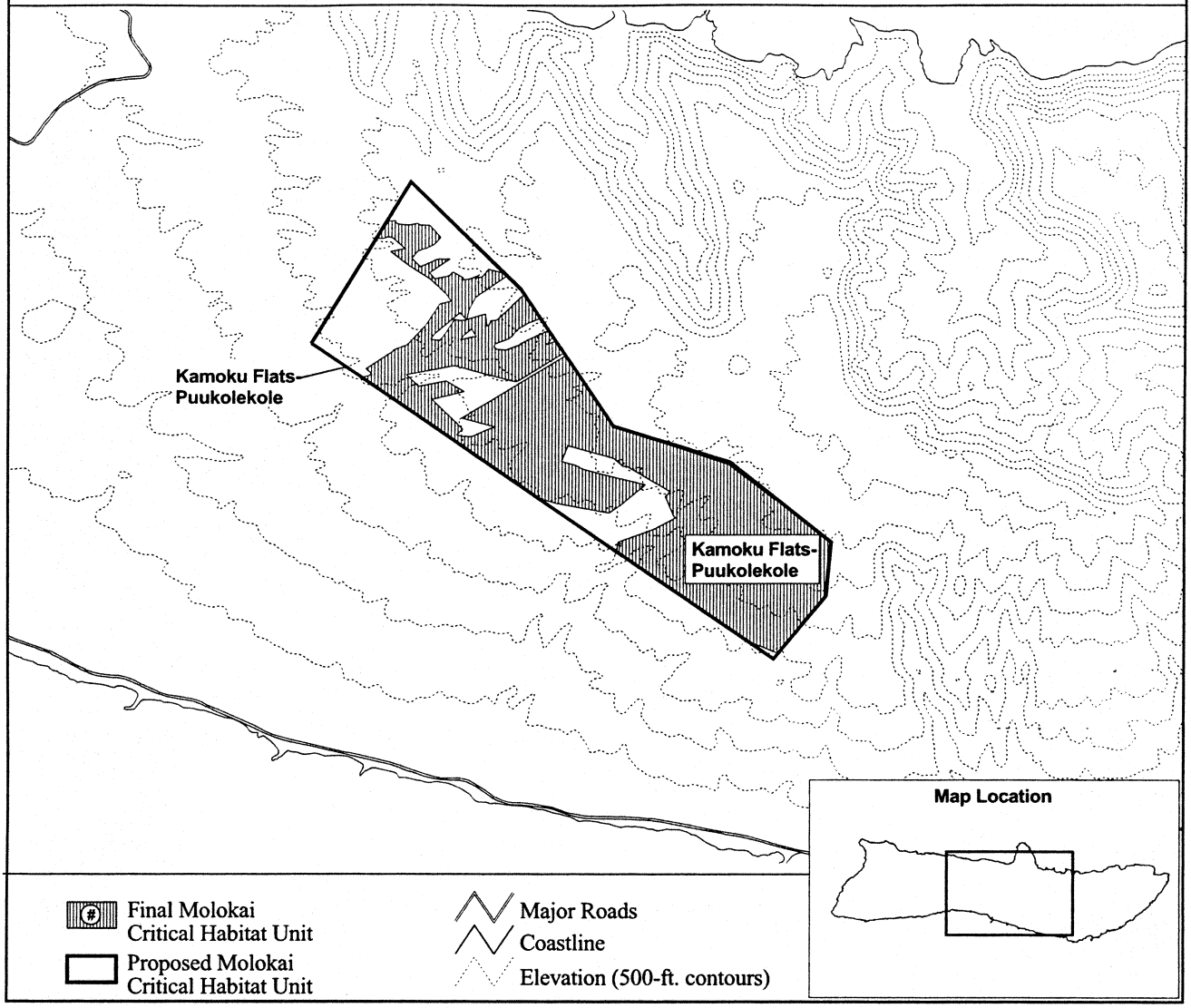


Figure 4 - Summary of Changes from Proposed Rule to Final Rule



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Former Unit 1. Ahihi-Kinau NEAR—Ulupalakua—Auwahi—Ka naio Maui Meta Unit (Formerly 15,216 ha (37,599 ac))

This unit has been subdivided into three smaller separate units (Unit 2, Cape Kinau; Unit 3, Ka naio; and Unit 4, Kahikinui) (*see* Table 2 and 3), which resulted in a total net decrease of 7,393 ha (18,269 ac).

TABLE 2.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT, ISLAND AND LANDOWNERSHIP IN HECTARES AND ACRES

Critical habitat unit	Island	State	Private	Total
1. Puu O Kali	Maui	1,503 ha 3,715 ac	101 ha 250 ac	1,604 ha 3,965 ac
2. Cape Kinau	Maui	597 ha 1,475 ac	6 ha 15 ac	603 ha 1,490 ac
3. Ka naio	Maui	2,416 ha 5,971 ac	4 ha 10 ac	2,420 ha 5,981 ac
4. Kahikinui	Maui	4,783 ha 11,820 ac	16 ha 39 ac	4,799 ha 11,859 ac
5. Kanaha Pond	Maui	56 ha 139 ac	0 ha 0 ac	56 ha 139 ac
6. Kanaha Park	Maui	25 ha 62 ac	0 ha 0 ac	25 ha 62 ac
7. Upper Kahoolawe	Kahoolawe	1,721 ha 4,252 ac	0 ha 0 ac	1,721 ha 4,252 ac
8. Puuwaawaa—Hualalai	Hawaii	9,120 ha 22,535 ac	835 ha 2,063 ac	9,954 ha 24,598 ac
9 Kamoko Flats—Puukolekole	Molokai	331 ha 817 ac	926 ha 2,288 ac	1,256 ha 3,105 ac
Total		20,552 ha 50,786 a	1,888 ha 4,665 ac	22,440 ha 55,451 ac

TABLE 3.—APPROXIMATE FINAL CRITICAL HABITAT AREA IN HECTARES (ACRES), ESSENTIAL AREA, AND EXCLUDED AREA ON HAWAII, KAHOOLAWE, MAUI, AND MOLOKAI

Area considered essential on Hawaii, Kahoolawe, Maui, and Molokai	27,366 ha (67,625 ac)
Area considered essential on Maui	14,226 ha (35,152 ac)
Maui Area excluded under 4(b)(2) (Haleakala and Ulupalakua Ranches)	4,717 ha (11,656 ac)
Final Critical Habitat on Maui	9,509 ha (23,496 ac)
Area considered essential on Hawaii	10,164 ha (25,115 ac)
Hawaii Area excluded under 4(b)(2) (MID/TSA Corp, and State)	210 ha (518 ac)
Final Critical Habitat on Hawaii	9,954 ha (24,597) ac)
Final Critical Habitat on Hawaii, Kahoolawe, Maui, and Molokai	22,440 ha (55,451 ac)

Some areas from the original unit were excluded under section 4(b)(2) because the benefits of designation of critical habitat are outweighed by the negative effect on the landowners' voluntary conservation activities on their property. Additional area was excluded because new information revealed that some lands in question did not contain moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Former Unit 2. Puu O Kali Unit (formerly 2,750 ha (6,794 ac))

This unit was renamed Unit 1 Puu O Kali, and is now 1,604 ha (3,965 ac) in size (*see* Table 2). This unit's boundary was adjusted with a total net decrease of 1,145 ha (2,829 ac). Some areas from the original unit were excluded under section 4(b)(2) because designation of critical habitat would have had a negative effect on the landowners' voluntary conservation activities on their property. Additional area was excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Former Unit 3. Kanaha Pond—Spreckelsville Unit (formerly 226 ha (559 ac))

This unit has been subdivided into two smaller, separate units (Unit 5 Kanaha Pond and Unit 6 Kanaha Park) (*see* Table 2), which resulted in a total net decrease of 145 ha (358 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Former Unit 4. Upper Kahoolawe Unit (formerly 1,878 ha (4,641 ac))

This unit was renamed Unit 7 Upper Kahoolawe, and is now 1,721 ha (4,252 ac) in size (*see* Table 2). This unit's boundary was adjusted with a total net decrease of 157 ha (389 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species (PBR Hawaii *et al.* 1995).

Former Unit 6. Puuwaawaa—Hualalai Meta Unit (formerly 18,111 ha (44,753 ac))

This unit was renamed Unit 8 Puuwaawaa—Hualalai, and is now 9,954 ha (24,598 ac) in size (*see* Table 2). This unit's boundary was adjusted with a total net decrease of 8,156 ha (20,155 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Former Unit 7. Kamoko Flats—Puukolekole Unit (formerly 1,829 ha (4,520 ac))

This unit was renamed Unit 9 Kamoko Flats—Puukolekole, and is now 1,256 ha (3,105 ac) in size (*see* Table 2). This unit's boundary was adjusted with a total net decrease of 573 ha (1,415 ac). Some areas from the original unit were excluded because new information revealed that some lands in question did not contain the moth's adult or larval stage primary constituent elements, or were more seriously degraded than previously ascertained, and are therefore not essential for the conservation of the species.

Critical Habitat

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

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat.

In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and conservation of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known, using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species. Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species or alternatively, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we believe to be critical habitat, using the best information available to us.

Our regulations state that ''The Secretary shall designate critical habitat outside the geographic areas presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not indicate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for

recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for conservation. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species.

Methods

As required by section 4(b)(2) of the Act and regulations 50 CFR 424.12, we used the best scientific information available to determine areas containing the physical and biological features that are essential for the conservation of Blackburn's sphinx moth. We evaluated areas containing dry and mesic habitats as well as data on known moth occurrence. The best scientific information we analyzed included peer-reviewed scientific publications; unpublished reports by researchers; the final rule listing the species (65 FR 4770); the Blackburn's sphinx moth Recovery Outline (Service 2000); the HHP database; island-wide GIS coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, landownership); information received during the public comment periods and public hearings; recent biological surveys and reports; and information received in response to outreach materials and from landowners, land managers, and interested parties.

The critical habitat unit approach in this rule addresses the numerous risks to the long-term survival and conservation of Blackburn's sphinx moth by employing two widely recognized and scientifically accepted methods for promoting viable populations of imperiled species—(1) creation or maintenance of multiple populations to reduce the possibility that a single or series of catastrophic events could threaten to extirpate the species; and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Tear *et al.* 1995; Meffe and Carroll 1996; Service 1997a).

In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Blackburn's sphinx moth. By maintaining viable populations in the designated critical habitat units, the threats represented by a fluctuating environment are reduced and the species has a greater likelihood of achieving conservation. Conversely, loss of a Blackburn's sphinx moth critical habitat unit will result in an appreciable increase in the risk that the species may not recover and survive.

The Blackburn's sphinx moth is short-lived, extremely mobile, and rare; hence population densities are not easily determined (A. Medeiros, pers comm., 1998; Janzen 1984; Roderick and Gillespie 1997; Van Gelder and Conant 1998). Even if the threats responsible for the decline of the moth were controlled, the persistence of existing populations is hampered by the small number of extant populations and the small number of individuals in known populations. These circumstances make the species more vulnerable to extinction resulting from a variety of natural processes. Small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and they may suffer a loss of genetic variability over time due to random genetic drift, resulting in decreased evolutionary potential and decreased ability to cope with environmental change (Lande 1988; International Union for Conservation of Nature and Natural Resources 1994).

Populations small in size are also demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio, and to catastrophes such as hurricanes (Lande 1988). We believe the existing Blackburn's sphinx moth populations on Kahoolawe, Hawaii, and Maui are insufficient in size and too limited in range to ensure the conservation of the species. While Blackburn's sphinx moth population sizes may be naturally small, establishing the species to a diverse set of habitats and climates within its former range is necessary to remove the long-term risk of rangewide extinction due to catastrophic events and the numerous direct threats to the species and its habitat (Service 1997a).

Janzen (1984) described the characteristics of tropical sphingid moths found in a Costa Rican National Park. In general, adult sphingids are nocturnal or crepuscular (dusk-flying) and regularly drink with a long proboscis from many kinds of sphingophilous flowers while hovering in front of them. Sphingophilus flowers are characterized by lightly colored tubular corollas, evening anthesis (opening), and nocturnal nectar and scent production (Haber and Frankie 1989). Fecundity was unknown, but estimated in the hundreds if the female can feed freely.

Particularly helpful in understanding the conservation needs of sphingids is Janzen's (1984) description of the adult moth biological characteristics, including that they have large latitudinal ranges, feed heavily over a long period of time and extensively at spatially particulate resources relatively fixed in location, *i.e.*, they feed on specific resources spread throughout the landscape, live for weeks to months, lay few eggs per night, probably oviposit (deposit eggs) on many host plant individuals and repeatedly visit many of them, have less synchronous eclosion (emergence from the pupa) during the rainy season than other moths, migrate, and are highly mobile, repeatedly returning to the same food plants. In another study of sphingids, adults were reported to travel greater distances to pollinate and visit flowers than those distances traveled by other insect pollinators or even hummingbirds (Linhart and Mendenhall 1977).

Sphingid caterpillars are known to feed heavily over a long time period and eat limited types of foliage, typically plants rich in toxic small molecules (*e.g.*, in the family Solanaceae). They also have less synchronous eclosion than other moths. Since sphingids search widely for good local conditions, Janzen (1984) concluded that isolated habitats may have difficulty supporting

sphingid populations, *i.e.*, connectivity between habitat areas is necessary to support wide-ranging sphingid species.

Ehrlich and Murphy (1987) noted that populations of herbivorous insects such as lepidopterans are often regulated by environmental factors, such as weather conditions, and thus small populations can be particularly at risk of extinction. Ehrlich and Murphy (1987) identified a number of principles important for the conservation of herbivorous insects. First, in most cases, a series of diverse demographic units will typically be needed to conserve a species. Second, where possible, corridors among the sites should be established to promote re-colonizations in areas where the species once occurred. Lastly, they noted that when populations are very sensitive to environmental changes and limited information is available on the species' population biology, it is easy to underestimate the conservation needs of such insects.

Murphy *et al.* (1990) also noted that reviews of butterfly population ecology demonstrate that environmental factors play important roles in determining butterfly population dynamics. They stated that most documented population extinctions have resulted from habitat deterioration combined with extreme weather events. Decreases in the quality or abundance of larval host plants and adult nectar sources are caused by changes in plant community composition, particularly changes associated with succession, disturbance, and grazing regimes. But, because many butterfly species are especially sensitive to thermal conditions, habitat changes that disrupt micro-climatic regimes can cause habitat deterioration without elimination of plant resources. Ehrlich and Murphy (1987) noted several patterns within typical butterfly populations: A number of subpopulations within a given specie's metapopulation (a set of local populations or breeding sites within an area, where typically migration from one local population or breeding site to other areas containing suitable habitat is possible, but not routine) are often extirpated and later re-colonized; and a given species may not be present in many of its habitat remnants, including within those containing the highest host plant diversity.

Section 3(5)(A)(i) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of the species. Although our knowledge of the Blackburn's sphinx moth's historical range is incomplete, we believe the existing natural habitats needed to support viable populations of the moth are too small, isolated, and seriously threatened to ensure its long-term conservation, particularly in light of the foraging needs of adult sphingid moths (Janzen 1984) and the apparent wide-ranging Blackburn's sphinx moth foraging habits (Fern Duvall, DOFAW, pers. comm. 2001; B. Gagne, pers. comm. 2001; D. Hopper, *in litt.* 2000, 2002; HHP 2000).

Long-term conservation of the species will require the protection and subsequent restoration of additional and larger areas of dry and mesic habitat that include the larval and adult primary constituent elements at different elevational and rainfall gradients, in order to improve the likelihood of successful larval development and adult moth foraging (A. Medeiros, pers. comm. 1998; Roderick and Gillespie 1997; Van Gelder and Conant 1998). The long-term persistence of the existing populations will likely improve if they could be increased in size, and if the connectivity among the populations was enhanced, thus promoting dispersal of individuals across intervening lands. Restoring moth populations in multiple locations would decrease the likelihood that the effect of any single alien parasite, predator, or combined pressure of such species could result in the diminished vigor or extinction of the moth.

Small habitats tend to support small populations, which frequently are extirpated by events that are part of normal environmental variation. The continued existence of such satellite populations requires the presence of one or more large reservoir populations, which may provide colonists to smaller, outlying habitat patches (Ehrlich and Murphy 1987). Based on recent field observations of the Blackburn's sphinx moth, we believe the species likely occurs within two regional populations on separate islands, one centered in the area of leeward East Maui (Units 1–4 (*see* Unit Descriptions below)), and one centered near Puuwaawaa (Unit 8) on Hawaii Island, north of Kailua-Kona (A. Medeiros, pers. comm. 1998; F. Howarth, pers. comm. 2001). Both of these two areas contain populations of the moth regarded as probable source areas or ''reservoirs'' (Murphy *et al.* 1990) for dispersing or colonizing moth adults.

Habitat areas close to the two large reservoir areas are also designated in order to promote genetic variability in the Blackburn's sphinx moth population, contributing to the long-term persistence and conservation of the species. These areas will serve as corridors for dispersing adult moths or as overflow habitat during particularly fecund years, which could be very important to the integrity of moth populations. For example, adult moths observed at Cape Kinau (Unit 2) on Maui may have originated from larval host plants located in the Kanaio NAR (Unit 3). The moth populations inhabiting these habitat areas appear to be taking advantage of lower elevation adult native host plants and nonnative host plants such as tree tobacco upon which the larval stage is completed successfully. In addition, these habitat areas may be able to support persistent moth populations independent of the reservoir areas, significantly contributing to conservation of the species.

Molokai is an example of essential habitat because it provides for the expansion of the species' range and for improved connectivity of the different populations. While the designated unit on this island is not known to currently harbor a Blackburn's sphinx moth population, preserving this habitat is important because some threats to the species may be absent there (Table 1 shows several of the potential moth predators and parasites are not reported on Molokai). Likewise, because of Molokai's distance from islands currently inhabited by the moth, we believe the designated critical habitat on this island will be extremely important for the species' conservation as it will help protect the species from extinction by catastrophic events, which could impact other more closely grouped populations (*e.g.*, those on Maui or the island of Hawaii). For these reasons, we find that inclusion of an area such as on Molokai, identified as containing the primary constituent elements, is essential to the conservation of the species even though it does not currently contain known Blackburn's sphinx moth populations.

Due to the species' presently reduced range, the Blackburn's sphinx moth is now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat and food. Furthermore, the moth is now more susceptible to direct pressure from numerous nonnative insect predators and parasites. For these reasons, and the reasons discussed above, those areas currently occupied would be inadequate to ensure the conservation of the species, and we have designated 9 units on four islands.

We are developing a draft recovery plan for this species. The overall objective of this recovery plan will be to ensure the species' long-term conservation and identify research

necessary so that the moth can be reclassified to threatened and ultimately removed from the list of endangered and threatened species. Because a recovery plan for the moth has not yet been completed, in making this determination we evaluated the remaining potential habitat, the biological and life history characteristics of the moth, and the best available scientific information on conservation planning to determine what will be required to ensure viable populations of this species. However, should our understanding of what areas support essential features for the conservation of the moth change after completing the recovery planning process, we may revise the existing critical habitat designation accordingly.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available. We consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or egg laying; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Blackburn's sphinx moth include specific habitat components identified as essential for the primary biological needs of foraging, sheltering, maturation, dispersal, breeding, and egg laying, and are organized by life cycle stage. The primary constituent elements required by the Blackburn's sphinx moth larvae for foraging, sheltering, maturation, and dispersal are the two documented host plant species within the endemic genus *Nothocestrum* (*N. latifolium* and *N. breviflorum*), and the dry and mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) and receiving between 25 and 250 cm (10 and 100 in) of annual precipitation. The primary constituent elements required by Blackburn's sphinx moth adults for foraging, sheltering, dispersal, breeding, and egg production are native, nectar-supplying plants including, but not limited to, *Ipomoea indica* and other species within the genus *Ipomoea, Capparis sandwichiana,* and *Plumbago zeylanica,* and within the dry to mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) and receiving between 25 and 250 cm (10 and 100 in) of annual precipitation.

Both the larval and adult food plants are found in undeveloped areas supporting mesic and dry habitats, typically receiving less than 250 cm (100 in) of rain per year and are located between the elevations of sea level and 1,525 m (5,000 ft). Vegetative communities in these areas include native plants, and in some instances, introduced plant species (A. Medeiros, pers. comm. 1998; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

Although Blackburn's sphinx moth larvae feed on the nonnative *Nicotiana glauca,* we do not consider this plant to be a primary constituent element for the designation of critical habitat. As previously discussed, the native *Nothocestrum* species are more stable and persistent components of dry to mesic forest habitats than *Nicotiana glauca. Nicotiana glauca* is a short-lived species that may disappear from areas during prolonged drought (A. Medeiros, pers. comm. 1998), or during successional changes in the plant community (F. Howarth, pers. comm. 2001; Symon 1999). Many studies have shown that insects, and particularly lepidopteran larvae, consume more food when the food has a relatively high water content (Murugan and George 1992). Relative consumption rate and growth have been reported to decrease for many sphingids closely related to the Blackburn's sphinx moth when raised on host plants or diets with a relatively low water content (Murugan and George 1992). *Nicotiana glauca's* vulnerability to drought conditions suggests that its water content frequently may not be suitable for optimal growth of Blackburn's sphinx moth larvae.

The restoration of native host species for the moth and other endangered species may also require the control or elimination of nonnative vegetation, potentially including *Nicotiana.* Additionally, unlike the *Nothocestrum* species, *Nicotiana glauca* is more likely to occur in habitats less suitable due to their occupation by alien insect predators (D. Hopper, *in litt.* 2000, 2002; Symon 1999). Therefore, in comparison with *Nicotiana glauca,* the native *Nothocestrum* species better fulfill the primary biological needs of the moth larvae. For all of these reasons, we are not considering *Nicotiana glauca* as a primary constituent element for the designation of critical habitat at this time.

Criteria Used To Identify Critical Habitat

We identified critical habitat areas essential to the conservation of Blackburn's sphinx moth in the primary locations where it currently occurs or has been known to occur. We have designated sufficient critical habitat at each site to maintain self-sustaining populations of Blackburn's sphinx moth at each of these locations.

During the development of this rule, we considered the role of unoccupied habitat in the conservation of Blackburn's sphinx moth. Due to the historic loss of the habitat that supports this species, we believe that future conservation and recovery of this taxon depends not only on protecting it in the limited area that it currently occupies, but also on providing the opportunity to expand its distribution by protecting currently unoccupied habitat that contains the necessary primary constituent elements within its historic range.

To help achieve our goal of conservation of Blackburn's sphinx moth, we are including one critical habitat unit on Molokai, despite the fact that the moth has not been documented there in recent years. The area is located within dry to mesic forest on the southern uplands of Molokai and contains both larval and adult stage host plants. By allowing the moth to recover to this area, either through its own ability or with assistance, the threat of extinction due to natural catastrophe occurring within the currently, close-grouped populations will be minimized. We believe the site is essential to the conservation of the species because it is the most appropriate site for a reestablishment effort. The combination of limited range, few populations, and restricted habitat, makes the moth susceptible to extinction or extirpation due to random events, such as disease, hurricanes, or other occurrences (Shaffer 1981, 1987; Primack 1993; Meffe and Carroll 1994). Such events are a concern when the number of populations or the geographic distribution of a species is severely limited, as is the case with Blackburn's sphinx moth. Establishment of the Molokai unit for the moth is likely to prove important in reducing the risk of extinction due to such catastrophic events.

Given the large size and strong flight capabilities of the Blackburn's sphinx moth, the species is believed to use large areas of habitat. Therefore, moth

population linkages will likely be enhanced if designated habitat occurs in large contiguous blocks or within a matrix of undeveloped habitat (A. Medeiros, pers. comm. 1998; S. Montgomery, pers. comm. 2001; McIntyre and Barrett 1992; Roderick and Gillespie 1997; Van Gelder and Conant 1998). To the extent possible with the limited potential habitat remaining, we have attempted to consider the wide-ranging behavior of the Blackburn's sphinx moth. Since the moth is believed to be a strong flier and able to move many kilometers from one area to another, areas of larval or adult presence and feeding may be separated from similar habitat areas and still serve important functions in maintaining moth populations.

Some small habitat areas are also suitable for Blackburn's sphinx moth larvae (*e.g.*, Units 2, 5, 6, and 9 (see unit descriptions below)) and are critical for the species' conservation since such habitats may facilitate adult moth dispersal and promote genetic exchange between populations located on different islands. These areas also provide nectar resources and sheltering opportunities required by the adult moth. However, geographically isolated populations may be subject to decreased viability caused by inbreeding depression, reductions in effective population size due to random variation in sex ratio, and limited capacity to evolve in response to environmental change (Soule 1987). The adult moth is dependent on its primary constituent element nectar source host plants for dispersal and migrating to and from various habitats. Because the factors threatening the moth's conservation are often not so mobile, providing for access to the moth's adult stage primary constituent elements, and thereby facilitating its ability to disperse, can minimize the effect of the various threats.

Blackburn's sphinx moth populations fluctuate from year to year and season to season, apparently correlated with environmental and climatic variation. The moth is likely sensitive to thermal conditions and habitat changes that disrupt its microclimatic requirements. Therefore, the critical habitat units include dry and mesic habitats containing the primary constituent elements along wide elevational gradients to better ensure adult moth foraging needs, up and downslope, within their range. Furthermore, the boundaries include elevational gradients to better ensure larval host plant availability during periods of drought. Numerous habitat elevations containing the various primary constituent elements are believed to be necessary for successful conservation of the sphingid species (Ehrlich and Murphy 1987; Shaffer 1987; Murphy and Weiss 1988; Murphy *et al.* 1990) in order to minimize the effects of annual localized drought conditions throughout different areas of the species' host plant range (Murugan and George 1992).

Critical habitat is being designated on those Hawaiian Islands where the Blackburn's sphinx moth's primary constituent elements are known to occur and are considered essential for the conservation of the species. This will allow the species the ability to persist and recolonize areas where it has become extirpated due to catastrophic events or demographic stochasticity (randomness) (Shaffer 1987). For example, on the island of Kauai in 1992, Hurricane Iniki blew over large areas of native forest, leaving open areas where nonnative plants became established, and created paths for further invasion of nonnative animals, both of which have been identified as threats to the survival of the moth.

Natural areas of suitable native, dry-to-mesic habitat containing at least one *Nothocestrum* plant adjacent to or near other *Nothocestrum* populations are included in the critical habitat units. We have included suitable habitat without *Nothocestrum* larval host plants, provided it contained the adult stage primary constituent elements including, but not limited to, *Ipomoea* species, *Capparis sandwichiana,* or *Plumbago zeylanica.* This is especially true for areas lying between or adjacent to large populations of *Nothocestrum* spp. that could serve as a flight corridor to other larger host plant habitat areas. An area may also serve as a corridor when it contains adult native host plants, thereby providing foraging opportunities for adults. Natural areas of primarily native vegetation containing the larval or adult stage primary constituent elements and where habitat could support a moth population and increase the potential for conservation are also designated as critical habitat. The designation and protection of a unit not known to currently contain a moth population (*i.e.,* the unit on Molokai), but which contains the primary constituent elements and lacks some of the serious threats to the species (*see* Table 1), will enhance population expansion and connectivity, thereby improving the likelihood of the species' conservation.

Mapping

Following publication of the proposed critical habitat rule for Blackburn's sphinx moth (67 FR 40633), we re-evaluated the proposed critical habitat units and modified the boundaries using additional information from peer review experts and comments on the proposed rule. We excluded areas that do not contain one or more of the primary constituent elements, or that are highly degraded and thus not essential for the conservation of the species. In addition, some areas were excluded under section 4(b)(2) of the Act (*see* Exclusions Under Section 4(b)(2)). The specific modifications are described above in the Summary of Changes from the Proposed Rule section. The boundaries of the final critical habitat units are described by their Universal Transverse Mercators (UTMs).

Within the critical habitat boundaries, section 7 consultation is generally necessary, and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In designating critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, which are unlikely to contribute to the conservation of the species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for this species did not allow us to exclude all such developed areas, or other areas unlikely to contain the primary constituent elements from the maps. In addition, existing manmade features and structures within the boundaries of the mapped unit, such as the following, do not contain one or more of the primary constituent elements, and are therefore excluded under the terms of this regulation: buildings; roads; aqueducts and other water system features, including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gauging stations, intakes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and associated rights-of-way; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines); airports; other paved areas; and other rural residential landscaped areas. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

The lack of scientific data on Blackburn's sphinx moth life history makes it impossible for us to develop a quantitative model (*e.g.*, population viability analysis) to identify the optimal number, size, and location of

critical habitat units (Ginzburg *et al.* 1990; Menges 1990; Murphy *et al.* 1990; Karieva and Wennergren 1995; Taylor 1995; Bessinger and Westphal 1998). At this time, we are only able to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of the Blackburn's sphinx moth's long-term survival and conservation. Therefore, we used the best available information to identify as critical habitat a reasonable number of additional units.

The one unoccupied area designated in this final rule is located on the island of Molokai (Unit 9). Although currently unoccupied by the moth, the area contains both larval stage and adult moth native host plants. The area is close enough in proximity to the Maui moth population that the area may again be re-populated by the moth on its own, yet because it is a separate island, some additional protection from a potential natural catastrophe affecting, for example, the Maui population, may be afforded a future moth population on Molokai. Also, as Molokai is the closest island to Oahu, we believe that allowing for a future moth population on Molokai may facilitate the species' dispersal and provide a flight corridor for moths eventually migrating to the island of Oahu, which is also part of its historical range.

Molokai was designated as critical habitat rather than other suitable unoccupied areas because we determined, to the best of our abilities, that it is the highest quality unoccupied habitat essential to the conservation of the moth. The designated unoccupied area on Molokai may lack some of the serious potential threats to the moth (*see* Table 1). Conserving and restoring Blackburn's sphinx moth populations in multiple locations decreases the likelihood that the effect of any single alien parasite or predator, or the combined pressure of such species and other threats, could result in the diminished vigor or extinction of the species.

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of such exclusions outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

Economic Impacts

Following the publication of the proposed critical habitat designation on June 13, 2002, a DEA was prepared to estimate the potential economic impact of the designation, in accordance with recent decisions in the *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service,* 248 F.3d 1277 (10th Cir. 2001). The DEA was made available for review on November 15, 2002 (67 FR 69179). We accepted comments on it until the comment period closed on December 30, 2002.

Our DEA evaluated the potential direct and indirect economic impacts associated with the proposed critical habitat designation for Blackburn's sphinx moth on Hawaii, Kahoolawe, Maui, and Molokai over the next 10 years. Direct impacts are those related to consultations under section 7 of the Act. They include the cost of completing the section 7 consultation process and potential project modifications resulting from the consultation. Indirect impacts are secondary costs and benefits not related to the specific provisions of the Act. Examples of indirect impacts include potential effects to property values, redistricting of land from agricultural or urban to conservation, and social welfare benefits of ecological improvements.

The categories of potential direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) potential delays associated with reinitiating completed consultations after critical habitat is finalized; (4) uncertainty and public perceptions resulting in loss of land value from the designation of critical habitat; (5) potential effects on property values including potential indirect costs resulting from the loss of hunting opportunities and increased regulation related costs due to the interaction of State and local laws; and (6) potential offsetting benefits associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency (*i.e.*, direct costs).

The DEA included an evaluation of the economic impacts associated with implementation of the section 7 provisions of the Act for the Blackburn's sphinx moth. To quantify the proportion of total potential economic impacts attributable to section 7 implementation, including both the section 7 listing provisions and the proposed critical habitat designation, the analysis evaluated a ''without section 7'' baseline and compared it to a ''with section 7'' scenario. The ''without section 7'' baseline represented the current and expected economic activity under all modifications except those associated with section 7, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the implementation of section 7 for the Blackburn's sphinx moth. Because of the uncertainty of the costs resulting solely from critical habitat designation, we believe it is reasonable to estimate the total impacts of section 7 application. However, it is important to note that inclusion of impacts attributable co-extensively to listing does not convert this economic analysis into a tool to be used in making listing decisions.

Following the close of the comment period on the DEA, an addendum was completed that incorporated public comments on the draft analysis and made other changes in the draft as necessary. These changes were primarily the result of information received during the comment period indicating that certain areas do not contain the necessary primary constituent elements or are not essential to the conservation of the species. However, the Addendum did analyze the economic impacts of areas that have been excluded pursuant to section 4(b)(2) in this final rule. Therefore, the total area and the potential impacts evaluated in the Addendum are greater than the total area designated as critical habitat and the actual impacts.

Together, the DEA as modified by the addendum constitute our final economic analysis. The final economic analysis estimates that, over the next 10 years, the designation may result in potential direct economic costs ranging from approximately $1,183,800 to $1,739,000. This reduction of approximately $27,399 to $175,400 from the costs estimated in the DEA is primarily due to the reduction in acreage for biological reasons.

Our final economic analysis for this rule also includes an evaluation of potential indirect costs associated with the designation of critical habitat for the Blackburn's sphinx moth. For example, in the event that designation results in a rezoning of property from agricultural district to conservation district a landowner could be expected to spend $50,000 to contest a potential re-zoning of their property, and a CDUA might cost as much as $100,000. Also, as described in section 4.e. of the Addendum, an estimate of the costs involved with investigation for the

intended designation ranges from approximately $173,000 to $618,000.

In addition, the final economic analysis discusses economic benefits in qualitative terms rather than providing quantitative estimates because of the lack of information available to estimate the economic benefits of endangered species preservation and ecosystem improvements.

A more detailed discussion of our economic analysis is contained in the DEA and the Addendum. Both documents are included in our administrative record and available for inspection at the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Although we do not find the economic costs to be significant, they were considered in balancing the benefits of including or excluding areas from critical habitat. The likely cost of designating critical habitat for the Blackburn's sphinx moth is estimated to be between $118,380 to $173,900 per year over the next 10 years.

Approximately 4,717 ha (11,656 ac) within two proposed critical habitat units (Units 1 and 2) are located on private lands owned by Ulupalakua and Haleakala Ranches. We are excluding both ranches from designation because the benefits provided by these two landowners' voluntary conservation activities within and adjacent to these units outweigh the benefits provided by a designation of critical habitat.

Ulupalakua Ranch

The portion of proposed Unit 1 on Ulupalakua Ranch lands is occupied habitat for Blackburn's sphinx moth.

As discussed previously, conservation of the moth will require self-sustaining, reproducing populations located in a geographic array across its range, with population numbers and population locations of sufficient robustness to withstand periodic threats due to natural disaster or biological threats. The highest priority conservation tasks include active management, such as host plant propagation and reintroduction, fire control, alien species removal, and ungulate fencing. Failure to implement these active management measures, all of which require voluntary landowner support and participation, virtually assures the extirpation of this moth species from those areas. Many of these types of conservation actions in this area of Maui are carried out as part of Ulupalakua Ranch's participation with our Partners for Fish and Wildlife and other landowner incentive-based programs, and by actions taken on the landowner's initiative in areas outside the partnership area. These activities, which are described in more detail below, require substantial voluntary cooperation by Ulupalakua Ranch.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. We paid particular attention to the following issues: Whether critical habitat designation would confer regulatory conservation benefits on this species; whether the designation would educate members of the public such that conservation efforts would be enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately owned land.

If excluding an area from a critical habitat designation will provide substantial conservation benefits, and at the same time including the area fails to confer a counter-balancing benefit to the species, then the benefits of excluding the area from critical habitat outweigh the benefits of including it. The results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and species involved.

(1) Benefits of Inclusion

Critical habitat was proposed for Blackburn's sphinx moth on 3,533 ha (8,730 ac) in the Ulupalakua Ranch portion of proposed Unit 1. The primary direct benefit of inclusion of this portion of proposed Unit 1 as final critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present. In contrast, Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act. The portion of Unit 1 being excluded is occupied by the moth, and thus would be subject to consultation anyway. *See e.g.,* 50 CFR section 402.12 (biological assessments are based on a list of species present in the action area).

Historically, we have conducted no formal or informal consultations under section 7 on Maui for Blackburn's sphinx moth. We have conducted only two informal intraservice consultations regarding Ulupalakua Ranch, and these have been on the effects of fencing and outplanting of certain endangered plants including *Alectryon Micrococcus* var. *auwahiensis* and *Zanthoxylum hawaiiense* within the Puu Makua Partnership Project area and the Auwahi Partnership Project area (*see* discussion below). Current and likely future economic activities on the ranch include cattle grazing, diversified agriculture such as strawberry and papaya production, eco-tourism, wild fowl hunting, and lease of lands for cellular phone and radio transmission towers. The most likely future Federal involvement on these lands includes the development of voluntary conservation agreements between the ranch and Federal agencies such as the Service and NRCS. Additionally, it is possible the ranch may apply for and receive Farm Service loans for land improvement projects pertaining to agricultural needs or to enhance habitat for wild fowl.

As a result of the low level of previous Federal activity on Ulupalakua Ranch, and after considering the likely future Federal activities in this area, it is our opinion that there is likely to be a low number of future Federal activities that would affect designated Blackburn's sphinx moth critical habitat on Ulupalakua Ranch. Even if a Federal action is proposed in the future, it would likely be subject to section 7 consultation because of the presence of the moth. The Final Economic Analysis (FEA) prepared for this rule does discuss the possibility that a re-zoning of some lands from agricultural status to conservation status could occur which might limit certain agricultural activities. However, the FEA concedes that the possibility of re-zoning of agricultural lands is low or unlikely. Furthermore, there are different levels of conservation district land use categories, and in the event of a potential re-zoning, activities such as grazing would likely continue. Therefore, we anticipate little direct regulatory benefits from including Ulupalakua Ranch lands in critical habitat.

Another possible benefit if including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the moth species for which critical habitat was proposed in Unit 1 that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable.

However, we believe we have achieved the same educational benefits through ongoing conservation activities

and the critical habitat designation process. The portion of proposed Unit 1 that lies within Ulupalakua Ranch has been identified as essential to the conservation of the Blackburn's sphinx moth and has been addressed in this rule. In addition, the existing conservation activities being conducted within proposed Unit 1, as well as within other areas of Ulupalakua Ranch, by the Service and other Federal agencies (*e.g.,* NRCS), the State, and private organizations (*e.g.,* Ducks Unlimited, Incorporated (DU)) demonstrates that the landowner and the public is already aware of the importance of this area for the conservation of Blackburn's sphinx moth.

In summary, we believe that a critical habitat designation for Blackburn's sphinx moth on Ulupalakua Ranch lands would provide a relatively low level of additional regulatory conservation benefits to the species. Any regulatory conservation benefits would accrue through the benefit associated with section 7 consultation. Based on a review of past consultations and consideration of the likely future activities in this area, there is little Federal activity expected to occur on this privately owned land that would trigger section 7 consultation. We also believe that a final critical habitat designation provides little additional educational benefits since the conservation value is already known by the landowner, the State, Federal agencies, and private organizations, and the area has been identified as essential to the conservation of Blackburn's sphinx moth. Both the additional regulatory conservation benefits to the species and the additional educational benefits appear marginal when considering the past and likely future conservation partnership opportunities with this landowner. Through cooperative and creative land restoration activities which have occurred on the ranch and are likely to continue to occur, a significant amount of land (hundreds of acres or more) can and will likely be restored for the long-term conservation of the moth, its host plant species, and other native Hawaiian ecosystem components. No such future conservation partnerships with this landowner are likely to occur if the proposed portions of the ranch are designated as outlined by the landowner within several letters.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts on private lands are necessary to prevent the extinction and promote the conservation of this species on Maui and other Hawaiian islands (Wilcove and Chen 1998; Wilcove *et al.* 1998; Shogren *et al.* 1999). This is especially important in areas where species or their essential habitat components, *i.e.,* host plants, have been extirpated and their recovery requires access and permission for reintroduction or restoration efforts. For example, the Blackburn's sphinx moth's larval stage host plant species, *Nothocestrum latifolium,* associated with proposed Unit 1, are in decline on Ulupalakua Ranch lands, and natural repopulation is likely not possible without human assistance and landowner cooperation.

Ulupalakua Ranch is involved in several important voluntary conservation agreements, and is currently carrying out some of these activities for the conservation of the moth and its essential habitat components. For example, the Partners for Fish and Wildlife Auwahi and Puu Makua agreements were entered into in 1997 and 1998 with the stated purpose of protecting and restoring dryland forest, including construction of exclosure fences, a greenhouse, access road, and propagation and outplanting of native plants. Preservation of these areas conserves critically endangered species of plants and animals in one of Hawaii's most degraded ecosystem types, the lowland dry forest. This management strategy is consistent with recovery of the Blackburn's sphinx moth. The Auwahi agreement is between Ulupalakua Ranch, USGS–BRD, and the Service. We provided funding ($64,388) for fence materials, plant propagation and outplanting, and weed control, Ulupalakua Ranch provided labor and materials valued at $18,000, and USGS–BRD provided materials and technical assistance as well as staff and volunteer labor. In the 4 ha (10 ac) Auwahi project area, Ulupalakua Ranch has built the exclosure fence, outplanted native plants grown in the greenhouse including *Nothocestrum latifolium,* removed the majority of non-native alien species within the fence, and removed all ungulates. We provided $31,675, through an agreement with Ulupalakua Ranch, for restoration work at Puu Makua. Ulupalakua Ranch has provided in-kind labor and materials valued at $37,055 to construct a fence around the 40 ha (100 ac) exclosure, removal of ungulates, control of nonnative plants and out-planting of native plants. The first two tasks have been completed, with weed control and out-planting ongoing.

A third voluntary partnership project undertaken in cooperation with the landowner is the Auwahi II Dryforest Restoration Project. We provided $76,500 (matched by in-kind services valued at $52,000) for this 8 ha (20 ac) restoration effort adjacent to the Auwahi I project. This project is ongoing, and will employ the same methods used at Auwahi I: Construct ungulate exclosure fence, remove ungulates, control nonnative plants, and outplant native species, including listed species.

Ulupalakua Ranch entered a partnership with Ducks Unlimited (DU), a private conservation organization, and the NRCS's Wetland Reserve Program (WRP) in 2000, to create wetland complexes suitable for the Hawaiian goose, nene (*Branta sandvicensis*) and Hawaiian duck, koloa (*Anas wyvilliana*). The NRCS WRP provided $100,000 for funding and technical support to develop the wetland complex, DU provided funds and provided full survey, design, construction management and completion of wetland development practices, and Ulupalakua Ranch provided fencing, equipment, labor or other in-kind serves as required to match the WRP funds. DU also conducted waterfowl monitoring at the four ponds for 1 full year after pond construction. In 2001, a 14 ha (35 ac) area was fenced and encompassed the four constructed ponds and associated upland habitat at a 1,585 m (5,200 ft) elevation site. The ponds were created to attract nene and koloa pairs to forage and nest within the protected pond/wetland area, which totals approximately 0.4 ha (1 ac) of surface water, with 0.9–1.8 m (3–6 ft) depths filled and maintained by natural hydrology and rainfall.

In addition to the projects described above, to address the conservation needs of the species in a larger area, Ulupalakua Ranch has expanded their Partners for Fish and Wildlife projects with the Service and in cooperation with the State NAR program for conserving additional areas, which include the following important voluntary actions by Ulupalakua Ranch:

(1) Construction of exclosure fencing around a portion of Ulupalakua Ranch and the Ka naio NAR (a portion of proposed Unit 1 (approximately 283 ha (700 ac)) with $50,000 provided us, matched by in-kind services (*e.g.,* labor and materials) valued at $50,000;

(2) Active management of feral ungulates that are negatively affecting listed plants within the fenced areas;

(3) Active management of nonnative grasses and other fire hazards, and development of fire control measures; and

(4) Nursery propagation and planting of native flora, including *Nothocestrum latifolium,* within the fenced areas.

Currently, this is the only large-scale planned nursery production of the moth's native larval host plants in the State.

We believe that Blackburn's sphinx moth habitat and host plant populations originally included within the Ulupalakua Ranch portion of proposed Unit 1 will benefit substantially from these management actions. Specifically, the planned and current conservation actions on 324 ha (800 ac) or approximately 10 percent of the area originally proposed on ranch lands should directly benefit the moth and its host plants. These benefits include a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, a reduction in risk of fire, and the potential for reintroduction of moth host plants currently extirpated from various areas. Also, these benefits include what is current or currently planned only, additional benefits could be derived from projects not yet conceived.

On Maui, simply preventing ''harmful activities'' will not slow the extinction of listed species. Where consistent with the discretion provided by the Act, we believe it is necessary to provide positive incentives to private landowners to voluntarily conserve natural resources. The FEA for this rule concluded that the likelihood of any particular parcel being rezoned as conservation district was low. However, the potential costs of such a rezoning should it occur, could entail additional costs to a landowner. For example, a landowner could be expected to spend $50,000 to contest a rezoning, and a conservation district use application (CDUA) might cost as much as $100,000. However, the FEA also conceded that some economic activities such as grazing would likely be permitted to continue even with a conservation district rezoning. Although the FEA concludes that the potential effects of rezoning are anticipated to be low, this landowner and other commenters nevertheless believe there is a risk that the critical habitat designation will result in the rezoning of lands, a decrease in the Ulupalakua Ranch's ability to remain economically competitive, and an increased risk of third-party litigation. The landowner has expressed concern over these potential negative impacts and has stated in several letters that they would cease all voluntary conservation activities on ranch property. We believe the ranch's cooperation on all current and planned future conservation projects on ranch property are necessary to conserve the moth. Current conservation projects alone will result in the direct restoration and conservation of approximately 10 percent of the ranch's property proposed for designation.

As described earlier, Ulupalakua Ranch has a history of entering into conservation agreements with various Federal and State agencies and private organizations on biologically important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments such as the Puu Makua and the two Auwahi Dryland Forest Restoration Partners for Fish and Wildlife projects (in cooperation with USGS–BRD and funded through Partners for Fish and Wildlife), wetland restoration/creation (in cooperation with NRCS and DU), and the Ka naio Dry Forest Restoration Project (in cooperation with DOFAW and funded through Partners for Fish and Wildlife and section 6 of the Act).

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where we have little management authority (Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Knight 1999; Main *et al.* 1999; Shogren *et al.* 1999; Norton 2000; Bean 2002; James 2002). Therefore, ''a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species'' (Crouse *et al.* 2002). Because the Federal government owns relatively little land in the State of Hawaii, and because large tracts of land suitable for conservation of threatened and endangered species are owned by private landowners, successful recovery of the Blackburn's sphinx moth and other listed species in Hawaii is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners. Thus, we believe it is essential for the conservation of Blackburn's sphinx moth to build on continued conservation activities such as these with a proven partner.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding the Ulupalakua Ranch portion of proposed Unit 1 as critical habitat outweigh the benefits of including it as critical habitat for Blackburn's sphinx moth. This conclusion is based on the following analysis:

(1) *Benefits of inclusion:* There will be little Federal regulatory benefit to the moth as a result of including ranch property in the designation because, as described in the FEA and in this rule, there is a low likelihood that this critical habitat unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation. The designation of critical habitat can serve to educate the general public, as well as conservation organizations regarding the potential conservation value of an area. However, this goal has already been effectively accomplished through the identification of this area in the management agreements described above. Lastly, even if any given ranch parcel were re-zoned as conservation district as a result of the designation, the FEA concluded that grazing activities would likely continue. Given the current Partners for Fish and Wildlife agreements between ourselves and the landowner, we believe the overall regulatory and educational benefits of including the Ulupalakua Ranch lands portion of proposed Unit 1 as critical habitat are relatively small.

(2) *Benefits of exclusion:* Excluding Ulupalukua Ranch property from the designation will result in the elimination of uncertainty about decreased land values and potential third party litigation. Potential costs to the landowner resulting from the need to investigate the effect of designation or to contest potential conservation rezoning, for example, will be eliminated. Lastly, and perhaps, most important for the conservation of the moth, excluding the properties from designation will ensure the landowner's continued voluntary participation in proactive conservation agreements and partnerships as the landowner has stated in several letters to the Service.

(3) In the past, Ulupalakua Ranch has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits. The ranch has a long history of participation in conservation projects beginning in the 1960s through the present. A substantial amount (approximately 10 percent) of the Ulupalakua Ranch portion of proposed Unit 1 is currently being managed by the landowner on a voluntary basis to achieve important conservation goals and which directly benefits numerous native Hawaiian plant and animal species including the

moth. For example, the landowner is currently cooperating with the Service and the State to restore and actively manage approximately 324 ha (800 ac) of high quality habitat for the moth and its host plants.

Simple regulation of potential ''harmful activities'' is not sufficient to conserve the Blackburn's sphinx moth on private lands. Landowner cooperation and support will be required to prevent its extirpation in this area of Maui and promote the recovery of the moth's host plants in this area due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, and plant propagation and reintroduction. This need for landowner cooperation is especially important because the Ulupalakua portion of proposed Unit 1 is part of the habitat for what is considered a core or metapopulation of the moth. In fact, some portions of the ranch's property currently being fenced and actively managed for restoration include some of the highest quality moth habitat remaining anywhere in the State. Future conservation efforts, such as maintaining and conserving Blackburn's sphinx moth host plant habitat in this area, will require the cooperation of Ulupalakua Ranch.

In conclusion, we find that the designation of critical habitat in the Ulupalakua Ranch portion of proposed Unit 1 would most likely have a net negative conservation effect on the recovery and conservation of Blackburn's sphinx moth. As described above, the overall benefits to this moth of a critical habitat designation for this portion of Unit 1 are relatively small. We conclude there is a greater likelihood of beneficial conservation activities occurring on this area of Maui without designated critical habitat than there would be with designated critical habitat in this location. We reached this conclusion because the landowner is more likely to continue and increase their ongoing voluntary conservation efforts for the moth and other listed species if their property is not designated as critical habitat. In fact, the landowner has stated in several letters to the Service that all voluntary conservation activities will cease if ranch property is designated. Therefore, it is our conclusion that the net benefits of excluding this portion of proposed Unit 1 from critical habitat for the Blackburn's sphinx moth outweigh the benefits of including it.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of this portion of proposed Unit 1 might result in the extinction of Blackburn's sphinx moth, we considered the impacts to the species. It is our conclusion that the current partnership agreements developed by Ulupalakua Ranch and the Service will provide more net conservation benefits than would be provided by designating the portion of proposed Unit 1 as critical habitat. These agreements will provide tangible proactive conservation benefits that will result in the direct restoration and active management of 324 ha (800 ac) of habitat for the moth and its native host plants within proposed Unit 1. Specifically, the benefits will include the construction of exclosure fencing around a large portion of high quality moth habitat, active management of feral ungulates and nonnative grasses and weeds, development of fire control methods, and nursery propagation of the moth's host plants. These benefits will reduce the likelihood of the moth's extirpation in this area of Maui, reduce the likelihood of its extinction, and increase its likelihood of conservation overall. Extinction of the Blackburn's sphinx moth as a consequence of this exclusion is unlikely because there are no known threats in this portion of proposed Unit 1 due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the partnership agreements between the landowner and the Service, and the exclusion of the portion of proposed Unit 1, have the highest likelihood of preventing extinction of this species and enhancing its conservation.

In addition, critical habitat is being designated in other areas of Maui and on the islands of Hawaii, Kahoolawe, and Molokai for Blackburn's sphinx moth. These other designations identify conservation areas for the maintenance and expansion of existing populations.

In summary, the above analysis indicates there is a much greater likelihood of the landowner undertaking conservation actions on Maui to prevent extinction, such as the outplanting of moth host plants to expand and establish additional populations, without the Ulupalakua Ranch portion of proposed Unit 1 being designated as critical habitat. Therefore, the exclusion of this portion of proposed Unit 1 will not cause extinction and should in fact improve the chances of conservation for Blackburn's sphinx moth.

Haleakala Ranch

Most of the portion of proposed Units 1 and 2 on Haleakala Ranch lands is believed to be occupied habitat for Blackburn's sphinx moth.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. We paid particular attention to the following issues: Whether critical habitat designation would confer regulatory conservation benefits on this species; whether the designation would educate members of the public such that conservation efforts would be enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately owned land.

If a critical habitat designation reduces the likelihood that voluntary conservation activities will be carried out, and at the same time fails to confer a counter-balancing positive regulatory or educational benefit to the species, then the benefits of excluding such areas from critical habitat outweigh the benefits of including them. The results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and species involved.

(1) Benefits of Inclusion

On Haleakala Ranch property, critical habitat was proposed for Blackburn's sphinx moth on 393 ha (972 ac) for proposed Unit 1 and 791 ha (1,955 ac) for proposed Unit 2. The primary direct benefit of inclusion of this portion of proposed Units 1 and 2 as final critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat.

Historically, there have been no formal consultations of informal consultations under section 7 involving Haleakala Ranch lands, except the consultation in the process of being completed for the Puu Pahu conservation project that we are funding in part.

Current and likely future economic activities on the ranch include cattle grazing, diversified agriculture, eco-tourism, hunting, and lease of lands for cellular phone and radio transmission towers. Likely future Federal involvement includes the development of voluntary conservation agreements between the ranch and Federal agencies such as the Service and NRCS. Additionally, it is possible the ranch

may apply for and receive Farm Service loans for land improvement projects pertaining to agricultural needs or to enhance habitat for wild fowl.

As a result of this low level of Federal activity on Haleakala Ranch, and after considering the likely future Federal activities in this area, it is our opinion that there is likely to be a low number of future Federal activities that would affect designated Blackburn's sphinx moth critical habitat on Haleakala Ranch. Even if a Federal action is proposed in the future, it would likely be subject to section 7 consultation because of the presence of the moth. The FEA prepared for this rule does discuss the possibility that a rezoning of some lands from agricultural status to conservation status could occur which might limit certain agricultural activities. However, the FEA concedes that the possibility of rezoning of agricultural lands is low or unlikely. Furthermore, there are different levels of conservation district land use categories, and in the event of a potential rezoning, activities such as grazing would likely continue. Therefore, we anticipate little regulatory benefits from including Haleakala Ranch lands in critical habitat.

Another possible benefit of including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. This outcome would be important for the Blackburn's sphinx moth. Any information about the species and its habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable.

However, we believe we have achieved the same educational benefits through ongoing conservation actions and the critical habitat designation process. The portion of proposed Units 1 and 2 that lie within Haleakala Ranch has been identified as essential to the conservation of the Blackburn's sphinx moth. In addition, the existing conservation activities being conducted within proposed Units 1 and 2, as well as within other areas of Haleakala Ranch, by the Service and other Federal agencies (*e.g.*, NRCS), the State, and private organizations (*e.g.*, The Nature Conservancy (TNC)) demonstrates that the landowner and the public is already aware of the importance of these areas for the conservation of the moth.

In summary, we believe that a critical habitat designation for Blackburn's sphinx moth on Haleakala Ranch lands would provide a relatively low level of additional regulatory conservation benefits to the species. Any regulatory conservation benefits would accrue through the benefit associated with section 7 consultation. Based on a review of past consultations and consideration of the likely future activities in this area, there is little Federal activity expected to occur on this privately owned land that would trigger section 7 consultation. In addition, we believe that the critical habitat proposal and final designation provides some conservation benefits by educating the public on the site-specific areas on Maui essential to the conservation of the Blackburn's sphinx moth. Both the additional regulatory conservation benefits to the species and the additional educational benefits appear marginal when considering the past and likely future conservation partnership opportunities with this landowner. Through cooperative and creative land restoration activities which have occurred and are likely to continue to occur on the ranch, a significant amount of land (hundreds of acres or more) can and will likely be restored for the long-term conservation of the moth, its host plant species, and other native Hawaiian ecosystem components. No such future conservation partnerships with this landowner are likely to occur if the proposed portions of the ranch are designated as outlined by the landowner within several letters.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts on private lands are necessary to prevent the extinction and promote the conservation of this species on Maui and other Hawaiian islands (Wilcove and Chen 1998; Wilcove *et al.* 1998; Shogren *et al.* 1999). This is especially important in areas where species or their essential habitat components, *i.e.*, host plants, have been extirpated and their recovery requires access and permission for reintroduction or restoration efforts. For example, the Blackburn's sphinx moth's host plant species, associated with proposed Units 1 and 2 are either extirpated or in decline on Haleakala Ranch lands, and natural repopulation is likely not possible without human assistance and landowner cooperation.

Haleakala Ranch is involved in several important voluntary conservation agreements, some of which benefit the moth. For example, in the mid-1980s, Haleakala Ranch Company sold to TNC a perpetual conservation easement that included over 19,000 ha (47,000 ac) (Waikamoi Preserve) in order to protect its native forest resources and watershed from damage caused by pigs and cattle. Haleakala Ranch Company has been working with the Central Maui Soil and Water Conservation District to address soil and resource issues. In cooperation with the NRCS Environmental Quality Incentives Program (EQIP), Haleakala Ranch Company has been implementing a weed control program that has been ongoing for over 80 years. Eight years ago, the Haleakala Ranch Company Directors created and filled a Land Steward position in order to shepherd conservation efforts of the ranch and update the conservation plans for all Haleakala Ranch lands.

The Partners for Fish and Wildlife Puu Pahu agreement was begun in 2001 with the stated purpose of protecting and restoring native subalpine dry shrubland including construction of a 6.9 kilometers (km) (4.3 miles (mi)) exclosure fence, and removal of ungulates within the area in order to allow the already semi-intact native vegetation to regenerate. Preservation of this area conserves critically endangered species of plants and animals in one of Hawaii's most restricted ecosystem types, subalpine dry shrubland. The agreement is between Haleakala Ranch, the Service, and NRCS. The Service and NRCS provided funding for fencing materials ($91,418 from us), and are providing technical assistance on the conservation of certain native plants and restoration of the subalpine dry shrubland, whereas Haleakala Ranch is building the fence and removing the ungulates (in-kind cost-share valued at $28,875). This work is to be completed by August 30, 2003. Haleakala Ranch has also been working with DOFAW for the past 2 years on an ungulate free reserve for native habitat regeneration in the Waiopae area. Haleakala Ranch is fencing the area for better grazing management from the forest to the shoreline. These actions will include riparian protection to improve habitat for native plants and watershed management. The area contains high quality habitat for both the moth's larval and adult stage host plants, and when completed, it would involve the conservation, restoration, and management of approximately 445 ha (1,100 ac) of moth habitat.

Through voluntary agreements with our Partners for Fish and Wildlife and the NRCS Wildlife Habitat Incentives Programs (WHIP), and in cooperation with the Native Hawaiian Plant Society, USGS-BRD and DOFAW, Haleakala Ranch is assisting with the fencing and exclusion of feral axis deer in the Puu

o Kali project area (part of proposed Unit 2) by granting access to the area. Furthermore, the success of this project, a high quality habitat area for the moth and its host plants, can be enhanced and facilitated by voluntary cooperation of Haleakala Ranch. Currently, the ranch is planning to implement similar fire control, weed, and ungulate management, and fence construction efforts on its properties adjacent and partly surrounding the Puu o Kali project area. Additionally, the ranch is fencing and excluding feral ungulates from a high elevation shrubland adjacent to Haleakala National Park, for conservation of endangered plants and animals and habitat protection purposes. Preservation of both these habitat areas conserves critically endangered species of plants and animals in two of Hawaii's most degraded ecosystem types. This management strategy is consistent with the conservation needs of Blackburn's sphinx moth and should directly benefit the moth's host plant habitat.

In addition, Haleakala Ranch has informed us that they are currently devising additional management plans for conserving habitat, including that of the moth. These plans include the following important voluntary actions by Haleakala Ranch:

(1) Construction of a 9 ha (22 ac) exclosure fence around Keokea Gulch in Kihei to reduce sedimentation on the shoreline and reef, and to reduce the fire hazard in the area by using R–1 (highest quality recycled water) water to irrigate a riparian buffer; exclosure fencing of a dryland lava flow in the Keokea area, in cooperation with the Service. Additionally, the ranch has begun planning with the Service and DOFAW to fence and restore a significant portion of the Waiopae area (within proposed Unit 1) for habitat protection of native forest and riparian areas. The project would involve the enclosure and management of approximately 445 ha (1,100 ac) of high quality moth habitat, or approximately 30 percent of the amount of Haleakala Ranch lands proposed for designation.

(2) Control of feral ungulates that are negatively impacting listed and rare plants, including the Blackburn's sphinx moth's host plants, within all the currently fenced areas and planned project areas;

(3) Control of nonnative grasses and other fire hazards, and development of fire control measures within many project areas including some occupied by the moth; and

(4) Habitat protection for natural regeneration of native flora including Blackburn's sphinx moth host plants, within many of the fenced project areas.

We believe that Blackburn's sphinx moth habitat included within the Haleakala Ranch portion of proposed Units 1 and 2 will benefit substantially from these management actions. Specifically, the planned and current conservation actions on approximately 445 ha (1,100 ac) or approximately 30 percent of the ranch property amount originally proposed should directly benefit the moth and its host plants. These benefits include a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, a reduction in risk of fire, and the potential for reintroduction of moth host plants currently extirpated from various areas. Furthermore, these benefits include what is current or currently planned only, additional benefits could be derived from projects not yet conceived.

On Maui, simply preventing ''harmful activities'' will not slow the extinction of listed species. Where consistent with the discretion provided by the Act, we believe it is necessary to provide incentives to private landowners to voluntarily conserve natural resources. The FEA for this rule concluded that the likelihood of any particular parcel being rezoned as conservation district was low. However, the potential costs of such a rezoning, should it occur, could entail additional costs to a landowner. For example, a landowner could be expected to spend $50,000 to contest a rezoning, and a CDUA might cost as much as $100,000. However, the FEA also conceded that some economic activities such as grazing would likely be permitted to continue even with a conservation district rezoning. Although the FEA concludes that the potential effects of rezoning are therefore anticipated to be low, this landowner and other commenters nevertheless believe there is a risk that the critical habitat designation will result in the rezoning of lands, a decrease in the Haleakala Ranch's ability to remain economically competitive and that there is an increased risk of third-party litigation. The landowner has expressed concern over these potential negative impacts and has stated in several letters that they would cease all voluntary conservation activities on ranch property. We believe the ranch's cooperation on all current and planned future conservation projects on ranch property are necessary to conserve the moth. Current and planned conservation projects alone could result in the direct restoration and conservation of approximately 30 percent of the ranch property acreage amount proposed for designation.

As described earlier, Haleakala Ranch has a history of entering into conservation agreements with various Federal and State agencies, and private organizations on important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments ranging from the Partners for Fish and Wildlife projects, and an agreement with DOFAW to fence areas in Waiopae, to weed control programs with NRCS WHIP, and a perpetual easement to TNC (Waikamoi Preserve).

We believe it is essential for the conservation of Blackburn's sphinx moth to build on continued conservation activities such as these with a proven partner. Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where we have little management authority (Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Knight 1999; Main *et al.* 1999; Shogren *et al.* 1999; Norton 2000; Bean 2002; James 2002). Therefore, ''a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species'' (Crouse *et al.* 2002). Because the Federal government owns relatively little land in the State of Hawaii, and because large tracts of land suitable for conservation of threatened and endangered species are owned by private landowners, successful recovery of the Blackburn's sphinx moth and other listed species in Hawaii is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding the Haleakala Ranch portion of proposed Units 1 and 2 as critical habitat outweigh the benefits of including it as critical habitat for Blackburn's sphinx moth. This conclusion is based on the following analysis:

(1) *Benefits of inclusion:* There will be little Federal regulatory benefit to the moth as a result of including ranch property in the designation because, as described in the FEA and in this rule,

there is a low likelihood that this critical habitat unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation. The designation of critical habitat can serve to educate the general public, as well as conservation organizations regarding the potential conservation value of an area. However, this goal has already been effectively accomplished through the identification of this area in the management agreements described above. Lastly, even if any given ranch parcel were re-zoned as conservation district as a result of the designation, the FEA concluded that grazing activities would likely continue. Given the current Partners for Fish and Wildlife agreements between ourselves and the landowner, we believe the overall regulatory and educational benefits of including the Haleakala Ranch lands portion of proposed Units 1 and 2 as critical habitat are relatively small.

(2) *Benefits of exclusion:* Excluding Haleakala Ranch property from the designation will result in the elimination of uncertainty about decreased land values and potential third party litigation. Potential costs to the landowner resulting from the need to investigate the effect of designation or to contest potential conservation rezoning, for example, will be eliminated. Lastly, and perhaps, most important for the conservation of the moth, excluding the properties from designation will ensure the landowner's continued voluntary participation in proactive conservation agreements and partnerships as the landowner has stated in several letters to the Service.

(3) In the past, Haleakala Ranch has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits. Currently only a small percentage of the Haleakala Ranch portion of proposed Units 1 and 2 are being restored or managed for the moth. However, a substantial amount (approximately 30 percent) of the ranch's portion of proposed Units 1 and 2 is within the planning stage to be restored and managed by the landowner on a voluntary basis to achieve important conservation goals, and to directly benefit numerous native Hawaiian plant and animal species including the moth. For example, the landowner is currently planning with the Service and the State to restore and actively manage approximately 445 ha (1,100 ac) of high quality habitat for the moth and its host plants.

Simple regulation of potential ''harmful activities'' is not sufficient to conserve the Blackburn's sphinx moth on private lands. Landowner cooperation and support will be required to prevent its extirpation in this area of Maui and promote the recovery of the moth's host plants in this area due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, and plant propagation and reintroduction. This need for landowner cooperation is especially important because the Haleakala Ranch portion of proposed Units 1 and 2 is part of the habitat for what is considered a core or metapopulation of the moth. Future conservation efforts, such as maintaining and conserving Blackburn's sphinx moth host plant habitat in this area, will require the cooperation of Haleakala Ranch.

In conclusion, we find that the designation of critical habitat in the Haleakala Ranch portion of proposed Units 1 and 2 would most likely have a net negative conservation effect on the recovery and conservation of Blackburn's sphinx moth. As described above, the overall benefits to this moth of a critical habitat designation for this portion of Units 1 and 2 are relatively small. We conclude there is a greater likelihood of beneficial conservation activities occurring within this area of Maui without designated critical habitat than there would be with designated critical habitat in this location. We reached this conclusion because the landowner is more likely to continue and increase their ongoing voluntary conservation efforts for the moth and other listed species if their property is not designated as critical habitat. In fact, the landowner has stated in several letters to the Service that all voluntary conservation activities will cease if ranch property is designated. Therefore, it is our conclusion that the net benefits of excluding this portion of proposed Units 1 and 2 from critical habitat for the Blackburn's sphinx moth outweigh the benefits of including it.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of this portion of proposed Units 1 and 2 might result in the extinction of Blackburn's sphinx moth, we considered the impacts to the species. It is our conclusion that the current partnership agreements developed and planned by Haleakala Ranch and the Service will provide more net conservation benefits than would be provided by designating the portion of proposed Units 1 and 2 as critical habitat. These agreements will provide tangible proactive conservation benefits that may result in the direct restoration and active management of 445 ha (1,100 ac) of habitat for the moth and its native host plants within proposed Units 1 and 2. Specifically, the benefits would include the construction of exclosure fencing around a large portion of high quality moth habitat, active management of feral ungulates and nonnative grasses and weeds, and development of fire control methods. These benefits will reduce the likelihood of the moth's extirpation in this area of Maui, reduce the likelihood of its extinction, and increase its likelihood of conservation overall. Extinction of the Blackburn's sphinx moth as a consequence of this exclusion is unlikely because there are no known threats in this portion of proposed Units 1 and 2 due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the partnership agreements between the landowner and the Service, and the exclusion of the portion of proposed Units 1 and 2, have the highest likelihood of preventing extinction of this species and enhancing its conservation.

In addition, critical habitat is being designated in other areas of Maui and on the islands of Hawaii, Kahoolawe, and Molokai for Blackburn's sphinx moth. These other designations identify conservation areas for the maintenance and expansion of existing populations.

In summary, the above analysis indicates there is a much greater likelihood of the landowner undertaking conservation actions on Maui to prevent extinction, such as the restoration and management of moth host plant habitat, without the Haleakala Ranch portion of proposed Units 1 and 2 being designated as critical habitat. Therefore, the exclusion of this portion of proposed Units 1 and 2 will not cause the species' extinction and should, in fact, improve the chances of conservation for Blackburn's sphinx moth.

Other Private Lands

Approximately 567 acres of State and private land within two proposed critical habitat units (Units 5A and 5B) are excluded because the economic impacts of their inclusion outweigh the benefits provided by a designation of critical habitat. The economic analysis indicates that activities already planned for these two units, including the State VOLA master planned community with over 1,000 units of affordable housing, and the Kaloko Properties projects, could incur indirect costs ranging between $49.9 and $61.9 million. While

there is no certainty that any or all of these indirect costs would be incurred, these figures are illustrative of the order of magnitude of the indirect impacts that could occur from the designation.

(1) Benefits of Inclusion

These areas proposed for development or other uses are proposed Units 5A and 5B. Proposed Unit 5A absent this exclusion would consist of 226 acres of State and private land. Proposed Unit 5B absent this exclusion would consist of 232 acres of State land. Both units are unoccupied by the moth.

If these areas were designated as critical habitat, any Federal agency which proposed to approve, fund or undertake any action which might adversely modify the critical habitat would be required to consult with us. This is commonly referred to as a ''Federal nexus'' for requiring the consultation. Since the areas in question are not occupied by the plants, this consultation would not be required absent the critical habitat designation.

The draft economic analysis and final addendum indicate no projects within the areas proposed for exclusion which have a Federal nexus, and thus there is no expectation that there would be any section 7 consultations if these areas were designated as critical habitat for the moth.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. These units have already been identified through the draft proposal and final designation. In addition, the State has included a preserve for listed plants within its VOLA development project, which will contribute to the long-term educational benefit of conserving the habitat of listed species.

In summary, we believe that a critical habitat designation for the moth on these properties would provide relative low additional Federal regulatory benefits. There is no Federal activity which might trigger the section 7 consultation process for these species known or anticipated for the lands to be excluded. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the notice and comments which accompanied the development of this regulation, and the proposed critical habitat is known to the landowners. In addition, the State is planning for a preserve for the listed plants within the VOLA development which will provide ongoing educational benefits regarding the habitat of listed species.

(2) Benefits of Exclusion

There are two development projects currently planned within the pre-exclusion boundaries of proposed Units 5A and 5B which could suffer significant economic impacts due to indirect effects of the critical habitat designation.

The Housing and Community Development Corporation of Hawaii has since 1990 had a master-planned community development project known as ''Villages at Laiopua'' (VOLA), much of which is within the pre-exclusion boundary of proposed Unit 5B. This includes a planned 570 ''affordable housing'' homes within the area proposed for designation. The State of Hawaii has already invested $30 million in infrastructure costs, including roads, utilities, a High School, planning and expanding the local waste-water treatment plant, and some of the project has been constructed.

There are real but undeterminable possibilities that designation of these areas as critical habitat would lead to loss or significant restriction of the project through actions not under the control of the Federal government but resulting from the critical habitat designation. These include redistricting of land, rezoning and other regulatory approvals, and litigation related to both.

Hawaii has statewide land classifications of Urban, Rural, Agricultural and Conservation, with restrictions on what type of activities can be conducted within the different classifications. The State Department of Land and Natural Resources commented on this proposal that they would be required to initiate rezoning of lands designated as critical habitat into the ''Conservation'' classification, which prohibits development.

While there is a low probability that the State Land Use Commission would finally vote to redistrict the lands proposed for the VOLA project, that possibility exists. In addition, there could well be litigation designed to either force the Commission to act or to have a court make the decision.

The VOLA project has already been troubled by litigation and defaulting developers; additional regulatory or legal uncertainties arising from this designation could well cause further delays or kill the project altogether. If this were to occur, the Housing and Community Development Corporation would lose the $30 million in sunk costs, and the affordable housing units that would have been constructed. Although the final addendum to the economic analysis assigns a cost to the loss of the affordable units of $2.7 million, there could well be considerable non-monetary social costs as well, particularly inasmuch as the available information indicates that there are no other affordable housing projects planned within the next 10 years.

The second project within the excluded areas is known as the Kaloko Properties/Kaloko Town Center. This project has been underway since 1987, and covers 1,150 acres, of which 240, or 21%, is within the preexclusion boundary of the proposed units. The developers have already expended over $20 million for infrastructure improvements, engineering and related costs, which approximately $4.2 (by percentage allocation) is associated with the portion of the project within the proposed critical habitat. This project will need both redistricting from the State and rezoning from the county for portions of the land. The final addendum to the economic analysis finds there is a reasonably foreseeable chance that the designation of critical habitat would affect this development.

In the worst-case scenario, the State or county might decide not to grant the discretionary approvals needed for the project—redistricting and rezoning—or might be prevented from doing so by litigation. This could lead to loss of the $4.2 million in sunk costs for the portion of the property within the proposed critical habitat, or of the entire $20 million investment. In addition, there would be an estimated loss of future profits from the land proposed for inclusion within the critical habitat of between $40 to $80 million. Using a present value discount, the loss would range between $13 and $25 million.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

The VOLA project has already been troubled by litigation and defaulting developers; additional regulatory or legal uncertainties arising from this designation could well cause further delays or kill the project altogether. If this were to occur, the Housing and Community Development Corporation would lose the $30 million in sunk costs, and the affordable housing units that would have been constructed.

Although the final addendum to the economic analysis assigns a cost to the loss of the affordable units of $2.7 million, there could well be considerable non-monetary social costs as well, particularly inasmuch as the

available information indicates that there are no other affordable housing projects planned within the next 10 years.

We accordingly do not find that the benefits from the designation of critical habitat for lands within the VOLA project, as discussed above, exceed the benefits of avoiding the possible economic and social costs which could well arise from this designation.

For the Kaloko Properties/Kaloko Town Center, there is also the real possibility that the designation of critical habitat could lead to loss of necessary regulatory approvals. This in turn could lead to loss of the $4.2 million in sunk costs for the portion of the property within the proposed critical habitat, or of the entire $20 million investment. In addition, there would be an estimated loss of future profits from the land proposed for inclusion within the critical habitat of between $40 to $80 million. Using a present value discount, this loss would range between $13 and $25 million. (There could also be the loss of all project revenues in the event the inability to utilize the lands within the critical habitat designation caused the failure of the entire project.)

The possibility of significant economic impacts to this project, while not certain, clearly exist. As noted above, we cannot find offsetting benefits from the designation of critical habitat in these two units which exceed the benefits of avoiding these possible economic costs.

There are two other factors of which we take note but upon which our decision does not rest. First, in June 2002, the State enacted legislation allowing State entities to enter into Safe Harbor agreements and Habitat Conservation Plans for three designated areas, including the VOLA project. There were previously specimens of the moth's larval host plant, which presumably could be reintroduced. There are also populations of the various plants on which adult moths feed. This area is thus a candidate for a Safe Harbor agreement. Absent the exclusion, it is highly unlikely the State would pursue these conservation options.

Secondly, the developers of this project contacted us after the close of the comment period offering to undertake a number of actions designed to provide conservation benefits to the species. Specifically, the offer included: (1) To set aside 100 to 130 acres within the proposed Unit 13; (2) enter into good faith negotiations with the Federal, State or county entities for acquisition of the area; (3) agree to enter into a Safe Harbor agreement with us; and (4) to enter into a memorandum of understanding or cooperative agreement to address habitat protection, monitoring and management actions for the remainder of their property relating to Blackburn's sphinx moth and two species of endangered plants.

Due to the court-ordered date by which this designation must be completed, we were unable to conclude such an agreement with the developers or to enter into a Safe Harbor agreement with the State prior to issuing this notice and regulation. However, if we had been, these are the types of agreements for which we have found in other cases that the benefits of the agreement exceed the benefits of designation and thus warrant exclusion (*See* previous discussions of exclusions under section 4(b)(2)).

It has been our policy not to make exclusions under section 4(b)(2) based on offers of conservation agreements, and we are not doing so in either case here. However, we find it highly unlikely that either party would pursue them absent the exclusions, and note the ability to pursue the agreements as a secondary benefit of the exclusions. A decision by the developers to follow through on their offer and by the State to pursue a Safe Harbor agreement might well be in both their and the species best interest.

(4) Exclusion Will Not Cause Extinction of the Species

In considering whether or not exclusion of this portion of the proposed critical habitat might result in the extinction of Blackburn's sphinx moth, we considered the impacts on the species. Given that the units in question are unoccupied, we find, based on all of the information available to us, that the projects proposed for the areas to be excluded will not adversely impact existing populations of the moth.

The exclusions will provide an opportunity to pursue beneficial conservation agreements with the landowners, as noted above, that most likely would not exist without the exclusions.

Critical habitat for the moth is also designated on Molokai, Maui, and Kahoolawe, and in other locations on the island of Hawaii.

We accordingly find no basis for any conclusion that these exclusions would cause extinction of the species.

Critical Habitat Designation

The critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of Blackburn's sphinx moth and the special management needs of this species, and are based on the best scientific and commercial information available. We publish this final rule acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for this species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

Descriptions of Critical Habitat Units

The approximate areas of the designated critical habitat by landownership or jurisdiction are shown in Table 2.

Critical habitat includes habitat for the Blackburn's sphinx moth on the islands of Hawaii, Kahoolawe, Maui, and Molokai. Lands designated as critical habitat have been divided into 9 units. A brief description of each unit is presented below.

Unit 1: Puu O Kali (Maui)

Unit 1 consists of approximately 1,604 ha (3,965 ac) on State and private land, encompassing portions of the leeward slope of Haleakala and adjacent portions of the upper southeast isthmus. The unit is bounded on the north and the south by pasture lands, on the east by the lower slopes of Haleakala below the area of Kula, and on the west by the coastal town of Kihei. Natural features within the unit include widely spread, remnant dry forest communities, rugged aa lava flows, and numerous cindercones, including the highly visible Puu O Kali. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants (HHP 1993).

Along with Units 2, 3, and 4, this unit contains what is probably the largest extant Blackburn's sphinx moth population or metapopulation. This unit is essential to the species' conservation because it is occupied and contains the native larval host plant *Nothocestrum latifolium,* and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui metapopulation, areas within this unit provide temporary (ephemeral) habitat for migrating Blackburn's sphinx moths.

Unit 2: Cape Kinau (Maui)

Unit 2 consists of approximately 603 ha (1,490 ac) on State and private land, encompassing Cape Kinau and the entire Ahihi-Kinau NAR. The unit is

bounded on the north by Puu Naio, to the south by the ocean, to the east by La Perouse Bay, and on the west by Ahihi Bay. Natural features within the unit include widely spread, remnant dry forest communities, and numerous rugged aa lava flows. Vegetation consists primarily of mixed-species dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 1993).

Along with Units 1, 3, and 4, this unit contains what is probably the largest extant Blackburn's sphinx moth population or metapopulation. This unit is essential to the species' conservation because it is occupied and contains the native larval host plant *Nothocestrum latifolium,* and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui metapopulation, areas within this unit provide ephemeral habitat for migrating Blackburn's sphinx moths.

Unit 3: Kanaio (Maui)

Unit 3 consists of approximately 2,421 ha (5,982 ac) on State and private land, encompassing portions of the leeward slope of Haleakala and adjacent portions of the upper southeast isthmus. The unit is bounded on the north by pasture lands, to the south by ocean, to the east by the Kanaio NAR boundary and Puu Hokukano, and on the west by the Kanaio Homesteads and Cape Hanamanioa. Natural features within the unit include widely spread, remnant dry forest communities, rugged aa lava flows, and numerous cindercones including the highly visible Puu Pimoe. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 1993).

Along with Units 1, 2, and 4, this unit contains what is probably the largest extant Blackburn's sphinx moth population or metapopulation. This unit is essential to the species' conservation because it is occupied and contains the native larval host plant *Nothocestrum latifolium,* and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui metapopulation, areas within this unit provide ephemeral habitat for migrating Blackburn's sphinx moths.

Unit 4: Kahikinui (Maui)

Unit 4 consists of approximately 4,799 ha (11,859 ac) on State and private land, encompassing portions of the leeward slope of Haleakala. The unit is bounded on the northeast by the 1,525 m (5,000 ft) elevation contour of Haleakala Volcano, to the south by the ocean, to the east by Poopoo Gulch, and on the west by Lualailua Hills. Natural features within the unit include widely spread, remnant dry forest communities, rocky coastline, numerous cindercones, and some of the most recent lava flows on Maui. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 1993).

Along with Units 1, 2, and 3, this unit contains what is probably the largest extant Blackburn's sphinx moth population or metapopulation. This unit is essential to the species' conservation because it is occupied and contains the native larval host plant *Nothocestrum latifolium,* and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui metapopulation, areas within this unit provide ephemeral habitat for migrating Blackburn's sphinx moths.

Unit 5: Kanaha Pond (Maui)

Unit 5 consists of approximately 56 ha (139 ac) on State land, entirely comprised of the Kanaha Pond State Sanctuary on Maui. It is bounded on the south by the Kahului Airport, on the north by the ocean, on the east by coastline, and to the west by the town of Kahului. Natural features within the unit includes Kanaha Pond and remnant coastal dune communities. Vegetation consists primarily of mixed-species, dry coastal shrub land communities composed of native and introduced plants, including nonnative larval host plants (HHP 2000).

Although devoid of naturally occurring *Nothocestrum* spp., the unit is essential to the species' conservation because it contains adult Blackburn's sphinx moth primary constituent elements, and recent observations of both larvae and adults have been documented within the sanctuary. Although this unit is lower in elevation than areas currently containing *Nothocestrum* plants, the persistent occurrence of Blackburn's sphinx moth within the Kanaha Pond State Sanctuary and other nearby areas indicates this site provides habitat for this area's moth population, and plays an important role in the species' population dynamics. Based upon an understanding of this species and other moth species' flight capabilities and migrational needs, we believe that designation of this area contributes to the available matrix of undeveloped habitat necessary as refugia for Blackburn's sphinx moths migrating to other areas of existing suitable host plant habitat on Maui (A. Medeiros, pers. comm. 1998; S. Montgomery, pers. comm. 2001; McIntyre and Barrett 1992; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

Unit 6: Kanaha Park (Maui)

Unit 6 consists of approximately 25 ha (62 ac) of State land, entirely comprised of coastal land on Maui. It is bounded on the south by the Kahului Airport, on the north by the ocean, on the east by other coastal lands, and immediately to the west by the Kanaha Pond State Sanctuary. Natural features within the unit include remnant coastal dune communities. Vegetation consists primarily of mixed-species, dry coastal shrub land communities composed of native and introduced plants, including nonnative larval host plants (HHP 2000).

We have no recent and verified Blackburn's sphinx moth observations within this unit. However, the unit is considered essential to the species' conservation because it is within the geographical area occupied by the species at the time of listing and contains the moth's adult stage primary constituent elements. Furthermore, recent observations of both larvae and adults have been documented within the adjacent Kanaha Pond State Sanctuary and in the nearby Kanaha-Spreckelsville area. Although this unit is lower in elevation than areas currently containing *Nothocestrum* plants, the persistent occurrence of Blackburn's sphinx moth within the nearby Kanaha Pond State Sanctuary, and other nearby areas, indicates this site provides habitat for this area's moth population and plays an important role in the species' population dynamics. Based upon an understanding of this species and other moth species' flight capabilities and migrational needs, we believe that designation of this area contributes to the available matrix of undeveloped habitat necessary as refugia for adult Blackburn's sphinx moths migrating to other areas of existing suitable host plant habitat on Maui in order to forage or lay eggs (A. Medeiros, pers. comm. 1998; S. Montgomery, pers. comm. 2001; McIntyre and Barrett 1992; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

Unit 7: Upper Kahoolawe (Kahoolawe)

Unit 7 consists of approximately 1,721 ha (4,252 ac) on State land, encompassing portions of the upper elevational contour of Kahoolawe, approximately above 305 m (1,000 ft) in elevation. Kahoolawe is located approximately 11 km (6.7 mi) south of

Maui and is approximately 11,655 ha (28,800 ac) in total land area. Natural features within the unit include the main caldera, Lua Makika, and Puu Moaulaiki. Vegetation within the unit consists primarily of mixed-species, mesic and dry grass and shrubland communities composed of primarily introduced plants and some native plant species (HHP 2000).

This unit contains a large Blackburn's sphinx moth population, which may or may not be part of the larger Maui populations. Adult host plants identified as primary constituent elements are numerous within this area. Because the unit is occupied, harbors adult native host plants, and is in close proximity to the large Maui moth population, this unit is essential for Blackburn's sphinx moth conservation and would improve dispersal and migration corridors and thus expand population recruitment potential (P. Higashino, pers. comm. 2001).

Unit 8: Puuwaawaa—Hualalai (Hawaii)

Unit 8 consists of approximately 9,954 ha (24,597 ac) on State and private land, encompassing portions of the flows and northwest slopes of Hualalai volcano on the island of Hawaii. It is bounded on the south by the Kailua-Kona region and large expanses of barren lava flows, on the north by Parker Ranch and large expanses of nonnative grass lands, to the east by the upper slopes of Hualalai volcano, and to the west by lava flows and coastal land. Natural features within the unit include Puuwaawaa cindercone and significant stands of native dry forest including the adult Blackburn's sphinx moth's nectar food plants and large numbers of *Nothocestrum breviflorum* host plants (Perry 2001). Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 2000).

This unit is essential to the species' conservation because frequent and persistent observations of both Blackburn's sphinx moth larvae and adults throughout this unit indicate that Unit 8 contains the largest population of Blackburn's sphinx moth on the island of Hawaii. In addition to providing habitat for this area's population, Unit 8 provides refugia for moths migrating to other areas of existing suitable host plant habitat. As previously discussed, given the large size and strong flight capabilities of the Blackburn's sphinx moth, support for moth population linkages requires habitat in large contiguous blocks or within a matrix of undeveloped habitat (A. Medeiros, pers. comm.1998; S. Montgomery, pers. comm. 2001; McIntyre and Barrett 1992; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

Unit 9: Kamoko Flats—Puukolekole (Molokai)

Unit 9 consists of approximately 1,256 ha (3,105 ac) on State and private land, encompassing portions of the higher, yet drier portions of east Molokai. It is bounded on the north by wet forests, to the south by drier coastal land, to the east by rugged, dry gullies and valleys, and to the west by dry to mesic lowland forest. Natural features within the unit include numerous forested ridges and gullies. Vegetation consists primarily of mixed-species mesic and dry forest communities composed of native and introduced plants (HHP 2000).

This unit is part of the historical range of the moth. Unit 9 is not known to currently contain a Blackburn's sphinx moth population, but it does contain native *Nothocestrum* host plants, including *N. longifolium* and *N. latifolium* (Wood 2001a), as well as adult native host plants. Because Unit 9 contains both larval and adult native host plants and is in close proximity to the large Maui population, it is essential for Blackburn's sphinx moth conservation. It would allow the species to expand into a former part of its historical range in very close proximity to its current range on the island of Maui. Furthermore, it may facilitate dispersal and provide a flight corridor for moths eventually migrating to the island of Oahu, which is also part of its historical range.

Due to its proximity to the island of Maui where the current and presumed highest historical concentration of Blackburn's sphinx moth occurred, and because this unit contains currently and historically known dry and mesic habitats to support the larval and adult native host plants, scientists believe that the Blackburn's sphinx moth will re-establish itself on this unit over time (F. Howarth, pers. comm. 2001). Furthermore, this unit lacks some of the serious potential threats to the moth, three ant, and one wasp species (*see* Table 1). Conserving and restoring Blackburn's sphinx moth populations in multiple locations decreases the likelihood that the effect of any single alien parasite or predator or the combined pressure of such species and other threats could result in the diminished vigor or extinction of the moth. Including this unit also reduces the possibility of the species' extinction from catastrophic events impacting the existing populations on other islands. Designating critical habitat within this area on Molokai is complementary to existing and planned management activities of the landowners. The critical habitat unit lies within a larger existing conservation area to be managed for watershed conservation and the conservation of endangered and rare species. The landowners, State and Federal resource agencies, and local citizens groups are involved with these planned natural resource management activities on Molokai.

Effects of Critical Habitat Designation

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

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation measures in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content

and conclusion(s) of the opinion (50 CFR 402.10(d)).

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

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed.

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

Federal activities that may affect Blackburn's sphinx moth or its critical habitat will require consultation under section 7 of the Act. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), the Department of Housing and Urban Development, or a section 10(a)(1)(B) permit from us; or some other Federal action (funding or authorization from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy); regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission (FCC)) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require Section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Recreational activities that appreciably degrade vegetation;

(3) Introducing or encouraging the spread of nonnative plant species into critical habitat units; and

(4) Importation of nonnative species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of its habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 NE. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not formally reviewed this final critical habitat designation.

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

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entitiesm, *i.e.*, small businesses, small organizations, and small governmental jurisdictions. However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Based on the information in our economic analysis (DEA and Addendum), we are certifying that the critical habitat designation for Blackburn's sphinx moth will not have a significant effect on a substantial number of small entities because a substantial number of small entities are not affected by the designation.

Small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The RFA/SBREFA requires

that agencies use the Small Business Administration's definition of ''small business'' that has been codified at 13 CFR 121.201. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. The RFA/SBREFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, neither Maui nor Hawaii County is a small governmental jurisdiction because both counties had populations exceeding 50,000 in 2000. Although certain State agencies, such as the DLNR, may be affected by this critical habitat designation, State governments are not considered small governments, for the purposes of the RFA. SBREFA further defines ''small organization'' as any not for profit enterprise that is independently owned and operated and is not dominant in its field.

The RFA/SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation. This analysis considers the relative number of small entities likely to be impacted in an area. In addition, Federal courts and Congress have indicated that an RFA/SBREFA is properly limited to impacts to entities directly subject to the requirements of the regulation (Service 2002). Therefore, entities not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis.

The primary projects and activities that might be affected by the designation that could affect small entities include ranching operations and conservation projects. Our DEA found that the only small or potentially small entities that could be impacted by the listing of Blackburn's sphinx moth and critical habitat designation were: (1) Ka Ohana O Kahikinui on Maui (participation in residential loan program; conservation activities; development of water collection system); (2) one to two lending institutions on Maui (loans for Department of Hawaiian Home Lands residential development); and (3) one farmer or rancher on Maui, Molokai, or the island of Hawaii (participation in farm loan programs). The DEA concluded that these entities did not represent a substantial number of small entities in their respective fields or industries. Because estimated section 7 costs associated with possible lessee participation in the Housing and Urban Development loan insurance and guarantee program are no longer expected, the Addendum estimates that the one to two lending institutions on Maui would no longer be impacted by critical habitat designation, and no new small entities were identified as being potentially impacted. Thus, the Addendum concluded that the critical habitat designation would not have a significant economic impact on a substantial number of small entities in Hawaii.

These conclusions are supported by the history of consultations on the Blackburn's sphinx moth. Since the species was listed in February 2000, there have been no formal section 7 consultations and only five informal section 7 consultations concerning the species, specifically on the island of Kahoolawe and entirely involved the Department of the Navy. The Navy is not a small entity.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures by definition must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

For these reasons, we are certifying that the designation of critical habitat for the Blackburn's sphinx moth will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

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

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the DEA and final addendum to the economic analysis. Based on the effects identified in these documents, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy production supply and distribution facilities because no energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe the designation of critical habitat for Blackburn's sphinx moth on the islands of Hawaii, Kahoolawe, Maui, and Molokai will affect future energy production. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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

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

(a) For reasons described in the economic analysis, this rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a ''significantly regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no direct obligations on State or local governments.

(b) This rule will not ''significantly or uniquely'' affect small governments so a Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for Blackburn's sphinx moth on

the islands of Hawaii, Kahoolawe, Maui, and Molokai in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant federalism effects or impose substantial direct compliance costs on State and local governments. This designation requires Federal agencies to ensure that their actions do not adversely modify critical habitat; it does not impose direct obligations on State or local governments. A federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The economic analysis does address possible impacts to State programs (*e.g.* hunting, airport operations) that may receive Federal funding. However, it does not conclude that there will be substantial costs to those programs due to the designation of critical habitat.

The designations may have some benefit to these governments, in that the areas essential to the conservation of the moth are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of this species are specifically identified. While this definition and identification do not alter where and what federally sponsored activities may occur, they may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of Blackburn's sphinx moth.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of the Blackburn's sphinx moth. Therefore, designation of critical habitat for this species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary author of this final rule is Mike Richardson, Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h) by revising the entry for ''Moth, Blackburn's Sphinx'' under INSECTS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habita	Special trules
Common name	Scientific name						
*	*	*	*	*	*	*	
INSECTS							
*	*	*	*	*	*	*	
Moth, Blackburn's sphinx.	*Manduca blackburni*	U.S.A. (HI)	NA	E	682	17.95(I)	NA
*	*	*	*	*	*	*	

■ 3. Amend § 17.95(i) by adding critical habitat for the Blackburn's sphinx moth (*Manduca blackburni*), in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Blackburn's Sphinx Moth (*Manduca blackburni*)

(1) Critical habitat units are depicted for the Hawaiian islands of Maui, Kahoolawe, Hawaii, and Molokai on the maps below.

(2) The primary constituent elements of critical habitat for Blackburn's sphinx moth include specific habitat components identified as essential for the primary biological needs of foraging, sheltering, maturation, dispersal, breeding, and egg-laying.

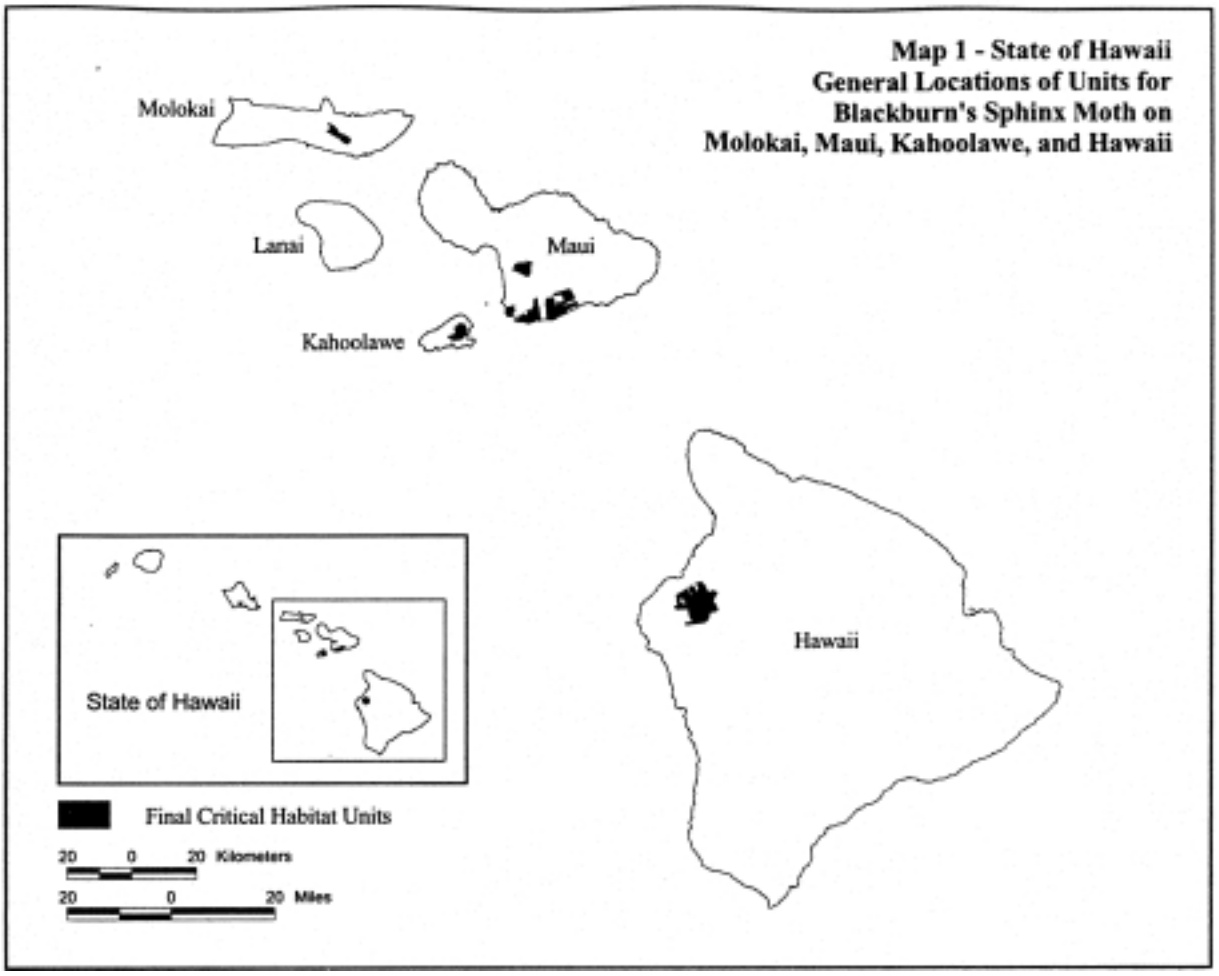
(i) Based on our current knowledge of the species, the primary constituent elements required by Blackburn's sphinx moth larvae for foraging and maturation are two larval host plant species in the endemic genus *Nothocestrum* (*N. breviflorum* and *N. latifolium*) and the habitats that support these plants, *i.e.*, dry and mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) that receive between 25 and 250 cm (10 and 100 in) of annual precipitation.

(ii) Based on our current knowledge of the species, the primary constituent elements required by Blackburn's sphinx moth adults for foraging, sheltering, dispersal, breeding, and egg production are native nectar-supplying plants, including, but not limited to, *Ipomoea* spp., *Capparis sandwichiana,* and *Plumbago zeylanica,* and the habitats that support these plants, *i.e.*, dry and mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) that receive between 25 and 250 cm (10 and 100 in) of annual precipitation.

(3) Existing manmade features and structures within the boundaries of the mapped areas do not contain one or more of the primary constituent elements described for the species in paragraph (2) of this section, and therefore, are not included in the critical habitat designations. These features include, but are not limited to: buildings; roads; aqueducts and other water system features such as pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gauging stations (section in a stream channel equipped with facilities for obtaining streamflow data), intakes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and associated rights-of-way; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines); airports; other paved areas; lawns; and other rural residential landscaped areas.

(4) Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following index map shows the general locations of the 9 critical habitat units designated on the islands of Hawaii, Kahoolawe, Maui, and Molokai.

(i) Note: Map 1—State of Hawaii General Locations of Units for Blackburn's Sphinx Moth on Molokai, Maui, Kahoolawe, and Hawaii follows:



(ii) Unit 1: Island of Maui, Puu O Kali (1,604 ha; 3,965 ac):

(A) Unit 1 consists of the following 38 boundary points: Start at 770230, 2293671; 769969, 2293640; 769876, 2293794; 769523, 2293779; 769444, 2293784; 769146, 2293904; 769358, 2294451; 769492, 2294471; 769569, 2294563; 770123, 2294379; 770384, 2294317; 770707, 2294517; 770169, 2294794; 769629, 2295149; 769732, 2295410; 770032, 2295219; 769985, 2295371; 770360, 2295328; 769892, 2295671; 770362, 2295705; 770578, 2295954; 771492, 2296086; 772138, 2296102; 772522, 2296179; 772876, 2295933; 773384, 2295733; 773324, 2296764; 775265, 2296040; 775041, 2295484; 774484, 2295757; 774033, 2294844; 774654, 2294538; 774448, 2294006; 774392, 2292779; 773825, 2291760; 772032, 2292639; 770772, 2293255; 770524, 2293353; return to starting point.

(B) **Note:** Unit 1 is depicted below on Map 2—Units 1, 2, 3, and 4—Island of Maui.

(iii) Unit 2: Island of Maui, Cape Kinau (603 ha; 1,490 ac):

(A) Unit 2 consists of the following 36 boundary points: 769419, 2281688; 769716, 2281856; 769854, 2281648; 769726, 2281351; 769548, 2281173; 769433, 2280683; 769312, 2280406; 769251, 2280342; 769175, 2280353; 769073, 2280442; 768954, 2280466; 768791, 2280406; 768658, 2280329; 768621, 2280282; 768645, 2279874; 768737, 2279820; 767046, 2281800; 767136, 2281768; 767208, 2281837; 767139, 2281940; 767151, 2281994; 767136, 2282020; 767607, 2282308; 767710, 2282266; 767837, 2282318; 767857, 2282291; 768160, 2282410; 769380, 2282944; 769746, 2282588; 769429, 2282400; 769103, 2282123; 768598, 2281510; 768687, 2281391; 768737, 2281399; 768836, 2281460. 768738, 2279820. Coast.

(B) **Note:** Unit 2 is depicted below on Map 2—Units 1, 2, 3, and 4—Island of Maui.

(iv) Unit 3: Island of Maui, Kanaio (2,420 ha; 5,981 ac):

(A) Unit 3 consists of the following 45 boundary points: 777366, 2282219; 777421, 2281595; 777453, 2281235; 777531, 2280334; 777588, 2279661; 777719, 2278166; 770402, 2278173; 770445, 2278268; 770936, 2279194; 771208, 2279714; 771289, 2279691; 771211, 2279314; 771211, 2278906; 771368, 2278922; 771525, 2279173; 771854, 2279424; 772011, 2279707; 772231, 2279974; 772357, 2280335; 772451, 2280445; 772514, 2280351; 772561, 2280068; 772687, 2279848; 772938, 2279801; 773221, 2279817; 773425, 2280021; 773676, 2280335; 773676, 2280665; 773888, 2280993; 773606, 2281355; 774253, 2281430; 774897, 2280433; 775340, 2281119; 774662, 2281499; 775105, 2281701; 775435, 2282376; 775590, 2284264; 776004, 2284678; 776020, 2285055; 776484, 2284998; 776553, 2285169; 776691, 2285141; 776878, 2283402; 777021, 2282206; 777227, 2278017. Coast.

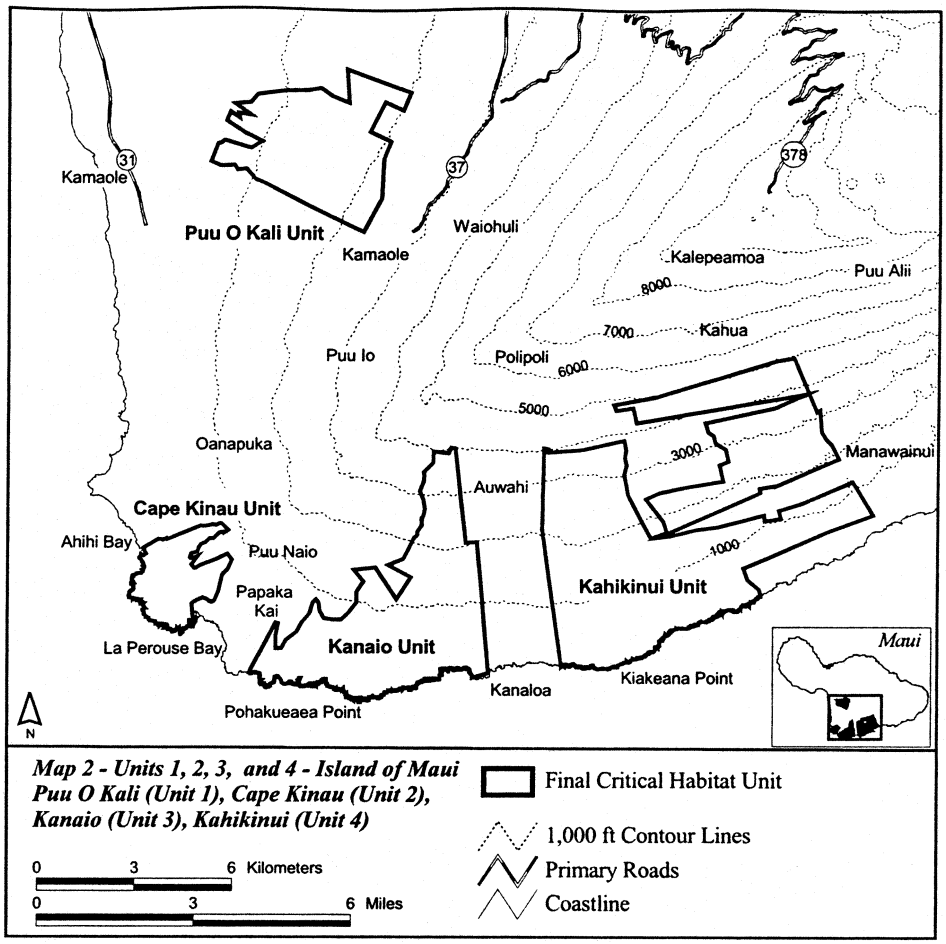
(B) Unit excludes an area (1 ha; 2 ac) consisting of the following 6 boundary points: 771887, 2277914; 771944, 2277910; 771986, 2277995; 771948, 2277989; 771909, 2277980; 771870, 2277975.

(C) **Note:** Unit 3 is depicted below on Map 2—Units 1, 2, 3, and 4—Island of Maui.

(v) Unit 4: Island of Maui, Kahikinui (4,799 ha; 11,859 ac):

(A) Unit 4 consists of the following 79 boundary points: 786068, 2283893; 786089, 2283760; 782956, 2282353; 783312, 2282399; 784167, 2282606; 784764, 2282682; 785521, 2282878; 786198, 2283068; 786227, 2282882; 786706, 2282953; 786657, 2283206; 787388, 2283424; 787555, 2283500; 788907, 2284087; 789388, 2283321; 789534, 2283053; 788185, 2282559; 786399, 2281761; 785563, 2281400; 785715, 2281039; 786057, 2280754; 786112, 2280548; 779950, 2278500; 779720, 2280135; 779703, 2280237; 779617, 2280887; 779412, 2282307; 779402, 2282377; 779372, 2282585; 779368, 2282602; 779376, 2282933; 779427, 2285142; 779549, 2285133; 779550, 2285007; 780604, 2285092; 781898, 2285373; 781956, 2285061; 781923, 2284848; 781966, 2284607; 781902, 2284320; 782032, 2283672; 782491, 2282783; 782731, 2282340; 783230, 2282514; 783112, 2282850; 782587, 2283565; 782996, 2283744; 783721, 2283912; 784941, 2284106; 784823, 2284611; 785088, 2284724; 785012, 2285109; 784719, 2285271; 784639, 2285526; 784482, 2285613; 784385, 2285910; 786498, 2286367; 787288, 2286710; 787415, 2286765; 787506, 2286804; 787311, 2286772; 782285, 2285909; 782162, 2286366; 781651, 2286291; 781569, 2286457; 782827, 2286695; 786589, 2287817; 787091, 2287913; 787800, 2286248; 787893, 2286297; 787957, 2285636; 788105, 2285388; 788261, 2285257; 788481, 2284803; 788363, 2284742; 786517, 2283943; 786510, 2283966; 786068, 2283893; 779965, 2278394. Coast.

(B) **Note:** Unit 4 is depicted on Map 2—Units 1, 2, 3, and 4—Island of Maui, which follows:



(vi) Unit 5: Island of Maui, Kanaha Pond (56 ha; 139 ac):

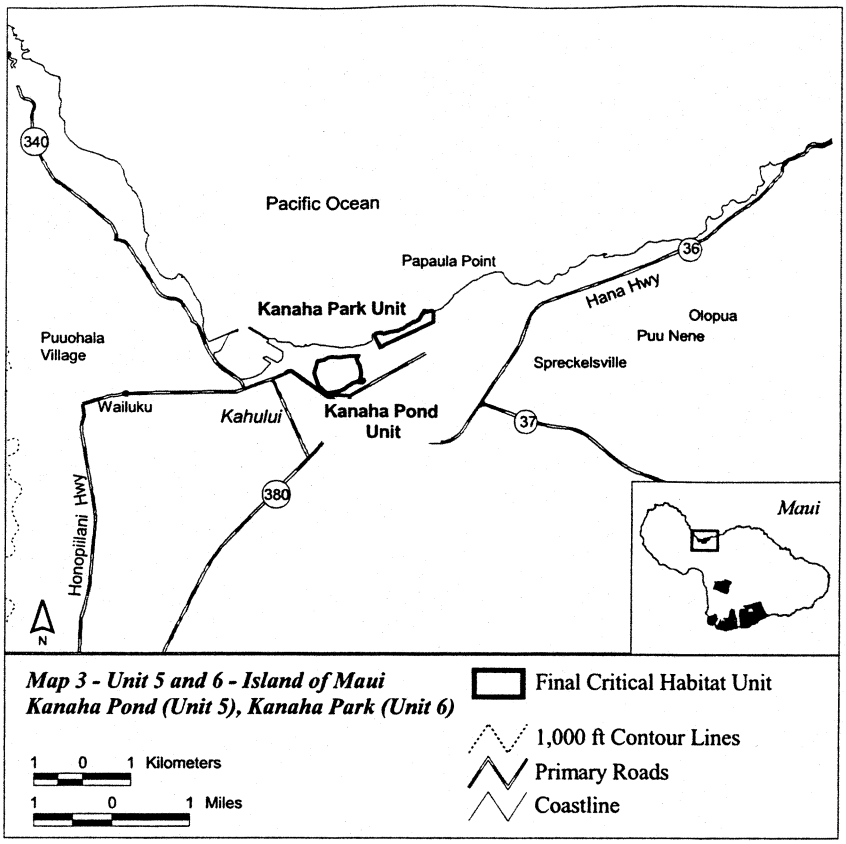
(A) Unit 5 consists of the following 35 boundary points: Start at 764695, 2312624; 764849, 2312615; 765062, 2312636; 765174, 2312639; 765226, 2312636; 765201, 2312573; 765221, 2312534; 765223, 2312502; 765259, 2312452; 765291, 2312304; 765287, 2312260; 765291, 2312223; 765281, 2312190; 765356, 2312144; 765352, 2312121; 765325, 2312090; 765284, 2312093; 765213, 2312118; 765183, 2312109; 765157, 2312091; 765106, 2312075; 765069, 2312044; 765036, 2312036; 764954, 2311971; 764872, 2311927; 764845, 2311912; 764588, 2311880; 764530, 2311946; 764474, 2311988; 764424, 2312038; 764390, 2312140; 764336, 2312293; 764397, 2312539; 764542, 2312565; 764615, 2312613; return to starting point.

(B) **Note:** Unit 5 is depicted below on Map 3—Units 5 and 6—Island of Maui.

(vii) Unit 6: Island of Maui, Kanaha Park (25 ha; 62 ac):

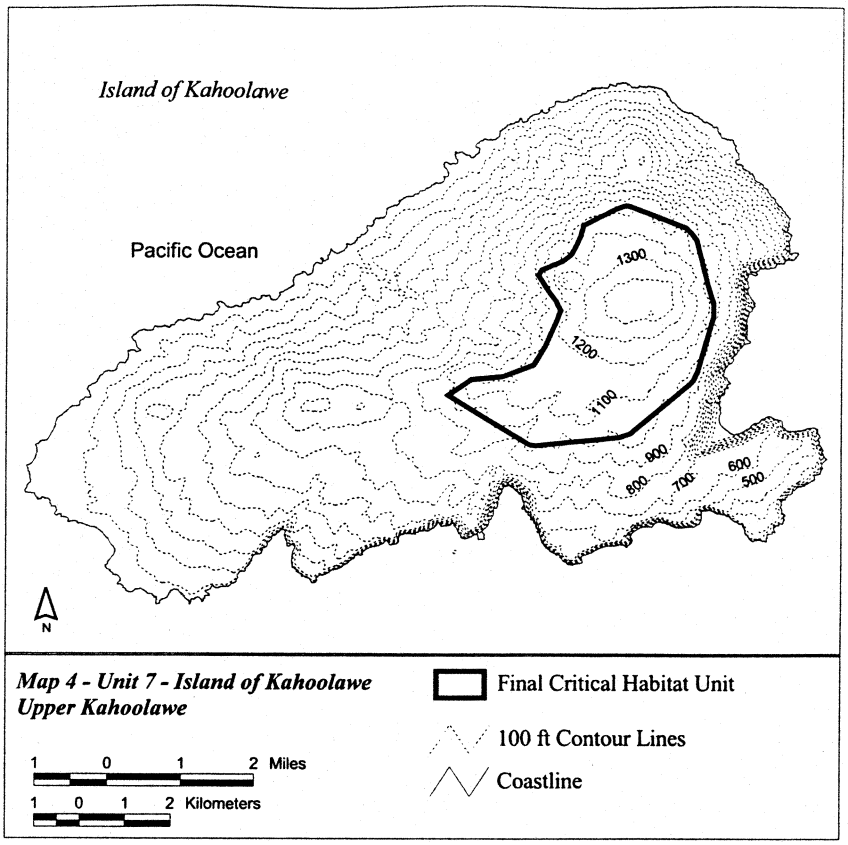
(A) Unit 6 consists of the following 7 boundary points: 766783, 2313583; 766781, 2313351; 766330, 2313141; 765776, 2312874; 765717, 2312838; 765689, 2312823; 765557, 2313073. Coast.

(B) **Note:** Unit 6 is depicted on Map 3—Units 5 and 6—Island of Maui, which follows:



(A) Unit 7 consists of the following 39 boundary points: Start at 751848, 2276600; 751944, 2276801; 752021, 2277051; 752708, 2277402; 752817, 2277444; 752922, 2277482; 753039, 2277468; 754266, 2276996; 754390, 2276868; 754486, 2276715; 754758, 2275711; 754871, 2275319; 754880, 2275141; 754868, 2275021; 754822, 2274844; 754523, 2273789; 754438, 2273635; 754364, 2273546; 754213, 2273418; 753057, 2272446; 752825, 2272362; 750995, 2272184; 750869, 2272206; 750787, 2272247; 749069, 2273302; 749575, 2273659; 750287, 2273729; 750943, 2273970; 751205, 2274403; 751431, 2274927; 751475, 2275037; 751531, 2275180; 751447, 2275330; 751428, 2275366; 751291, 2275543; 751032, 2275938; 751109, 2276062; 751570, 2276254; 751752, 2276408; return to starting point.

(B) **Note:** Unit 7 is depicted on Map 4—Unit 7—Island of Kahoolawe, which follows:



(ix) Unit 8: Island of Hawaii, Puuwaawaa—Hualalai (9,954 ha; 24,598 ac):

(A) Unit 8 consists of the following 449 boundary points: Start at 193748, 2193379; 193979, 2193518; 194022, 2193428; 194091, 2193386; 194109, 2193303; 194145, 2193281; 194185, 2193225; 194212, 2193188; 194225, 2193213; 194201, 2193260; 194232, 2193325; 194227, 2193356; 194266, 2193381; 194290, 2193366; 194306, 2193379; 194301, 2193431; 194281, 2193478; 194292, 2193504; 194286, 2193538; 194291, 2193598; 194328, 2193648; 194331, 2193666; 194320, 2193710; 194969, 2194077; 195027, 2194069; 195065, 2194098; 195121, 2194107; 195172, 2194152; 195231, 2194087; 195235, 2194013; 195256, 2193957; 195324, 2193909; 195378, 2193840; 195441, 2193804; 195564, 2193455; 195558, 2193407; 195590, 2193322; 195588, 2193245; 195641, 2193182; 195659, 2193134; 195645, 2193064; 195682, 2192983; 195722, 2192963; 195793, 2192836; 195838, 2192773; 195829, 2192664; 195844, 2192499; 195907, 2192445; 196009, 2192213; 196079, 2192144; 196061, 2192063; 196077, 2191999; 196121, 2191888; 196184, 2191891; 196196, 2191837; 196250, 2191837; 196287, 2191749; 196280, 2191681; 196331, 2191672; 196361, 2191560; 196379, 2191428; 196414, 2191446; 196473, 2191524; 196497, 2191624; 196494, 2191708; 196593, 2191768; 196656, 2191837; 196644, 2191885; 196593, 2192093; 196576, 2192195; 196596, 2192288; 196581, 2192409; 196566, 2192451; 196506, 2192484; 196397, 2192655; 196367, 2192770; 196427, 2192764; 196452, 2192703; 196581, 2192577; 196614, 2192547; 196623, 2192577; 196605, 2192634; 196608, 2192685; 196679, 2192667; 196749, 2192610; 196804, 2192476; 196831, 2192436; 196879, 2192403; 196885, 2192466; 196815, 2192586; 196717, 2192687; 196614, 2192809; 196241, 2193037; 196094, 2193227; 196003, 2193494; 195985, 2193759; 196088, 2193858; 195949, 2194099; 195958, 2194379; 195865, 2194469; 195811, 2194559; 196050, 2194687; 196076, 2194653; 196055, 2194610; 196109, 2194511; 196184, 2194505; 196223, 2194361; 196256, 2194337; 196322, 2194285; 196334, 2194171; 196370, 2194174; 196348, 2194291; 196379, 2194331; 196367, 2194427; 196363, 2194508; 196372, 2194578; 196427, 2194610; 196385, 2194670; 196314, 2194718; 196304, 2194841; 196831, 2195161; 196944, 2195021; 196930, 2194959; 197092, 2194830; 197104, 2194773; 197179, 2194752; 197273, 2194622; 197279, 2194550; 197361, 2194467; 197477, 2194325; 197573, 2194252; 197613, 2194177; 197654, 2194115; 197640, 2194033; 197654, 2193943; 197697, 2193753; 197750, 2193692; 197778, 2193488; 197871, 2193374; 197922, 2193401; 197995, 2193392; 198304, 2193109; 198362, 2193103; 198518, 2192944; 198584, 2192854; 198620, 2192761; 198680, 2192715; 198716, 2192658; 198731, 2192586; 198801, 2192589; 198879, 2192547; 198921, 2192493; 199051, 2192352; 199101, 2192412; 199177, 2192324; 199171, 2192201; 199246, 2192141; 199252, 2192243; 199294, 2192252; 199303, 2192291; 199225, 2192348; 199243, 2192397; 199186, 2192439; 199156, 2192529; 199084, 2192566; 199047, 2192643; 198948, 2192736; 198956, 2192786; 198949, 2192835; 198931, 2192888; 198913, 2192924; 198819, 2192954; 198760, 2192979; 198741, 2193028; 198777, 2193070; 198746, 2193098; 198718, 2193126; 198730, 2193180; 198683, 2193290; 198609, 2193325; 198679, 2193472; 198648, 2193542; 198669, 2193598; 198623, 2193633; 198602, 2193685; 198553, 2193675; 198480, 2193748; 198442, 2193839; 198494, 2193857; 198550, 2193860; 198819, 2193594; 198819, 2193514; 198882, 2193479; 198872, 2193388; 198872, 2193252; 198861, 2193199; 198844, 2193143; 198935, 2193063; 198981, 2193027; 199010, 2192968; 199103,

2193492; 199103, 2193552; 199015, 2193608; 198931, 2193619; 198910, 2193717; 198753, 2193867; 198735, 2193951; 198805, 2193972; 198889, 2193941; 198942, 2193853; 199005, 2193794; 199050, 2193829; 199001, 2193880; 199029, 2193930; 199092, 2193962; 199110, 2194004; 199025, 2194133; 199012, 2194241; 198896, 2194308; 198861, 2194399; 198799, 2194485; 198862, 2194479; 198938, 2194378; 199015, 2194329; 198987, 2194392; 198934, 2194434; 198931, 2194472; 198798, 2194560; 198795, 2194672; 198749, 2194749; 198623, 2194860; 198553, 2194937; 198550, 2195004; 198637, 2195060; 198683, 2195074; 198746, 2195175; 198714, 2195256; 198707, 2195340; 198588, 2195399; 198497, 2195417; 198402, 2195429; 198344, 2195490; 198302, 2195511; 198274, 2195563; 198179, 2195584; 198172, 2195658; 198127, 2195703; 198641, 2195878; 198662, 2195829; 198714, 2195780; 198732, 2195665; 198809, 2195633; 198970, 2195626; 199047, 2195549; 199075, 2195469; 199141, 2195427; 199087, 2195235; 199101, 2195127; 199124, 2194955; 199208, 2194840; 199267, 2194675; 199270, 2194567; 199260, 2194504; 199263, 2194437; 199310, 2194460; 199347, 2194479; 199306, 2194541; 199326, 2194591; 199424, 2194595; 199508, 2194525; 199522, 2194441; 199582, 2194392; 199598, 2194329; 199643, 2194295; 199662, 2194406; 199599, 2194462; 199596, 2194588; 199515, 2194853; 199368, 2195011; 199260, 2195319; 199312, 2195434; 199235, 2195476; 199274, 2195696; 199169, 2195847; 199138, 2195938; 199071, 2196039; 199663, 2196234; 199977, 2195921; 200985, 2194989; 201320, 2194454; 201268, 2194305; 201289, 2194176; 201150, 2193708; 201809, 2193212; 202487, 2192751; 202713, 2192557; 202794, 2192559; 203007, 2192869; 203088, 2192979; 203136, 2192967; 203139, 2192921; 203197, 2192911; 203224, 2192943; 203218, 2192991; 203264, 2193014; 203275, 2193130; 203278, 2193165; 203253, 2193224; 203277, 2193250; 203296, 2193248; 203321, 2193200; 203355, 2193261; 203340, 2193353; 203398, 2193434; 203487, 2193372; 203534, 2193296; 203580, 2193267; 203611, 2193247; 203631, 2193197; 203661, 2193126; 203650, 2193032; 203644, 2192994; 203649, 2192943; 203665, 2192930; 203692, 2192935; 203681, 2193005; 203695, 2193038; 203743, 2193045; 203751, 2193024; 203738, 2192991; 203747, 2192970; 203800, 2192948; 203810, 2192905; 203819, 2192867; 203833, 2192838; 203878, 2192830; 203916, 2192790; 203944, 2192724; 203935, 2192680; 203951, 2192655; 203968, 2192628; 203952, 2192587; 203978, 2192535; 203975, 2192477; 203992, 2192466; 204025, 2192444; 204044, 2192404; 204086, 2192392; 204133, 2192395; 204170, 2192417; 204186, 2192474; 204162, 2192528; 204130, 2192602; 204129, 2192641; 204081, 2192714; 204046, 2192717; 204022, 2192755; 204021, 2192835; 204057, 2192840; 204076, 2192827; 204105, 2192829; 204151, 2192846; 204218, 2192835; 204283, 2192808; 204311, 2192754; 204327, 2192655; 204350, 2192684; 204434, 2192709; 204459, 2192700; 204478, 2192684; 204469, 2192614; 204482, 2192593; 204485, 2192570; 204478, 2192547; 204485, 2192512; 204523, 2192529; 204540, 2192511; 204553, 2192479; 204294, 2191977; 203325, 2189871; 203670, 2189403; 203884, 2188867; 203876, 2188804; 204461, 2186966; 204241, 2186814; 203491, 2186573; 202905, 2186615; 201914, 2186332; 201935, 2186229; 201876, 2186192; 201969, 2186029; 201914, 2185947; 201962, 2185871; 201921, 2185754; 201866, 2185830; 201776, 2185816; 201838, 2185534; 201270, 2183971; 200424, 2183478; 194641, 2182859; 194391, 2182952; 194378, 2183030; 194326, 2183157; 194456, 2183246; 194375, 2183319; 194389, 2183392; 194641, 2183400; 195006, 2183522; 195441, 2183574; 195719, 2183591; 196066, 2183591; 196362, 2183670; 196372, 2183812; 195923, 2185051; 195805, 2185370; 195527, 2186175; 195324, 2186794; 195333, 2187189; 195544, 2187388; 195515, 2187690; 195450, 2187775; 193517, 2187814; 192035, 2187735; 191436, 2188145; 191395, 2188201; 191330, 2188228; 191183, 2188413; 191053, 2188549; 192020, 2188888; 192202, 2189030; 192137, 2189101; 192046, 2189432; 191945, 2189652; 191926, 2189817; 192000, 2189918; 191994, 2190055; 192009, 2190194; 191926, 2190322; 191954, 2190387; 191972, 2190616; 191961, 2190800; 191953, 2190938; 191917, 2191094; 191981, 2191296; 191943, 2191461; 191923, 2191548; 191871, 2191672; 191850, 2191864; 191834, 2192269; return to starting point.

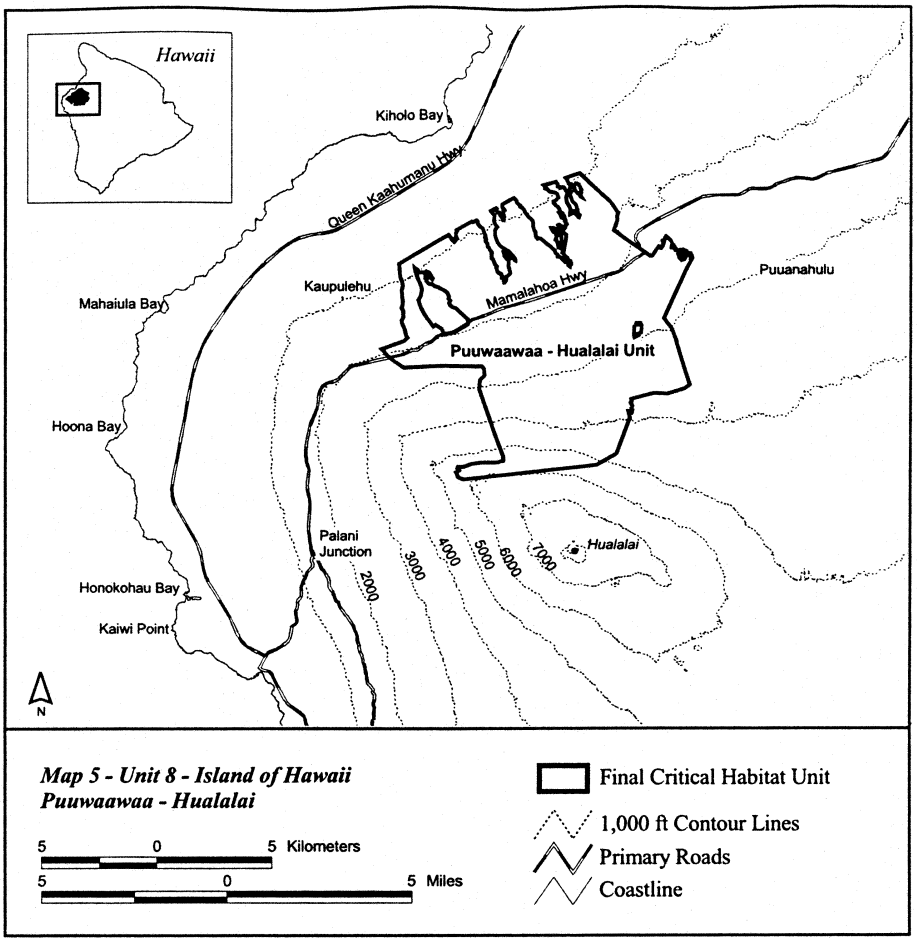
(B) This unit excludes three areas:

(*1*) Unit excludes an area (292 ha; 723 ac) consisting of the following 53 boundary points: Start at 194866, 2189663; 194567, 2189462; 194355, 2189326; 194325, 2189306; 194187, 2189261; 193786, 2189183; 193790, 2189211; 193677, 2189413; 193430, 2189605; 193325, 2189528; 192941, 2190012; 192773, 2190361; 192668, 2190673; 192763, 2190854; 192807, 2191149; 192721, 2191436; 192600, 2191671; 192527, 2191928; 192513, 2192089; 192642, 2191999; 192658, 2191915; 192697, 2191881; 192913, 2191886; 193004, 2191923; 193133, 2191855; 193180, 2191784; 193280, 2191621; 193278, 2191563; 193175, 2191653; 193109, 2191763; 193075, 2191789; 192949, 2191779; 192960, 2191622; 193028, 2191556; 193012, 2191490; 193102, 2191393; 193291, 2191346; 193364, 2191272; 193540, 2191230; 193782, 2191099; 193918, 2190994; 193958, 2190933; 193989, 2190799; 193984, 2190718; 194048, 2190643; 194008, 2190547; 194039, 2190466; 194149, 2190358; 194304, 2190298; 194449, 2190177; 194695, 2189967; 194808, 2189833; 194848, 2189683; return to starting point.

(*2*) Unit excludes an area (15 ha; 38 ac) consisting of the following 12 boundary points: Start at 202034, 2189562; 202141, 2189566; 202153, 2189649; 202308, 2189645; 202298, 2189564; 202339, 2189548; 202329, 2189219; 202193, 2189187; 202230, 2189088; 202042, 2189024; 202020, 2189151; 202024, 2189554; return to starting point.

(*3*) Unit excludes an area (11 ha; 28 ac) consisting of the following 23 boundary points: Start at 199447, 2195793; 199533, 2195796; 199635, 2195736; 199639, 2195696; 199701, 2195643; 199708, 2195591; 199713, 2195537; 199743, 2195499; 199737, 2195444; 199746, 2195368; 199725, 2195312; 199732, 2195273; 199753, 2195207; 199772, 2195162; 199732, 2195181; 199706, 2195245; 199646, 2195283; 199615, 2195345; 199573, 2195368; 199509, 2195416; 199449, 2195478; 199437, 2195611; 199430, 2195734; return to starting point.

(C) **Note:** Unit 8 is depicted on Map 5–Unit 8—Island of Hawaii, which follows:



(x) Unit 9: Island of Molokai, Kamoko Flats—Puukolekole (1,256 ha; 3,105 ac):

(A) Unit 9 consists of the following 170 boundary points: Start at 713960, 2337883; 713787, 2337815; 713641, 2337737; 713587, 2337686; 713542, 2337635; 713525, 2337608; 713514, 2337604; 713488, 2337574; 713275, 2337497; 713260, 2337442; 713302, 2337415; 713444, 2337400; 713651, 2337482; 713677, 2337507; 713828, 2337580; 713834, 2337585; 713841, 2337587; 713989, 2337659; 714006, 2337664; 714030, 2337681; 714036, 2337674; 714090, 2337691; 714150, 2337601; 714065, 2337490; 714169, 2337531; 714182, 2337553; 714217, 2337500; 714313, 2337356; 714267, 2337327; 713658, 2336950; 713641, 2336937; 713639, 2336938; 713638, 2336937; 713592, 2336909; 713171, 2337020; 713128, 2337025; 713101, 2337039; 712948, 2337083; 712768, 2337134; 712739, 2337127; 712714, 2337150; 712707, 2337152; 712647, 2337156; 711929, 2337023; 712115, 2336844; 712527, 2336930; 712811, 2336772; 712314, 2336653; 712783, 2336203; 712700, 2336108; 712785, 2336093; 712927, 2336085; 713147, 2336184; 713257, 2336224; 713265, 2336238; 712778, 2336365; 712783, 2336372; 712923, 2336457; 713217, 2336633; 714333, 2337309; 714341, 2337313; 715056, 2336242; 715073, 2336232; 716805, 2335668; 717490, 2335146; 717565, 2335112; 718350, 2334490; 718276, 2333666; 717554, 2332806; 717447, 2332851; 717080, 2333001; 716796, 2333195; 715114, 2334345; 715139, 2334491; 715684, 2334688; 716000, 2334857; 715980, 2334880; 715849, 2335177; 715914, 2335254; 715842, 2335306; 715274, 2335635; 715213, 2335636; 715076, 2335749; 715046, 2335773; 714377, 2335948; 714372, 2335938; 714373, 2335938; 714280, 2335711; 714494, 2335653; 714617, 2335594; 714901, 2335519; 715544, 2335359; 715547, 2335358; 715174, 2335053; 715005, 2334932; 714716, 2334982; 714205, 2335078; 714040, 2335127; 714024, 2335088; 711244, 2336986; 711354, 2337009; 711401, 2337037; 711322, 2337112; 711727, 2337380; 711733, 2337403; 711948, 2337483; 712220, 2337776; 712433, 2338103; 712602, 2338152; 712517, 2338265; 712284, 2338486; 711968, 2338683; 711759, 2338845; 711681, 2338900; 711900, 2338941; 711710, 2339118; 711642, 2339123; 711579, 2339096; 711465, 2339097; 711625, 2339356; 711763, 2339365; 711777, 2339323; 711817, 2339308; 711969, 2339303; 712089, 2339324; 712130, 2339297; 712272, 2339304; 712447, 2339115; 712346, 2339007; 712231, 2338953; 712098, 2338911; 712002, 2338805; 712132, 2338664; 712392, 2338783; 712579, 2338783; 712421, 2338675; 712279, 2338579; 712353, 2338489; 712568, 2338528; 712635, 2338591; 712780, 2338508; 712777, 2338472; 712895, 2338488; 713001, 2338534; 713003, 2338502; 713072, 2338512; 713177, 2338629; 713424, 2338561; 713452, 2338533; 712978, 2338207; 712867, 2337997; 712845, 2337873; 713121, 2337952; 713150, 2337771; 713181, 2337784; 713184, 2337801; 713189, 2337803; 713196, 2337826; 713191, 2337829; 713197, 2337831; 713204, 2337853; 713303, 2337864; 713482, 2338023; 713503, 2338044; 713520, 2338067; 713525, 2338081; 713557, 2338108; 713664, 2338205; 713713, 2338254; 713731, 2338228; return to starting point.

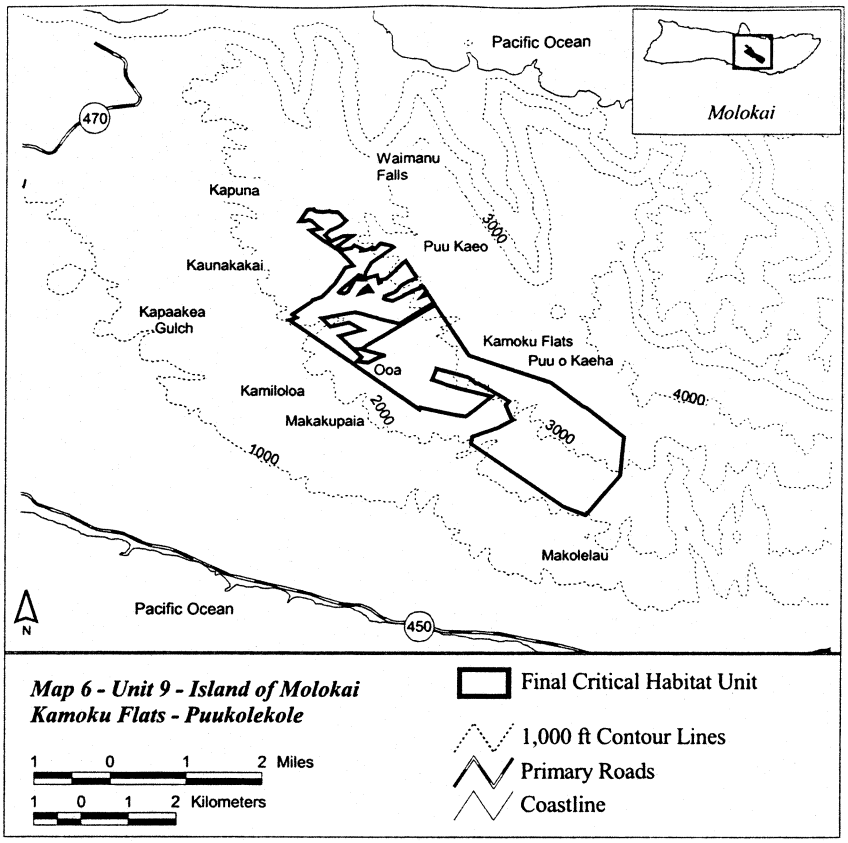
(B) This unit excludes two areas:

(*1*) Unit excludes an area (2 ha; 4 ac) consisting of the following 5 boundary

points: Start at 712804, 2337632; 712923, 2337724; 712990, 2337608; 712917, 2337600; 712748, 2337553; return to starting point.

(*2*) Unit excludes an area (5 ha; 13 ac) consisting of the following 10 boundary points: Start at 712742, 2337968; 712839, 2337857; 712748, 2337850; 712646, 2337870; 712632, 2337823; 712481, 2337590; 712425, 2337550; 712313, 2337564; 712299, 2337574; 712360, 2337661; return to starting point.

(C) **Note:** Unit 9 is depicted on Map 6–Unit 9–Island of Molokai, which follows:



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Dated: May 30, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–14144 Filed 6–9–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
June 10, 2003

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 413

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1469–P2]

RIN 0938–AL20

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

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

ACTION: Proposed rule.

SUMMARY: In this proposed rule, we are considering an adjustment to the annual update for skilled nursing facilities (SNFs) that would account for forecast errors. In addition, we are proposing to make a technical correction to correct a misspelling in existing regulation text. This proposed rule supplements the proposed rule that we published previously in the **Federal Register** on May 16, 2003 (68 FR 26758), which included proposed updates to the payment rates used under the prospective payment system (PPS) for SNFs, for fiscal year (FY) 2004, as required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments and consolidated billing for SNFs.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 7, 2003 (*see* section VI of this proposed rule for a discussion of the comment period).

ADDRESSES: Mail written comments (one original and three copies) to the following address:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1469–P2, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC 20201, or

Centers for Medicare & Medicaid Services, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS–1469–P2 on each comment. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 4 p.m. Please call (410) 786–7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT: Stephen Heffler, (410) 786–1211 (for information related to the SNF Market Basket Index and forecast error adjustments). Bill Ullman, (410) 786–5667, and Sheila Lambowitz, (410) 786–7605 (for general information).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

I. Background and Purpose of this Proposed Rule

Annual updates to the prospective payment system (PPS) rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106–554), relating to Medicare payments and consolidated billing for SNFs.

On May 16, 2003, we published in the **Federal Register** a proposed rule (68 FR 26758) in connection with the Medicare PPS for skilled nursing facilities (SNFs). The proposed rule included updated payment rates for fiscal year (FY) 2004, as well as a number of proposed revisions and technical corrections to the associated regulations. We are now publishing this supplemental proposed rule in order to propose an additional possible change, concerning the regulations in 42 CFR 413.337(d)(2) for determining the annual update to the SNF payment rates. Specifically, we are considering an adjustment that would account for forecast error. In addition, we propose to make a technical correction to correct a misspelling in the existing regulation text at § 413.345.

We note that the issue of establishing an adjustment to account for forecast error is one that we have considered previously. To date, we have not implemented such an adjustment, because we were concerned that it might tend to detract from the prospective nature of the SNF payment system. Additionally, we note that, in the past, our evaluation of a possible adjustment to account for forecast error has not taken place in isolation, but rather, within the broader context of considering the possibility of developing a SNF-specific update framework, which would keep track of the various factors that affect costs and payment per case. This would include not only the market basket, but also other factors as well, such as productivity changes, intensity changes, and adjustment for case-mix creep. For example, the May 12, 1998 interim final rule on the SNF PPS (63 FR 26293) discussed the possibility of adopting a forecast error adjustment, similar to the one employed in the existing update framework for the inpatient hospital PPS:

> We are considering a mechanism to adjust future SNF PPS rates for forecast errors. * * * In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increases in prices faced by SNFs and the forecast used in calculating the update factors.

We further noted that if such a mechanism were adopted,

> * * * an adjustment would be made only if the forecasted market basket percentage change for any year differs from the actual percentage change by 0.25 percentage points or more. There would be a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for an error in forecasting the 1997 market basket percentage used to compute the PPS rates effective with this interim final

rule through an adjustment to the fiscal year 1999 update to the SNF PPS rates.

As noted in the May 12, 1998 interim final rule, the existing update framework for the inpatient hospital capital PPS already includes an adjustment to account for forecast error (see the regulations at § 412.308(c)(1)(ii)). The update framework for the inpatient hospital operating PPS includes a similar forecast error adjustment as well. However, the latter framework serves as the basis for making a recommendation to the Congress, which then establishes the actual update amount for the operating PPS through legislation. In the context of discussing a possible update framework for the SNF PPS in the FY 2002 proposed rule published on May 10, 2001 (66 FR 24018 through 24019), we observed that in this existing update framework,

> a forecast error adjustment has typically been included, to reflect that the updates are set prospectively and some degree of forecast error is inevitable. In the case of the inpatient hospital PPS, this adjustment is made on a two-year lag and only if the error exceeds a defined threshold (0.25 percentage points).

Further, in the FY 2002 final rule published on July 31, 2001 (66 FR 39586), one commenter specifically suggested establishing a mechanism in the SNF PPS to account for forecast error. In response, we noted that the development of a SNF-specific update framework ''* * * would give us the ability to factor in a forecast error adjustment in our recommendation for an update to SNF payments.''

As the preceding discussion indicates, our consideration of adopting a mechanism for making forecast error adjustments has, to date, occurred exclusively within the broader context of developing a SNF-specific update framework, where the end result would be solely a recommendation to the Congress, rather than an actual adjustment to the payment rates. However, it might also be possible to establish a forecast error adjustment mechanism independently as a separate initiative, as we discuss in the following sections of this proposed rule.

II. Proposed Adjustment to the Annual Increase in the SNF Market Basket Index Amount to Account for Forecast Error

A. Background

Since the implementation of the SNF PPS in July 1998, annual updates to the national PPS rate have been based on the forecasted percent change in the SNF market basket for the upcoming fiscal year. The SNF market basket was described in detail in the interim final rule that we published on May 12, 1998 (63 FR 26289), and in the final rule published on July 31, 2001 (65 FR 39581). The use of a forecasted market basket percent change is consistent with section 1888(e)(5) of the Act, which directs us to establish a market basket index for SNFs that ''* * * reflects changes over time in the prices of an appropriate mix of goods and services'' included in covered SNF services, and to calculate the percentage change in that index from the midpoint of the prior fiscal year to the midpoint of the current one. It is also consistent with the methodology used for other prospective payment systems, most notably the inpatient hospital PPS.

The forecast of the SNF market basket percent change for the upcoming fiscal year is based on data that are available when the final rule is developed. This generally means that historical data that are available through the first quarter of the current calendar year are used to develop forecasts for the upcoming fiscal year. For example, the SNF market basket percent change for the FY 2003 payment update was forecast in June 2002, with historical data available through the first quarter of 2002. We purchase the forecasts of the individual price series in the SNF market basket from a leading macroeconometric forecasting firm, Global Insights, Inc. We define the SNF market basket forecast error as the difference in the forecasted percent change in the SNF market basket and the actual percent change in the SNF market basket for a given period, generally the fiscal year.

Upon further consideration of the language of the statute and consistent with the use of a forecast to calculate the market basket percentage under section 1888(e)(5) of the Act, we believe that the statute provides us with authority to make adjustments to the update to the SNF per diem amount computed under section 1888(e)(4)(E)(ii)(IV) of the Act to adjust for differences in the forecasted percent change in the SNF market basket and the actual percent change in the SNF market basket, determined on the basis of later acquired, actual data. Pursuant to section 1888(e)(4)(E)(ii)(IV) of the Act, the SNF market basket percentage calculated by the Secretary is used to update the per diem rate computed for the prior fiscal year in order to determine the unadjusted Federal per diem rates to be applied during the upcoming fiscal year. Consistent with section 1888(e)(4)(H)(i) of the Act, before August 1, the Secretary shall publish in the **Federal Register** ''the unadjusted Federal per diem rates to be applied to days of covered skilled nursing facility services furnished during the fiscal year.'' There is, however, no requirement that this published figure be used for purposes of computing the payment rate for the following fiscal year. Rather, the annual update to the SNF per diem rate is equal to ''the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year involved'' (section 1888(e)(4)(E)(ii)(IV) of the Act). Accordingly, we believe the language of these provisions supports an interpretation of the Act in which the payment rate for a fiscal year can be computed again after the end of a fiscal year to reflect later acquired, actual data regarding changes in the market basket, and that this recomputed rate could then be used in determining updates to the SNF payment rate for the subsequent fiscal year. Because the payment rates to be applied during a fiscal year are the rates that are published in the **Federal Register** by the August 1 preceding the start of the fiscal year, (*see* section 1888(e)(4)(H)(i) of the Act), any such adjustments would be made for FY 2004 and subsequent years.

B. Possible Approaches

We believe that establishing an adjustment for forecast error in prior years could help to further ensure that the payment rates appropriately reflect changes over time in the price of goods and services. However, it is important to consider certain additional factors in evaluating the feasibility of such an approach. In order to ensure that any such adjustment reflects actual market conditions accurately, it is absolutely essential that the adjustment be applied uniformly—not only in those instances where the forecasted percent change is lower than the actual percent change (as has been the case up to this point under the SNF PPS), but also in those instances where the forecasted percent change is higher than the actual percent change.

We note that the latter circumstance would result in SNFs receiving lower than expected payments. In fact, it is even possible that, under a certain set of circumstances (for example, a year in which the law specifies an adjustment of the SNF market basket percentage change minus one percentage point, in combination with a negative forecast error correction and low price inflation), it could actually yield a net *decrease* in payment rates.

This possibility underscores a potential disadvantage of establishing a forecast error adjustment, in that it would inevitably introduce an element

of uncertainty regarding the amount of future updates. This uncertainty, in turn, would tend to detract from the prospective nature of the SNF payment system. In fact, the final rule that we published on January 3, 1984 at the inception of the prospective payment system for inpatient hospital services (49 FR 252) cited those very concerns in declining to adopt a suggestion to establish a forecast error adjustment at that point:

> One of the purposes of the prospective payment system is that hospitals will know in advance of each discharge the amount of Medicare payment. Using the latest available market basket projections prior to the beginning of a particular Federal fiscal year is consistent with this concept. To permit retroactive adjustments of the market basket inflation rates would erode the prospective nature of the system. We believe this would introduce an element of uncertainty incompatible with the very purpose of the prospective payment system. Therefore, we have not adopted the suggestion that the rates be adjusted if market basket projections prove to be inaccurate.

Thus, while there are considerations that argue in favor of establishing an adjustment to account for forecast error, we believe that such a change also raises a number of concerns. Accordingly, we seek comments on the advisability of pursuing this approach.

Further, along with the basic question of whether to adopt a forecast error adjustment, it is also necessary to consider other related issues involving the precise nature of any such adjustment. For example, as further discussed in section II.D of this proposed rule, we are considering the inclusion of a threshold under which no forecast error adjustment would be made if the forecasted percent change is within 0.25 percentage points of the actual percent change (as is currently the case under the inpatient capital PPS). However, it would also be possible to set a different threshold, such as the 0.3 percentage point level that was used in updating the SNF routine cost limits under the reasonable cost payment methodology that preceded the SNF PPS. Alternatively, we could even use a significantly higher threshold in this context, such as a full percentage point.

In addition, we are considering that the initial forecast error adjustment would occur in FY 2004, and would take into account the cumulative forecast error between FYs 2000 and 2002, that is, since the beginning of the SNF PPS. We would apply the forecast error threshold of 0.25 percentage points to the forecast error calculation for the entire cumulative forecast error for FYs 2000 through 2002 instead of applying it to each year individually. We would do this because, in this calculation, the base payment rate is being adjusted in FY 2004 to bring the payment system in line with the actual experience. Alternatively, we could adopt an approach under which the initial adjustment takes into account only the forecast error for periods beginning after the effective date of the FY 2004 final rule. Under this alternative approach, the initial adjustment would not occur until FY 2006, and would take into account the forecast error from FY 2004. Accordingly, we invite comments not only on whether to adopt an adjustment to account for forecast error, but also on the specific characteristics of any such adjustment. The following describes the methodology that would be used if we considered an initial, cumulative forecast error adjustment provision.

C. SNF Market Basket Forecast Error for FYs 2000 Through 2002

The initial SNF market basket forecasted update under the SNF PPS was for FY 2000 (3.1 percent), followed by forecasted updates for FY 2001 (3.161 percent), FY 2002 (3.3 percent), and FY 2003 (3.1 percent). Historical market basket data are now available through FY 2002; therefore, we can calculate the cumulative SNF market basket forecast error for FYs 2000 through 2002, as shown in Table A. Historical data for the FY 2003 SNF market basket increase will not be available until early in 2004.

TABLE A.—CUMULATIVE SNF MARKET BASKET FORECAST ERROR FOR FYS 2000 THROUGH 2002

	Forecasted SNF market basket percent change	Actual SNF market basket percent change
FY 2000	3.1	4.1
FY 2001	3.161	5.1
FY 2002	3.3	3.4
Cumulative Growth FY 2000 through 2002	9.869	13.129
Cumulative SNF Market Basket Forecast Error	.....	3.26

Note: The FY 2000 and FY 2001 SNF market basket percent changes are based on the 1992-based SNF market basket. The FY 2002 SNF market basket percent changes are based on the 1997-based SNF market basket.

As indicated in Table A, the cumulative SNF market basket forecast error from FYs 2000 through 2002 is 3.26 percent. This figure is calculated by taking the difference in the cumulative forecasted SNF market basket increase over this period (1.031*1.03161*1.033=1.09869) and the cumulative actual SNF market basket increase (1.041*1.051*1.034=1.13129). As mentioned previously in section II.B of this proposed rule, we applied the forecast error threshold of 0.25 percentage points to the forecast error calculation for the entire cumulative forecast error for FYs 2000 through 2002 instead of applying it to each year individually. We did this because, in this calculation, the base payment rate is being adjusted in FY 2004 to bring the payment system in line with the actual experience. The difference between these two cumulative increases equals 0.0326 (1.13129 minus 1.09869). This means that the SNF market basket was under-forecast by 3.26 percent for the period FY 2000 through 2002. Similarly, the base payment rate computed for FY 2003 was 3.26 percent lower than it would have been if actual data had been used.

The major reason that the SNF market basket forecast was under-forecast during this period was that wages and benefits for nursing home workers increased more rapidly than expected. This faster-than-expected increase occurred primarily because the health sector continued to grow rapidly despite the economic downturn, and also because of the impacts of nursing staff shortages and other conditions generally affecting the health care market.

In order to illustrate the potential impact that an initial, cumulative forecast error adjustment provision would have on payment rates, we are reproducing the original figures from Tables 1 and 2 in the FY 2004 SNF PPS proposed rule that appeared in the **Federal Register** on May 16, 2003 (68 FR 26761). The Federal rates in that proposed rule reflect an update to the rates that we published in the July 31, 2002 **Federal Register** (67 FR 49798) equal to the full change in the SNF market basket index. According to our interpretation of section 1888(e)(4)(E)(ii)(IV) of the Act, we would update the SNF PPS national base payment rate for FY 2003 by the cumulative forecast error amount. Thus, we would increase the SNF PPS national base payment rate for FY 2003 by 3.26 percent. We would then update the rate by adjusting the revised rate by the full SNF market basket index (see the May 16, 2003 proposed rule (68 FR 26775) for an explanation of how we calculate the full SNF market basket index). The FY 2004 market basket increase factor is 2.9 percent. We are inviting comments on including an

adjustment to the SNF PPS base payment rate to account for the cumulative forecast error between FY 2000 and FY 2002. Using this approach, we would update the FY 2003 SNF PPS national payment rate by an additional 3.26 percent above the 2.9 percent SNF market basket increase currently forecasted for FY 2004. For a complete description of the multi-step process, see the May 12, 1998 interim final rule (63 FR 26252).

As explained in section II.D, we have also included additional figures that are adjusted to reflect a 3.26 percent forecast error adjustment. The following describes the process we could consider using if we apply a forecast error adjustment only in future years.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Original Per Diem Amount without Forecast Error Adjustment	$125.15	$94.27	$12.42	$63.87
Revised Per Diem Amount with Forecast Error Adjustment	129.23	97.34	12.82	65.96

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Original Per Diem Amount without Forecast Error Adjustment	$119.57	$108.70	$13.26	$65.06
Revised Per Diem Amount with Forecast Error Adjustment	123.47	112.24	13.69	67.18

D. Process for Adjusting for SNF Market Basket Forecast Error

We are also inviting comments on applying the forecast error adjustment in future years, by adjusting the SNF PPS base payment rate annually for any forecast error in the SNF market basket. This process would involve making a one-time adjustment for the forecast error from the most recently available fiscal year. For example, for the FY 2005 update, we could adjust for forecast error for FY 2003 only; FY 2004 information would not yet be final. Similarly, for the FY 2006 update, we could adjust for the FY 2004 forecast error. This process creates what is essentially a 2-year lag on the forecast error correction, but is as timely as possible given the availability of historical data.

The method of adjusting for annual forecast error would be similar to that described above for the FY 2004 update. We could adjust for forecast error in a fiscal year by adjusting the SNF PPS national base payment by the forecast error amount. For example, if the FY 2004 SNF market basket were over-forecast by 0.5 percent, we would reduce the SNF PPS national base payment rate in FY 2006 by 0.5 percent. Accordingly, this is a prospective adjustment and is consistent with the methodology currently employed under the inpatient hospital capital PPS, and with the update framework that we discussed in the FY 2002 SNF PPS proposed rule published on May 10, 2001 (66 FR 24016) and FY 2002 final rule published on July 31, 2001 (66 FR 39587).

In addition, as mentioned previously in section II.B, we are considering adopting a threshold under which no forecast error adjustment would be made if the forecasted percent change is within a defined range of the actual percent change. As noted previously, the inpatient hospital capital PPS already uses a threshold of 0.25 percentage points. We are soliciting comments on what threshold would be appropriate in the context of the SNF PPS. This methodology is again consistent with the methodology used under the inpatient capital PPS, and reflects the concept that there is a certain level of imprecision associated with measuring statistics. We invite comments on the use of this standard.

III. Solicitation of Comments on Quality of Care Efforts Under SNF PPS

We noted above that a major reason the SNF market basket forecast was under-forecasted for previous periods was that wages and benefits for SNF workers increased more rapidly than expected. Part of this wage increase may have been caused by nursing staff shortages which, coupled with the increased demand for services during this period, drove up wages not only in SNFs but in the entire health sector. Since the factors that drive costs in SNFs can also relate to nursing home quality of care, we believe it is important to reflect appropriately the market conditions facing SNFs.

We have focused significant resources in the past two years on improving the quality of health care provided by Medicare providers. Our efforts with respect to nursing home quality have been particularly intensive. In December 2001, we announced a Nursing Home Quality Initiative. This initiative is part of the goal of the Department of Health and Human Services to continue to improve the quality of health care for all Americans, including those covered by the Medicare and Medicaid programs. After a successful six-State pilot in the Spring of 2002, we released quality of care information on November 12, 2002 for nearly 17,000 nursing homes in all 50 States, the District of Columbia, and some U.S. Territories. Consumers can view these measures and other helpful information at *http://www.medicare.gov.*

The Nursing Home Quality Initiative is a four-prong effort that consists of: regulation and enforcement efforts conducted by State survey agencies and by us; improved consumer information on the quality of care in nursing homes; continual, community-based quality improvement programs designed to help nursing homes improve their quality of care; and collaboration and partnership to utilize available knowledge and resources most effectively. State pilot in the Spring of 2002, we released quality of care information on November 12, 2002 for nearly 17,000 nursing homes in all 50 States, the District of Columbia, and some U.S. Territories. Consumers can view these measures and other helpful information at *http://www.medicare.gov.*

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to utilize available knowledge and resources most effectively.

To the extent that market basket adjustments to the SNF PPS result in more appropriate payments to SNFs in future years, it is expected that a majority of the additional payments made in the future to SNFs will be used for direct care services to nursing home residents. Further, we expect that SNFs will use such payments to continue to engage in proactive, quality improvement activities and programs. Accordingly, we invite comments on how SNFs will account for these direct care funds and how CMS may use its authority under section 1888 of the Act or elsewhere to further promote quality improvement efforts among SNFs. We also invite comments on available legal authority, as well as the advisability of refining and structuring payments under the SNF PPS to promote additional caregiver staffing at SNFs.

IV. Provisions of the Proposed Rule

In this proposed rule, we propose to make the following revisions to the existing text of the regulations:

- In § 413.337(d)(2), we would insert additional text at the end of the paragraph, which would provide for an adjustment to the annual update of the previous fiscal year's rate to account for forecast error in the SNF market basket beginning with FY 2004.
- In § 413.345, we would make a technical correction to the second sentence of the regulation text, in order to correct the spelling of the word ''standardized.''

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the **DATES** section of this preamble and respond to those comments in the preamble to that rule.

Waiver of 60-day Comment Period

As discussed previously in section I of this preamble, we are issuing this proposed rule specifically in order to supplement the proposed rule that we published previously in the **Federal Register** on May 16, 2003 (68 FR 26758). Section 1871(b)(1) of the Act normally requires a 60-day public comment period for a proposed rule. However, under section 1871(b)(2)(C) of the Act, this requirement can be waived for good cause in situations where the agency finds that its application would be ''* * * impracticable, unnecessary, or contrary to the public interest'' (*see* 5 U.S.C. § 553(b)). We note that under section 1888(e)(4)(H) of the Act, the updated payment rates for FY 2004 must be published in the **Federal Register** no later than July 31, 2003. This means that providing a full 60-day comment period for this supplemental proposed rule could leave insufficient time following the close of the comment period to include any resulting revisions in that publication. We believe it to be in the public interest to consider any revisions in conjunction with the annual update to the SNF PPS rates so any adjustment to the payment rate could be done as part of the annual update process. Moreover, promulgating such revisions in a separate final rule published later than July 31 would require revising the rate structure after the start of the new fiscal year in order to accommodate the change, which would impose an inordinate administrative burden. Additionally, we note that, other than to propose a minor technical correction in the existing regulations text, the sole focus of this supplemental proposed rule concerns a single potential change, to adjust the annual update to the SNF payment rates in order to account for forecast error. Given the extremely narrow scope of this document, we believe that even a comment period of less than 60 days would still give interested parties sufficient opportunity to comment adequately on it.

For the reasons set forth in the preceding discussion, which indicate that providing a full comment period would be contrary to the public interest, we find that there is good cause to modify the 60-day comment period in this instance. Accordingly, the closing date of the comment period for this supplemental proposed rule is hereby set at July 7, 2003, to coincide with the close of the initial proposed rule's comment period.

VII. Regulatory Impact Analysis

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is a major rule, as defined in 5 U.S.C. 804(2), because, if we proceed with a forecast error adjustment, we estimate that the impact of such a change would be approximately $450 million in FY 2004 (based on the cumulative SNF market basket forecast error of 3.26 percent for FYs 2000 through 2002, as shown in Table A). The $450 million estimate also assumes the use of a 0.25 percentage point threshold (and would be reliable for thresholds up to 3.26 percent). However, as noted previously in section II.D, this estimated impact could change in any given year if we were to adopt a different threshold level.

The RFA requires agencies to analyze options for the regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of $11.5 million or less in any 1 year. For purposes of the RFA, approximately 53 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards with total revenues of $11.5 million or less in any 1 year (for further information, see 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity.

The revision that we are considering in this proposed rule would simply provide for adjusting the annual increase in the applicable SNF market basket index amount, effective with FY

2004, to account for forecast error. Accordingly, we certify that this proposed rule would not have a significant impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. For a proposed rule, this analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the change in methodology set forth in this proposed rule would also affect rural hospital swing-bed services, we believe that this proposed rule would similarly affect small rural hospitals. However, because the incremental change in payments for Medicare swing-bed services would be relatively minor in comparison to overall rural hospital revenues, this proposed rule would not have a significant impact on the overall operations of these small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This proposed rule would have no substantial effect on State, local, or tribal governments. We believe the private sector cost of this proposed rule falls below these thresholds as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this proposed rule would have no substantial effect on State and local governments.

As stated previously, the purpose of this proposed rule is simply to consider an adjustment to the annual update to account for forecast error in the SNF market basket. We believe that such a revision would have, at most, only a negligible overall effect in terms of the RFA and the other provisions discussed in this section. As such, it would not represent an additional burden to the industry.

For the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart J—Prospective Payment for Skilled Nursing Facilities

2. In § 413.337(d)(2), paragraph (d)(2) is revised to read as follows:

§ 413.337 Methodology for calculating the prospective payment rates.

* * * * *

(d) *Annual updates of Federal unadjusted payment rates.* * * *

(2) For subsequent fiscal years, the unadjusted Federal rate is equal to the rate for the previous fiscal year increased by the applicable SNF market basket index amount. Beginning with fiscal year 2004, an adjustment to the annual update of the previous fiscal year's rate will be computed to account for forecast error. The initial adjustment (in fiscal year 2004) to the update of the previous fiscal year's rate will take into account the cumulative forecast error between fiscal years 2000 and 2002. Subsequent adjustments in succeeding fiscal years will take into account the forecast error from the most recently available fiscal year for which there is final data.

* * * * *

§ 413.345 [Amended]

3. In the second sentence of § 413.345, the word ''tandardized'' is removed and the word ''standardized'' is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program.)

Dated: May 22, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 3, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–14632 Filed 6–6–03; 10:38 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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S. 243/P.L. 108–28

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S. 330/P.L. 108–29

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S. 870/P.L. 108–30

To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

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