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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (''USDA'') amends its regulations implementing the Equal Access to Justice Act (''EAJA''). The amendments incorporate modifications enacted in the Small Business Regulatory Enforcement Fairness Act of 1996.

DATES: Effective October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara S. Good, Attorney Advisor, Room 3311 South Building, Office of the General Counsel, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1415; telephone (202) 720–8045.

SUPPLEMENTARY INFORMATION: The USDA published proposed revisions to its EAJA regulations on March 20, 2002, at 67 FR 12898 through 12903. The Department solicited comments on the proposed rule, but did not receive any. Accordingly, the Department is publishing the proposed rule as a final rule without changes.

In the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Pub. L. 104–121, Title II, Mar. 29, 1996, 100 Stat. 857 to 874, Congress amended EAJA in two significant respects with regard to administrative proceedings.

First, Congress amended 5 U.S.C. 504(a) to add a new basis for recovery under EAJA. Under prior law, only a ''prevailing party'' other than the United States in an adversary adjudication before an agency was eligible for recovery of fees and expenses. 5 U.S.C. 504(a)(1). Pursuant to new paragraph (a)(4), a party to an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement may also be entitled to reimbursement of fees and expenses, even though not a ''prevailing party.'' In those enforcement cases where the demand by the agency is ''substantially in excess'' of the decision of the adjudicative officer and is ''unreasonable'' when compared with the eventual decision under the facts and circumstances of the case, the agency adjudicative officer is directed to award to an eligible party the fees and other expenses related to defending against the excessive demand. Award is qualified if the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust.

SBREFA further amended section 504(b)(1) to add new subparagraph (F), which defines the term ''demand'' as ''the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.''

SBREFA also added, in 5 U.S.C. 504(b)(1)(B), a new category of applicants eligible for fees based on a claim of excessive demand. In addition to the other categories of eligible applicants, a small entity as defined in 5 U.S.C. 601 will be eligible for reimbursement with respect to a claim of excessive demand in a regulatory or statutory enforcement action.

The second major change, in 5 U.S.C. 504(b)(1)(A), increased from $75 per hour to $125 per hour the maximum rate for fees awardable. The qualifying language ''unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorney or agents for the proceeding involved justifies a higher fee'' remains. Departmental rules at 7 CFR 1.186 currently implementing EAJA attorney fees set a cap of $75 per hour. Amended language at 7 CFR 1.186 reflects the statutory increase to $125 per hour.

In view of the legislative changes, the Department is revising its regulations to conform to statute. In addition, the Department is making minor changes to modify obsolete provisions related to effective dates, and to correct minor errors, and to make minor stylistic changes.

The Department retains its stance concerning the applicability of EAJA to National Appeals Division proceedings as set forth in the preamble to the final rule for National Appeals Division rules of procedure at 64 FR 33367, June 23, 1999.

This rule has been reviewed under Executive Order No. 12866 and has been determined not to be a ''significant regulatory action'' since it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local or tribal governments or communities. This rule will not create any serious inconsistencies, or otherwise materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or principles set forth in E.O. 12866. Therefore, this rule has not been reviewed by the Office of Management and Budget.

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534, as amended (5 U.S.C. 601 *et seq.*).

USDA has determined that the provisions of the Paperwork Reduction Act as amended, 44 U.S.C. chapter 35, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action involving an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

List of Subjects in 7 CFR Part 1

Administrative practice and procedures.

For the reasons set forth in the preamble, revise subpart J of part 1 of title 7 of the Code of Federal Regulations to read as follows:

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

Authority: 5 U.S.C. 504(c)(l).

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§ 1.180 Definitions.

(a) The definitions contained in § 1.132 of this part are incorporated into and made applicable to this subpart.

(b) *Adjudicative Officer* means an administrative law judge, administrative judge, or other person assigned to conduct a proceeding covered by EAJA.

(c) *Agency* means an organizational unit of the Department whose head reports to an official in the Office of the Secretary.

(d) *Agency counsel* means the attorney from the Office of the General Counsel representing the agency of the Department administering the statute involved in the proceeding.

(e) *Days* means calendar days.

(f) *Department* means the United States Department of Agriculture.

§ 1.181 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called ''EAJA'' in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Department. An eligible party may receive an award when it prevails over the Department unless the position of the Department was substantially justified or special circumstances make an award unjust. Alternatively, an eligible party may receive an award in connection with an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement where the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Department will use to make awards.

§ 1.182 When EAJA applies.

EAJA applies to any adversary adjudication pending or commenced before the Department on or after August 5, 1985, except with respect to a proceeding covered under § 1.183(a)(1)(iii) of this part, which is effective on or after October 21, 1986. In addition, the provisions of § 1.185(b) relating to award for excessive demand apply only to adversary adjudications commenced on or after March 29, 1996. Changes in maximum rates for attorney fees are effective as of October 11, 2002.

§ 1.183 Proceedings covered.

(a)(1) The rules in this subpart apply to adversary adjudications. These are:

(i) Adjudications required by statute to be conducted by the Department under 5 U.S.C. 554 in which the position of the Department or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding,

(ii) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Agriculture Board of Contract Appeals as provided in section 8 of that Act (41 U.S.C. 607), and

(iii) Any hearing conducted under chapter 38 of title 31, United States Code.

(2) Any proceeding in which the Department may prescribe a lawful present or future rate is not covered by EAJA. Proceedings to grant or renew licenses also are excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise ''adversary adjudications.'' The proceedings covered include adversary adjudications under the following statutory provisions.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
Animal Quarantine Laws (21 U.S.C. 104, 117, 122, 127, 134e, and 135a)
Animal Welfare Act (7 U.S.C. 2149)
Archaeological Resources Protection Act (16 U.S.C. 470ff)
Beef Research and Information Act (7 U.S.C. 2912)
Capper-Volstead Act (7 U.S.C. 292)
Cotton Research and Promotion Act (7 U.S.C. 2111)
Egg Products Inspection Act (21 U.S.C. 1047)
Egg Research and Consumer Information Act (7 U.S.C. 2713, 2714(b))
Endangered Species Act (16 U.S.C. 1540(a))
Federal Land Policy and Management Act (43 U.S.C. 1766)
Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608, 671)
Federal Seed Act (7 U.S.C. 1599)
Horse Protection Act (15 U.S.C. 1823(c), 1825)
Packers and Stockyards Act (7 U.S.C. 193, 204, 213, 218d, 221)
Perishable Agricultural Commodities Act (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))
Plant Protection Act (7 U.S.C. 2279e, 7734(b), 7736)
Potato Research and Promotion Act (7 U.S.C. 2620)
Poultry Products Inspection Act (21 U.S.C. 455, 456, 457(d), 467)
Swine Health Protection Act (7 U.S.C. 3804(b), 3805(a))
U.S. Cotton Standards Act (7 U.S.C. 51b, 53)
U.S. Grain Standards Act (7 U.S.C. 79(g)(3), 85, 86)
U.S. Warehouse Act (7 U.S.C. 246, 253)
Virus-Serum-Toxin Act (21 U.S.C. 156)
Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409)

(b) The failure of the Department to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must meet one of the following conditions:

(1) The applicant must be a prevailing party to the adversary adjudication for which it seeks an award; or

(2) The applicant must be a party to an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement in which the demand by the agency was substantially in excess of the decision of the

adjudicative officer and the demand is unreasonable when compared with such decision under the facts and circumstances of the case.

(b) In addition to the criteria set out in paragraph (a) of this section, a party seeking an award must be one of the following:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (2 U.S.C. 1141j(a)) with not more than 500 employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and nor more than 500 employees;

(6) For purposes only of paragraph (a)(2) of this section, a small entity as defined in 5 U.S.C. 601.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated: Provided, that for purposes of eligibility in proceedings covered by § 1.183(a)(1)(ii) of this part, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) In interpreting the criteria set forth in paragraph (b) of this section, the following apply:

(1) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(2) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(3) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines such treatment would be unjust and contrary to the purposes of EAJA in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(4) An applicant that participates in a proceeding primarily on behalf of one or more other person or entity that would be ineligible is not itself eligible for an award.

§ 1.185 Standards for awards.

(a) Prevailing party. (1) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department was substantially justified. The position of the Department includes, in addition to the position taken by the Department in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the position of the Department was substantially justified is on the agency.

(2) An award to a prevailing applicant will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(b) Excessive demand. (1) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.

(2) ''Demand'' means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty:

(i) In the administrative complaint, or

(ii) Elsewhere when accompanied by an express demand for a lesser amount.

§ 1.186 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under the rules in this subpart may exceed $125.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses, which is set out at § 1.150 of this part. However, an award also may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 1.187 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the

Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $125 per hour in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Department a petition for rulemaking to increase the maximum rate for attorney fees in accordance with § 1.28 of this part. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It also should explain fully the reasons why the higher rate is warranted. The Department will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 1.188 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 1.189 Delegations of authority.

The Secretary of Agriculture delegates to the Judicial Officer, except as otherwise delegated, authority to take final action on matters pertaining to EAJA in proceedings covered by the rules in this subpart. The Secretary by order or regulation may delegate authority to take final action on matters pertaining to EAJA in particular cases or categories of cases to other subordinate officials or bodies. With respect to proceedings covered under § 1.183(a)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

Information Required From Applicants

§ 1.190 Contents of application.

(a) An application for an award of fees and expenses under EAJA shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of the Department that the applicant alleges was not substantially justified and shall briefly state the basis for such allegation; or

(2) Show that the demand by the Department in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application also shall, as appropriate, include a declaration that the applicant is a small entity as defined in 5 U.S.C. 601 or a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application also may include any other matters that the applicant wishes the Department to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It also shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 1.191 Net worth exhibit.

(a) An applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1.184 of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9). The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures of the Department under the Freedom of Information Act (§§ 1.1 through 1.23 of this part).

§ 1.192 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing on behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation also shall include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to § 1.199 of this part.

§ 1.193 Time for filing application.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after final disposition of the proceeding by the Department.

(b) For the purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, become final and unappealable, both within the Department and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Procedures for Considering Applications

§ 1.194 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding except as provided in § 1.191 of this part for confidential financial information. The provisions relating to filing, service, extensions of time, and computation of time contained in § 1.147 of this part are incorporated into and made applicable to this subpart, except that the statutory 30 day time limit on filing the application as set out in § 1.193 of this part may not be extended.

§ 1.195 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer. If agency counsel fails to timely answer or settle the application, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's allowable fees and expenses.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.196 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.197 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application, unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1.198 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1.199 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall identify specifically the information sought or the disputed issues, and shall explain specifically why the additional proceedings are necessary to resolve the issues.

(c) In the event that an evidentiary hearing is held, it shall be conducted pursuant to §§ 1.130 through 1.151 of this part, except that any hearing in a proceeding covered by § 1.183(a)(1)(ii) of this part shall be conducted pursuant to Rules 17 through 25 of the Board of Contract Appeals contained in § 24.21 of this title.

§ 1.200 Decision.

The adjudicative officer or Board of Contract Appeals shall issue an initial decision on the application as expeditiously as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. This decision also shall include, if at issue, findings on whether the position of the Department was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for

payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.201 Department review.

(a) Except with respect to a proceeding covered by § 1.183(a)(1)(ii) of this part either the applicant or agency counsel may seek review of the initial decision on the fee application, in accordance with the provisions of §§ 1.145(a) and 1.146(a) of this part or in accordance with any delegation made pursuant to § 1.189 of this part. If neither the applicant nor agency counsel seeks review, the initial decision on the fee application shall become a final decision of the Department 35 days after it is served upon the applicant. If review is taken, it will be in accord with the provisions of §§ 1.145(b) through (i) and 1.146(b) of this part, or

(b) With respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either party may seek reconsideration of the decision on the fee application in accordance with Rule 29 of the Board of Contract Appeals contained in § 24.21 of this title. In addition, either party may appeal a decision of the Board of Contract Appeals to the Court of Appeals for the Federal Circuit in accordance with 41 U.S.C. 607.

§ 1.202 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1.203 Payment of award.

An applicant seeking payment of an award shall submit to the head of the agency administering the statute involved in the proceeding a copy of the final decision of the Department granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: October 7, 2002.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 02–26002 Filed 10–10–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1470

RIN 0560–AG85

Apple Market Loss Assistance Payment Program III

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements the Apple Market Loss Assistance Payment Program III under the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) (the 2002 Act). The program will provide direct payments to apple producers to provide relief due to the low prices received for their 2000 crop.

DATES: Effective October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, Price Support Division, FSA/USDA, Stop 0512, 1400 Independence Ave., SW., Washington, DC, 20250–0512; telephone (202) 720–1919; facsimile (202) 690–3307; e-mail: *Danielle_Cooke@wdc.fsa.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that regulations needed to implement Title I of the 2002 Act, which includes this program, be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

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

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies is:

Special Apple Program—10.075

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking on the subject matter of this rule.

Environmental Assessment

The environmental impacts of this final rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has completed a final environmental assessment and concluded that the proposed action will have no significant impacts upon the human environment as documented through the completion of a Finding of No Significant Impact (FONSI). A copy of the final environmental assessment and FONSI are available for inspection and review upon request.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement these provisions be issued as soon as practical after the date of enactment of Pub. L. 107–171 and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional review delay of the effective date of a major regulation if the agency find that there is good cause to do so. These regulations affect the planting and marketing decisions of a large number of agricultural producers. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Information Collection

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program implemented under this rule are not yet fully implemented for the public to conduct business with FSA electronically. However, the application form will be available electronically through the USDA eForms Web site at *http://www.sc.egov.usda.gov* for downloading. The regulation will be available at FSA's Price Support Division internet site at *http://www.fsa.usda.gov/dafp/psd*. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available because signatures from multiple producers with shares in the apple operation's production are required. Still, full implementation of electronic submission is underway.

Background

Section 10105 of the 2002 Act directs the Secretary of Agriculture to use $94 million of funds of the Commodity Credit Corporation (CCC) to provide assistance to producers for loss of markets during the 2000 crop year.

Apples are grown in every state in the continental United States, and are grown commercially in 36 states. During the past few years a number of factors have produced a serious economic crisis that threatens the existence of apple producers throughout the United States. Twenty years of increasing world production, stagnant domestic consumption, natural disasters and low-priced juice imports have altered the blueprint for economic success in the apple industry.

This rule addresses the situation by continuing with an ongoing series of rulemaking that authorizes continuation of a program for the market loss of apples for 2000 crop production utilizing the forgoing authority. The payments provided by this rule will offset a portion of the per-bushel losses producers have incurred marketing apples in the U.S. Those eligible will receive an immediate payment to help pay operating expenses and meet other financial obligations.

Section 801 of Public Law 106–387 authorized the first Apple Market Loss Assistance Program (AMLAP I) for the 1998 and 1999 crops of apples. Regulations for that program were published on March 8, 2001 (66 FR 13839). A similar program (AMLAP II) was authorized in section 741 of Public Law 107–76, as amended by Public Law 101–117, for the 2000 crop of apples, which provided that there could be no duplicative benefits made under another act for the same losses covered by AMLAP I. Because there was no exemption from rulemaking, as provided in section 1601(c) of the 2002 Act, a proposed rule was issued on July 19, 2002 for AMLAP II (67 FR 47477), and a final rule was published on September 12, 2002 (67 FR 57719).

The 2002 Act does not contain any reference to duplicative payments. Because (1) the 2002 Act was later enacted, and there is no legislative history to indicate that Public Law 107–76, as amended by Public Law 107–117, was to be applied to subsequently-enacted statutory provisions, and (2) the funds available to make payments under AMLAP II are not sufficient to cover all of the losses incurred by producers with respect to their 2000 crop of apples, AMLAP III payments made to producers who receive AMLAP II payments are not considered duplicative payments, which are prohibited under AMLAP II.

The 2002 Act provides that producers of apples can receive a payment on a per-pound basis for 2000-crop production from a qualifying operation, up to a maximum of 5 million pounds per separate apple operation. To be eligible, apple producers must: (1) Have produced and harvested apples during the 2000 crop year, and (2) apply for cash payments during the application period for each apple operation. The 2002 Act also specified that benefits under the program would not be subject to payment or income eligibility limitations, other than those provided for in the statute. Therefore, producers do not have to be in the business of producing and marketing agricultural products at the time of application if the producer was actively producing and marketing agricultural products during the 2000 crop year. At the close of the sign-up period, a national per-pound payment rate will be determined by dividing the available $94,000,000 by the total pounds of apples from all applicants, with no operation exceeding 5 million pounds. Because funds for this program are fixed, the national average payment rate and individual payments can only be calculated after the total eligible quantity of apple production has been determined. Information provided on applications will be subject to verification by FSA. Applications to be verified will be selected randomly. Penalties for false certifications can be easily assessed and are expected to minimize such certifications. Apple operations may, during the application period, apply in person at FSA county offices during regular business hours. Alternatively, program applications may be obtained by mail, telephone, and facsimile from their designated FSA county office or obtained via the Internet. The Internet Web site is located at *http://www.fsa.usda.gov/dafp/psd/*.

List of Subjects in 7 CFR Part 1470

Apples, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 1470 is amended as follows:

PART 1470—APPLE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

1. The authority citation for part 1470 is revised to read as follows:

Authority: Sec. 811, Pub. L. 106–387, 114 Stat. 1549; Sec. 741, Pub. L. 107–76, 115 Stat. 704; Sec. 102, Pub. L. 107–117, 115 Stat. 2230; Sec. 10105, Pub. L. 107–171, 116 Stat. 489.

2. Add subpart C to part 1470 to read as follows:

Subpart C—Apple Market Loss Payment Program III

Sec.

1470.201 Applicability.
1470.202 Administration.
1470.203 Definitions.
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Subpart C—Apple Market Loss Assistance Payment Program III

§ 1470.201 Applicability.

(a) The regulations in this subpart are applicable to producers of the 2000 crop of apples. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program III in accordance with section 10105 of Public Law 107–171. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

§ 1470.202 Administration.

(a) The Apple Market Loss Assistance Payment Program III shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation of this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of the Apple Market Loss Assistance Payment Program III and do not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

§ 1470.203 Definitions.

The definitions set forth in this section shall apply to the Apple Market Loss Assistance Payment Program III as follows:

Administrator means the Administrator, Farm Service Agency.

Apple operation means any person or group of persons who, as a single unit as determined by CCC, produces and markets apples in the United States.

Application means the Apple Market Loss Assistance Payment Application.

Application period means the period beginning September 30, 2002, and ending on November 8, 2002, for producers to apply for program benefits.

CCC means the Commodity Credit Corporation.

County committee means the FSA county committee.

County office means the local FSA office.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, or a designee.

Eligible production means apples that were produced and harvested in the United States anytime during the 2000 crop year, up to a maximum of 5 million pounds per apple operation.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Payment pounds means the pounds of apples for which an operation is eligible to be paid under this subpart.

Person means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this subpart.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Verifiable production records means evidence that is used to substantiate the amount of harvested production reported and that can be verified by CCC through an independent source.

§ 1470.204 Time and method of application.

(a) Apple producers may obtain an application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the application at *http://www.sc.egov.usda.gov*.

(b) A request for benefits under this subpart must be submitted on a completed application as defined in § 1470.203. Applications should be submitted to the FSA county office serving the county where the apple operation is located but, in any case, must be received by the FSA county office by the close of business on November 8, 2002. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the apple operation will not be eligible for benefits under this program.

(c) All persons who share in the risk of an apple operation's total production must certify to the information on the application before the application will be considered complete.

(d) The apple operation requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the government is punishable by imprisonment, fines and other penalties.

§ 1470.205 Eligibility.

(a) To be eligible to receive a payment under this subpart, an apple operation must:

(1) Have produced and harvested apples in the United States at some time during the 2000 crop year;

(2) Apply for payments during the application period according to § 1470.204.

(b) Payments may be made for losses suffered by an eligible producer who is

now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution, or their duly authorized representatives, must sign the application for payment.

(c) An apple operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

(d) All payments under this subpart are subject to the availability of funds.

§ 1470.206 Proof of production.

(a) Apple operations selected for spot checks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof of the apples produced and harvested during the 2000 crop year to verify production. The documentary evidence of apple production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The 2000 crop year production must be documented using actual records.

(b) All persons involved in such apple operation producing apples during the 2000 crop year must provide any available supporting documents to assist the county FSA office in verifying the operation's apple production indicated on the Application. Examples of supporting documentation include, but are not limited to: picking, packout, and payroll records, RMA records, sales documents, copies of receipts, ledgers of income, or any other documents available to confirm the production and production history of the apple operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, apple operations will be determined ineligible for benefits.

§ 1470.207 Availability of funds.

The total available program funds shall be $94 million as provided by § 10105 of Public Law 107–171 except as determined appropriate by the Executive Vice President of CCC and authorized by law. Any discretion in such matters shall be the discretion of the Executive Vice President alone.

§ 1470.208 Applicant payment quantity.

(a) The applicants payment quantity of apples will be determined by CCC, based on the production of the 2000 crop of apples that was produced and harvested by each operation.

(b) The maximum quantity of apples for which producers are eligible for a payment under this subpart shall be 5 million pounds per operation. The Deputy Administrator shall determine what may be considered a distinct operation and that decision shall be final.

§ 1470.209 Payment rate and apple operation payment.

(a) A national per-pound payment rate will be determined after the conclusion of the application period, and shall be calculated, to the extent practicable, by dividing the $94 million available for the Apple Market Loss Assistance Payment Program III by, for all applicants taken together, the total pounds of eligible production approved for payment.

(b) Each eligible apple operation's payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

(d) A reserve may be created to handle claims but claims shall not be payable once the available funding is otherwise expended.

§ 1470.210 Offsets and withholdings.

CCC may offset or withhold any amount due CCC under this subpart in accordance with the provisions of part 1403 of this chapter.

§ 1470.211 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with part 1404 of this chapter or successor regulations as designated by the Department.

§ 1470.212 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 11 and 780 of this title.

§ 1470.213 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program.

CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC in accordance with § 1470.217(a). The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1470.214 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1470.215 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

§ 1470.216 Maintenance and inspection of records.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under this program. Destruction of the records 3 years after the date of payment shall

be at the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the apple operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

§ 1470.217 Refunds; joint and several liability.

(a) In the event of an error on an application, a failure to comply with any term, requirement, or condition for payment arising under the application, or this subpart, all improper payments shall be refunded to CCC together with interest and late payment charges as provided in part 1403 of this title.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

§ 1470.218 Violations of highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title apply to this subpart.

Signed in Washington, DC, on September 25, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–25984 Filed 10–8–02; 1:07 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR 217

[INS No. 2219–02]

RIN 1115–AG73

Passenger Data Elements for the Visa Waiver Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule serves to further implement the automated entry and exit control system mandated by section 217(h) and other provisions of the Immigration and Nationality Act (Act) by specifying those passenger data elements that must be electronically transmitted to the Immigration and Naturalization Service (Service) by carries seeking to transport Visa Waiver Program (VWP) passengers into and out of the United States on or after publication of this rule. This rule will also ensure that legitimate VWP travel is not disrupted. This rule is necessary for the proper identification and monitoring of VWP aliens.

DATES: *Effective date:* October 11, 2002. *Comment date:* Written comments must be submitted on or before November 12, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2219–02 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov.* Comments submitted electronically must include the INS No. 2219–02 in the subject heading to ensure that the comments can be transmitted electronically to the appropriate program office. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

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

SUPPLEMENTARY INFORMATION:

Background

Congress mandated that, by 2005, the U.S. Department of Justice must complete deployment at all ports-of-entry (POE) of an entry-exit system that integrates the available alien arrival and departure data that exists in the systems of the Department and the U.S. Department of State (DOS). The Immigration and Naturalization Service Data Management Improvement Act of 2000, Public Law 106–215, 114 Stat. 337 (2000), codified, as amended, at 8 U.S.C. 1365a. This system also must include the arrival and departure for any visitor who transits through the air and seaports and is admitted under the Visa Waiver Program.

What Is the Visa Waiver Program (VWP)?

The Visa Waiver Program (VWP) permits nationals from participating countries to apply for admission to the United States for a duration of 90 days or fewer, as nonimmigrant visitors for business or pleasure, without first obtaining a nonimmigrant visa, provided that all other statutory and regulatory requirements are met. If arriving by air or sea, a VWP traveler must arrive on a carrier that signed an agreement (signatory carrier) with the Service guaranteeing that it will transport its VWP passengers deemed inadmissible or deportable out of the United States at no expense to the United States government. *See* 8 CFR part 217. The VWP has been expanded and made permanent. This rule implements one of the steps to making the VWP system permanent.

How Does the Permanent VWP Change the Pilot Program?

The Visa Waiver Permanent Program Act (VWPPA), Public Law 106–396, 114 Stat. 1637 (Oct. 30, 2000), converted the Vias Waiver Pilot Program which was first launched in 1988 into a permanent program with several modifications. Congress modified the pilot program in order to safeguard the United States' law enforcement and security interests and to reduce the ability of inadmissible aliens to enter the United States under the program. *See* H.R. Rep. No. 106–564, at 7 (2000); *see* also H.R. Rep. No. 106–1048, p. unavail. (2001). Among other modifications, the VWPPA required the Attorney General to develop and implement, on or before October 1, 2001, at automated entry and exit control system to collect the arrival and departure record for each VWP passenger admitted at a U.S. air or sea port-of-entry (POE). The automated control system was to be based, to the maximum extent practicable, on passenger data collected and electronically transmitted by each carrier that has an agreement with the Service to transport aliens to the United States. The Service has worked with and informed the Air Transport Association (ATA), International Air Transport Association (IATA), International Council of Cruise Lines (ICCL), and other interested stakeholders of the development of the electronic arrival passenger data transmittal system. Currently, over 140 carriers submit electronic arrival passenger information. Of those carriers who do not currently have this system in place, most are fully

aware of both the arrival and departure requirements of the system and the statutory deadline being implemented in this rule. The departure requirements are the same as the current APIS arrival information.

Upon publication of this rule, travelers will not be admitted to the United States under the VWP unless they arrive on carriers that are electronically transmitting to the automated entry and exit control system, VWP passenger data that is sufficient to carry out the purpose of section 217(h) of the Act including the calculation of the percentage of nationals from each program country who received a waiver after arriving at a U.S. air or sea POE and for whom no record of departure exists.

Why Is the Development and Implementatin of an Automated Entry and Exit Control System Important for Protecting the Integrity of the VWP?

Controlling our borders requires collecting information regarding the movement of aliens in, through, and out of the United States. Such information allows the U.S. Government to make informed policy and management decisions, to identify and take action against those who violate the law, to locate individual aliens of interest to law enforcement entities, to track the immigration status of individual aliens so that only those eligible receive immigration benefits, and to keep out terrorists and other malafides. To meet these objectives Congress has mandated that the Service create an electronic Entry-Exit System. Developing an effective entry and exit control system to monitor VWP admissions and departures is a significant step in building this system. Additionally, advance manifests provide the Service with an opportunity to more thoroughly analyze information regarding persons from countries participating in the Visa Waiver program, who are seeking to enter into or depart from the United States upon arrival under the VWP and to identify individuals who may be inadmissible to the United States or otherwise of interest to the Service or another law enforcement agency. Submission of early advance passenger information also facilitates the ability of the Service to notify other law enforcement authorities that an arriving passenger on board may present a potential safety or security risk. Furthermore, the development of an automated entry and exit control system will allow the Service to fulfill the reporting requirements mandated by sectin 217(h)(1)(C) of the Act.

For Which Passengers Must the Requested Information Be Transmitted Electronically on or After the Date of Publication of This Rule?

Carriers must electronically transmit passenger arrival data in accordance with this regulation for every applicant for admission under the VWP that the carrier transports by air or sea to a U.S. port-of-entry on or after the date of publication of this rule. Carriers must electronically transmit passenger departure data in accordance with this regulation for every passenger who was admitted to the United States under the VWP that the carrier transports by air or sea from the United States to a foreign port or place on or after the date of publication of this rule. Carriers are only required to transmit departure passenger information for those departing VWP passengers who were admitted under the VWP after arriving at a port-of-entry via sea or air.

What Are the Timeframes for the Electronic Transmission of the Required VWP Passenger Information?

This rule provides final implementation for commercial carriers to submit the required VWP passenger arrival data to the Service electronically no later than 15 minutes after the flight or vessel has departed from the last foreign port or place. This is the current transmission requirement for air carriers submitting electronic arrival information under the APIS program and this requirement will also conform to the U.S. Customs Service's rule published at 66 FR 67482 (Dec. 31, 2001). This will allow the Service to check the requested information against appropriate law enforcement and security databases prior to the passenger's arrival. Carriers transporting passengers who were admitted uner the VWP to points outside of the United States must electronically submit the required pasenger departure information to the Service no later than 15 minutes before the flight or vessel departs from the United States. If additional passengers board after the original manifest has been submitted, or if passengers exit after boarding but prior to departure, carriers will also be required to submit amended or updated passenger manifest information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States.

What Passenger Information Must Carriers Submit for Arriving and Departing VWP Passengers?

This regulation specifically provides that the following information must be electronically transmitted for each passenger seeking admission under the VWP or seeking to depart after having been admitted under the VWP:

Passenger information;

Last Name;
First Name;
Middle name or middle initial;
Date of birth;
Gender or sex (F—Female; M—Male);
Nationality;
Document number;
Country of document issuance;
Document type (*e.g.,* P=Passport, V=Visa, A=Alien registration card);

Flight or vessel information (Advance Passenger Information (API) header message)

Airline International Air Transport Association (IATA) carried code or vessel name;

Airline flight number, or tail number for private or Corporate aircraft;

Date and time of scheduled flight or vessel arrival into the United States;

Date and time of scheduled flight or vessel departure from the United States;

Port of arrival;
Port of departure;
Contact name and number; and
Traveler status (*e.g.,* P=Passenger, C=Crewmember).

For each arriving and departing VWP passenger, carriers will submit electronically only data elements that most carriers are already transmitting electronically under the Advanced Passenger Information System (APIS) Program administered jointly by the Service and the United States Customs Service and/or pursuant to section 115 of the Aviation and Transportation Security Act, Public Law 107–71. Accordingly carriers that electronically transmit complete and accurate passenger information in accordance with either the memorandum of understanding that governs the APIS program or section 115 of the Aviation Security Act will be in compliance with the passenger arrival information requirements of this regulation. In this light, it must be noted that effectively the only new requirement being implemented on current VWP carriers by promulgating this rule is that of submitting the prescribed data elements electronically prior to department as well as arrival.

How Is the Required Information To Be Transmitted?

The required data for each VWP passenger must be transmitted to the Service via the U.S. Customs Data Center, U.S. Customs Service Headquarters, by means of an electronic data interchange system that is approved by the U.S. Customs Service

in conjunction with the Service. Carriers that are not currently transmitting data via the U.S. Customs Data Center must contact the U.S. Customs Data Center, U.S. Customs Service Headquarters for technical guidance. All of the APIS data is currently transmitted to a centralized data base known as the Interagency Border Inspection System (IBIS), which is jointly operated and accessible by the Service and the U.S. Customs Service. IBIS allows all of the carriers to submit the electronic arrival and passenger information to one centralized location that meets both the service and the USCS's requirements.

What Are the Penalties for Failure to Electronically Transmit the Required VWP Passenger Data Information?

There are no fines provided for by section 217 of the Act; however, in cases where the carrier inexcusably fails to transmit an electronic record in accordance with this rule and an alien arrives without the necessary documentation needed for admission in the absence of the VWP, the Service may impose fines under section 273 of the Act. Prior to the Service issuing any fines, the Service will evaluate carriers on a Good Faith Effort, which will be based upon the following criteria: (1) The carrier notifies the Service of any technical or other issues in submitting the departure information; (2) the carrier has a backorder of the purchase of additional equipment, such as document readers; (3) the carrier is using an alternative temporary method such as, the U.S. Customs Service e-main account, in lieu of the carrier's reservation system; (4) the carrier is utilizing a third party vendor as a temporary solution in lieu of the carrier's reservation system to transmit departure manifests; or (5) the totality of circumstances of each carrier to comply with this regulation. Additionally, the Service may seek to cancel the carrier's VWP contract for continued infractions that could include untimely as well as incomplete data. Finally, it should be noted that the Service may refuse admission under the VWP to aliens for whom the carrier has not electronically transmitted the required data elements.

Will Carriers Who Submit VWP Passenger Data Elements in the Required Electronic Format Remain Responsible for the Submission of Passenger Manifests as Well?

Yes. The obligation of carriers to submit information on VWP passengers in support of the automated entry exit control system mandated by section 217(h) of the Act is separate from a carrier's obligation to submit arrival and departure manifests for all persons transported on commercial aircraft or vessels pursuant to section 231 of the Act. However, section 402 of the Enhanced Border Security Act of 2002 recently amended section 231 of the Act by mandating, among other things, that the manifest information required under section 231 must be transmitted electronically not later than January 1, 2003. The Service plans to publish a regulation implementing the manifest provisions of Public Law 107–173, including the electronic transmission requirement, shortly. It is the goal of the Service to develop a single procedure for the electronic transmission of passenger and crew arrival and departure information that will satisfy the requirements of both sections 217 and 231 of the Act.

Good Cause Exception

Implementation of this rule as an interim rule with provision for post-promulgation public comments is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(B). In accordance with section 217(h)(1)(B)(1) of the act, effective on the date of publication of this rule, no waiver may be provided under section 217 of the Act to an alien arriving by air or sea on a carrier unless the carrier is electronically transmitting passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out his obligations under 217(h) of the Act. In addition, this regulation will provide the Service with valuable advanced information regarding persons who are arriving and departing the United States from air and sea ports-of-entry. Additionally, this information will allow the Service to better able to identify and monitor individuals who violate their immigration status. The electronic arrival and departure manifest will also enable the Service to determine overstay rates by Visa Waiver Countries. For these reasons, promulgation of this rule as a proposed rule would be contrary to the public interest.

Regulatory Flexibility Act

Because this regulation is not subject to the requirements of the notice and comment provisions of the Administrative Procedure Act for good cause noted above it is likewise not subject to the provisions of the Regulatory Flexibility Act. Should it become necessary, a regulatory flexibility analysis will be provided in connection with the promulgation of a final rule.

Executive Order 12866

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

All of the air carriers currently transmnit arrival information electronically, however, it is unknown what the cost is to the airlines to reprogram their systems for departure manifests. However, a majority of carriers already collect passenger information during the passenger's arrival check-in process and this information is maintained in the reservation system. In addition, the ATA and IATA have not been able to provide cost estimates to the Service but expect most of the costs to be associated with reprogramming the carrier's existing reservation system to meet the departure requirement. Other costs may also include the purchase of additional document readers to scan travel documents. The price range of a document reader is approximately $900.00 to $2,000.00.

There will be additional staff hours if the departure manifest requirements are entered manually, however, most airlines already have automated systems, especially for the arrival APIS process. The U.S. Customs system also provides an e-mail account for carriers with no systems and is developing a Web account.

For carriers without reservation systems or APIS access, the USCS has developed an e-m,ail account to transmit and is also in the process of developing web APIS to allow carriers to transmit the electronic arrival and departure manifests. This option provides minimum costs to carriers who wish to utilize the e-mail or Web access. Third party vendors are also available to submit an electronic arrival or department on the carrier's behalf.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act (PRA)

This interim rule requires that carriers collect and electronically transmit certain arrival and departure information concerning Visa Waiver Program passengers to the Service. This requirement is considered an information collection under the Paperwork Reduction Act. Accordingly, the Service has submitted an information collection request to the Office of Management and Budget (OMB) for emergency review and clearance in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

All comments and suggestions, or questions regarding additional information, should be directed to the Immigration and Naturalization Service, Regulations and Forms Services Division, 425 I Street NW., Room 4034, Washington, DC 20536; Attention: Richard A Sloan, Direction, (202) 514–3291.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Any comments on the information collection must be submitted on or before December 10, 2002. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* Visa Waiver Program Passenger Arrival and Departure Data.

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Business or Individuals. Section 217(h) of the Immigration and Nationality Act (Pub. L. 106–396), requires that certain passenger data elements must be collected and electronically transmitted to the Immigration and Naturalization Service by carriers seeking to transport VWP passengers into and out of the United States on or after October 1, 2002. The information collection is necessary to ensure that the Service receives accurate passenger arrival and departure information in a timely manner.

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

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 36,500 burden hours. This collection is OMB No. 1115–0255.

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

List of Subjects in 8 CFR Part 217

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

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PROGRAM

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

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

2. Section 217.7 is added as follows:

§ 217.7 Electronic data transmission requirement.

(a) *No waivers granted.* An alien who applies for admission under the provisions of the Visa Waiver Program pursuant to section 217 of the Act after arriving via sea or air at a port of entry will not be granted a waiver of the visa requirement of section 212(a)(7)(B)(i)(II) of the Act unless the carrier transporting such an alien is electronically transmitting the data required in paragraphs (b) and (c) of this section.

(b)(1) *Passenger arrival data.* Each carrier shall transmit the data elements set forth in paragraph (c) of this section for each passenger transported by the carrier under section 217 of the Act. The information must be transmitted to the Service via the U.S. Customs Data Center, U.S. Customs Service Headquarters, by means of an electronic data interchange system that is approved by the U.S. Customs Service in conjunction with the Service. The Service must receive the information for each passenger no later than 15 minutes after the flight or the vessel has departed from the last foreign port or place.

(2) *Passenger departure data.* Each carrier shall transmit the data elements set forth in paragraph (c) of this section for each passenger departing the United States aboard the carrier after having been admitted under section 217 of the act. The information must be transmitted to the Service via the U.S. Customs Data Center, U.S. Customs Service Headquarters by means of an electronic data interchange system that is approved by the U.S. Customs Service in conjunction with the Service. The Service must receive the information for each passenger no later than 15 minutes before the flight or vessel has departed from the United States. If additional passengers board after the original manifest has been submitted, or if passengers exit after boarding but prior to departure, carriers will also be required to submit amended or updated passenger manifest information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States.

(c) *Required passenger and flight or vessel data elements.*

(1) Last name.
(2) First name.
(3) Middle name or middle initial.
(4) Date of birth.
(5) Gender or sex (F=Female; M=Male).
(6) Nationality.
(7) Document number.
(8) Country of document issuance.
(9) Document type (*e.g.,* P=Passport, V=Visa, A=Alien registration card).
(10) Airline International Air Transport Association (IATA) carrier code or vessel name.
(11) Airline flight number, or tail number for private or corporate aircraft;
(12) Date and time of scheduled flight or vessel arrival into the United States.
(13) Date and time of scheduled flight or vessel departure from the United States.
(14) Port of arrival.
(15) Port of departure.
(16) Contact name and number.
(17) Traveler status (*e.g.,* P=Passenger, C=Crewmember).

Dated: October 7, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–26027 Filed 10–10–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM231; Special Conditions No. 25–216–SC]

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 777–200 series airplanes. These airplanes, modified by Flight Structures Inc., will have a novel or unusual design feature associated with an overhead flightcrew rest compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 3, 2002. Comments must be received on or before November 12, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM231, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM231. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions, and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although this action is in the form of final special conditions, and for the reasons stated above, is not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

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

Background

On September 17, 2001, Flight Structures Inc., 4407 172 Street NE., Arlington, Washington, 98223, applied for a supplemental type certificate (STC) for installation of a Door 1 overhead flightcrew rest (OFCR) compartment in Boeing Model 777–200 series airplanes. The certification of the Alitalia Model 777–200 overhead crew rest is currently scheduled for October 9, 2002. The Boeing Model 777–200 series airplanes are large twin engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OFCR compartment, adjacent to Door 1, is located in the overhead above the main passenger cabin and will include a maximum of two private berths, two seats, and a lavatory. Occupancy of the OFCR compartment will be limited to a maximum of four occupants.

The OFCR will be accessed from the main deck by stairs. In addition, an emergency hatch that opens directly into the main passenger cabin area will be provided for the compartment. A smoke detection system, an oxygen system, and occupant amenities will also be provided. This compartment will only be occupied in flight, not during taxi, takeoff, or landing.

Compliance with these proposed special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that the OFCR installation creates a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g), for the overhead area compartment, as well as any other airplane compartments whose decompression characteristics are affected by the installation of a crew rest compartment. Compliance with § 25.831 must be

demonstrated for all phases of flight where occupants will be present.

The FAA considers OFCR compartment smoke or fire detection and fire suppression systems (including airflow management features that prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) complex with respect to paragraph 6d of Advisory Circular (AC) 25.1309–1A, ''System Design and Analysis.'' In addition, the FAA considers failure of the crew rest compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with a crew rest fire to be a catastrophic event. Based on the ''Depth of Analysis Flowchart'' shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A). In addition, it should be noted that flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the crew rest area.

The requirements to enable crewmember(s) quick entry to the crew rest compartment and to locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the crew rest area. The FAA notes that the crew rest area is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

The addition of galley equipment or a kitchenette incorporating a cook top or other heat source, or a stowage compartment greater than or equal to 25 ft^3, into the crew rest compartment may require further special conditions to be considered.

Amendment 25–38 modified the requirements of § 25.1439(a) by adding, ''In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.'' The requirements of § 25.1439(a) apply to the OFCR compartment, which is an isolated separate compartment. However, the PBE requirements for isolated separate compartments of § 25.1439(a) are not appropriate because the OFCR compartment is novel and unusual in terms of the number of occupants. In 1976 when amendment 25–38 was adopted, small galleys were the only isolated compartments that had been certificated. A maximum of two crewmembers were expected to occupy those galleys. Special Condition No. 9 addresses crew rest compartments which can accommodate up to four crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time amendment 25–38 was adopted. It is not appropriate for all occupants to don PBE in the event of a fire because the first action should be to leave the confined space unless the occupant is fighting the fire. Taking the time to don the PBE would prolong the time for the emergency evacuation of the occupants and possibly interfere with efforts to extinguish the fire.

Operational Evaluations and Approval

These special conditions outline requirements for OFCR compartment design approvals (*i.e.* type design changes and supplemental type certificates) administered by the FAA's Aircraft Certification Service. Prior to operational use of an OFCR compartment, the FAA's Flight Standards Service must evaluate and approve the ''basic suitability'' of the OFCR compartment for crew occupation. Additionally, if an operator wishes to utilize a flightcrew rest area as ''sleeping quarters,'' the crew rest area must undergo an additional evaluation and approval (Reference §§ 121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the requirements of part 121 or part 135 have been demonstrated.

In order to obtain an operational evaluation, the type design holder must contact the Aircraft Evaluation Group (AEG) in the Flight Standards Service and request a ''basic suitability'' evaluation or a ''sleeping quarters'' evaluation of their crew rest. The results of these evaluations must be documented in a 777 Flight Standardization Board (FSB) Report Appendix. Individual operators may then reference these standardized evaluations in discussions with their FAA Principal Operating Inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OFCR compartment configuration that effect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related training shall require a re-evaluation and approval. The applicant for a crew rest design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest evaluation is required.

Procedures must be developed to assure that a crewmember entering the OFCR through the vestibule to fight a fire will examine the vestibule and the lavatory areas for the source of the fire prior to entering the remaining areas of the crew rest compartment. These procedures are intended to assure that the source of the fire is not between the crewmember and the primary exit.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Flight Structures Inc., must show that the Boeing Model 777–200, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777–200 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The U.S. type certification bases for the Boeing Model 777–200 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777–200 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

While the installation of a crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been evaluated that are installed within the main passenger compartment area of the Boeing Model 777–200 and Model 777–300 series airplanes and the overhead area of the passenger compartment of the 777–200. Other crew rest compartments have been installed below the passenger cabin area, adjacent to the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 airplane. The interfaces of the modification are evaluated within the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide all the requirements for crew rest compartments within the overhead area of the passenger compartment. Further, these special conditions do not negate the need to address other applicable part 25 regulations.

Due to the novel or unusual features associated with the installation of this crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Prior Comment

During a previous publication of the substantially identical special conditions a comment was received after the comment period had closed. The commenter thought requiring placards prohibiting storage of ''hazardous quantities of flammable fluids'' was unnecessary and a duplication of International Air Transport Association (IATA) Dangerous Goods Regulations, specially, ''Provisions for Dangerous Goods Carried by Passengers or Crew.'' The FAA concurs with the commenter that the placard requirement is similar to the IATA requirement, however based on several factors the FAA finds that the duplication is warranted and consistent with maintaining an equivalent level of safety. While flammable fluid placards are not required in the passenger cabin, it is also an occupied area with a high degree of monitoring by passengers and crew. By contrast the crew rest may go unoccupied for long periods of time. The fire protection methods employed for this type of remote area are predicated on minimization of flammable materials.

Applicability

As discussed above, these special conditions are applicable to the Model 777–200 series airplanes. Should Flight Structures Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate Data Sheet No. T00001SE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–200 series airplanes, modified by Flight Structures Inc., with an overhead flightcrew rest (OFCR) compartment.

1. Occupancy of the OFCR compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the OFCR compartment. The maximum occupancy is four in the OFCR compartment.

(a) There must be appropriate placards, inside and outside each entrance to the OFCR compartment to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the OFCR compartment,

(3) That occupancy is prohibited during taxi, take-off and landing,

(4) That smoking is prohibited in the OFCR compartment, and

(5) That hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from the OFCR compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the OFCR compartment.

(c) There must be a means to prevent passengers from entering the OFCR compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the OFCR compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the OFCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the OFCR compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the OFCR compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of the two evacuation routes should not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (*i.e.* main aisle, cross aisle or galley complex) that would impede egress of the OFCR compartment. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the OFCR area) from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation path is over an area where there are passenger seats, a maximum of one row of passengers may be displaced from their seats temporarily during the evacuation

process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures and the emergency evacuation of incapacitated occupant procedures must be established and transmitted to the operator for incorporation into their training programs and appropriate operational manuals. If the evacuation path is over an area where there are passenger seats, a maximum of one row of passengers may be displaced from their seats temporarily during the evacuation process.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the OFCR compartment to the passenger cabin floor.

(a) The evacuation must be demonstrated for all evacuation routes. A flight crewmember or other crewmember (a total of one assistant within the OFCR area) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OFCR compartment, or to the first landing, whichever is lower.

(b) Procedures for the evacuation of an incapacitated person from the OFCR compartment must be established.

4. The following signs and placards must be provided in the OFCR compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i), except that a sign of reduced background area with no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.* white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the aircraft's main power system, or of the normal OFCR compartment lighting system, for emergency illumination to be automatically provided for the crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the OFCR compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between crewmembers on the flightdeck and occupants of the OFCR compartment. There must also be two-way communications between the occupants of the OFCR compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flightdeck and at each pair of required floor level emergency exits to alert occupants of the OFCR compartment of an emergency situation. Use of a public address or crew interphone system would be acceptable, providing an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), or the disconnection or failure of all power sources dependent on their continued operation (*i.e.* engine and APU), for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the OFCR compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.* sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of a small isolated galley, the following equipment must be provided in the OFCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

(b) Two protective breathing equipment (PBE) devices, approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for fire fighting or one PBE for each hand-held fire extinguisher, whichever is greater; and

(c) One flashlight.

10. A smoke or fire detection system (or systems) must be provided that monitors each area within the OFCR compartment including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the OFCR compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The OFCR compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for fire fighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the fire fighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the OFCR compartment from entering any other compartment

occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the crew rest compartment and, if applicable, when accessing the crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers after opening the OFCR access door must dissipate within five minutes after closing the access to the OFCR compartment. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used in lieu of manual fire fighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew; the system must have adequate capacity to suppress any fire occurring in the OFCR compartment, considering the fire threat, volume of the compartment and the ventilation rate.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the OFCR compartment. The system must provide an aural and visual warning to warn the occupants of the crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously until a reset push button in the OFCR compartment is depressed.

14. The following requirements apply to OFCR compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the OFCR compartment that accompanies automatic presentation of supplemental oxygen masks. A minimum of two supplemental oxygen masks are required in each section whether or not seats or berths are installed in each section. There must also be a means by which the oxygen masks can be manually deployed from the flightdeck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OFCR compartment into small sections. The placard must require that the curtain(s) remain open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each OFCR section created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Condition No. 10).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the OFCR compartment, and must meet the requirements of § 25.812(b)(1)(i).

(e) Sections within an OFCR compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit. An exit sign with reduced background area as described in Special Condition No. 4(a) may be used to meet this requirement.

(f) For each smaller section within the main OFCR compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Two-way voice communication (Special Condition No. 6),

(4) Emergency alarm system (Special Condition No. 7),

(5) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8),

(6) Emergency fire fighting and protective equipment (Special Condition No. 9), and

(7) Smoke or fire detection system (Special Condition No. 10).

15. The requirements of two-way voice communication with the flightdeck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a) as amended by Amendment 25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

Issued in Renton, Washington, on October 3, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25929 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 47

RIN 1219–AA47

Hazard Communication (HazCom)

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

ACTION: Final rule; correction.

SUMMARY: This document corrects errors that appeared in MSHA's preamble and final rule for Hazard Communication.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 202–693–9440.

SUPPLEMENTARY INFORMATION: On June 21, 2002, we (MSHA) published, in the **Federal Register** (67 FR 42314), our final rule on Hazard Communication for the mining industry. This document contained errors and omissions that must be corrected; therefore, the document is corrected as follows:

1. On page 42335, third column, second paragraph, ninth line, correct ''provides valuable,'' to read ''provides valuable guidance,''.

2. On page 42343, first column, first paragraph after the heading *3. Section 47.2 Label Contents,* tenth line, correct ''The label must also contain'' to read ''For customers, the label must also contain''.

3. On page 42343, third column, first paragraph, seventeenth line, correct ''the name, address, and telephone number of the operator or other responsible party be included in the contents of the label'' to read ''the name and address of the operator or another responsible party be included in the contents of the product's label for customers.''.

4. On page 42345, second column, sixth paragraph, eighth line, correct ''Although you do not have to label it'' to read ''Although you do not have to label it while on mine property''.

5. On page 42365, first column, second paragraph, fifteenth line, correct ''§ 47.32'' to read ''§ 47.42''.

6. On page 42373, second column, first paragraph, third line, correct ''4015 Wilson Boulevard, Arlington, VA 22203'' to read ''1100 Wilson Boulevard, Arlington, VA 22209''.

7. On page 42375, first column, second paragraph, fourteenth line, correct ''to about $370'' to read ''to about $390''.

8. On page 42379, third column, second paragraph, eighth line, correct ''At concentrations between 2–10%,'' to read ''At concentrations between 2–10%,''.

§ 47.42 [Corrected]

9. On page 42385, second column, paragraph (d) of § 47.42, correct ''(d) Include the name and address'' to read ''(d) Include on labels for customers, the name and address''.

§ 47.92 [Corrected]

10. On page 42388, Table 47.92—Hazardous Chemicals Exempt from Labeling, first column, first entry after the heading *Exemption,* second line, correct ''presticide'' to read ''pesticide''.

Dated: October 4, 2002.

John R. Caylor,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 02–25928 Filed 10–10–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–091]

RIN 2115–AE47

Drawbridge Operation Regulations; Miami River, Miami-Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule; request for comments.

SUMMARY: The Coast Guard is temporarily changing the operating regulations of all the drawbridges on the Miami River from the mouth of the River to, and including, the NW 27th Avenue Bridge, mile 3.7, Miami, Florida, to allow tugs and tugs with tows to pass through these bridges, except the new Second Avenue Bridge, upon proper signal to the bridge tender at all times, including during the normal rush hour traffic curfew periods. This rule allows the new Second Avenue Bridge to keep a single leaf in the horizontal (down) position for up to nine hours each day except Wednesdays, beginning three hours after one of the two daily high tides. This rule is intended to facilitate construction of the new Second Avenue Bridge and provide increased relief for tugs and tugs with tows on the Miami River. The construction is scheduled to be accomplished in two phases, the first running from October 7, 2002 to November 18, 2002. The second is scheduled from approximately December 16, 2002 to January 27, 2003. This temporary rule covers the entire period from October 7, 2002 to January 27, 2003, but leaves open the potential for the Coast Guard to change this rule based on comments received.

DATES: This rule is effective from 12:01 a.m. on October 7, 2002 until 11:59 p.m. on January 27, 2003. Comments must be received by November 18, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, Room 432, 909 SE 1st Ave., Miami, FL 33131–3050.

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 [CGD07–02–091] and are available for inspection or copying at the Seventh Coast Guard District Bridge Branch, located at the above address, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, telephone 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–091], indicate the specific section of this document to which each comment applies, and give the reason for each comment. The Coast Guard is interested in comments that, among other issues, detail specific economic impact to stakeholders on the Miami River. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Regulatory Information

On August 6, 2002 we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Miami River, Miami-Dade County, Florida'' in the **Federal Register** (67 FR 50842). We received twenty-three letters commenting on the proposed rule. A public meeting was requested; none was held for reasons discussed later in this preamble.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The Coast Guard is making this rule effective on October 7, 2002 because the contractor will solicit input weekly from the tugboat companies responsible for moving large commercial vessels on the Miami River to develop a coordinated construction schedule to minimize disruption to the large vessel and construction schedules of the Miami River and Second Avenue Bridge, respectively. Allowing the rule to go into effect in less than 30 days will allow construction to begin closer to the scheduled start, thus expediting the completion of the Second Avenue Bridge and elimination of obstructions to navigation due to its construction.

Background and Purpose

On August 6, 2002 we published a Notice of Proposed Rulemaking (NPRM) outlining a request from the Florida Department of Transportation (FDOT)

(the bridge owner) and Gilbert Southern Corp. (GSC) (the bridge contractor) to keep a single-leaf of the Second Avenue Bridge in the closed position for periods of time not to exceed eighteen hours daily to facilitate installation of the two bridge leaves.

At an August 21, 2002 meeting, the Coast Guard briefed the bridge owner and contractor of the negative tone of the comments to the proposed rule the Coast Guard had in the docket at that point. Based on this meeting, the owner and contractor met with key stakeholders and requested the Coast Guard change the window originally requested, allowing a single leaf opening of the Second Avenue Bridge for not more than nine hours per day, three hours after one of the two daily high tides. This temporary rule allows this each day except Wednesdays, because that is the busiest day for shipping on the Miami River. The temporary rule better provides for the reasonable needs of navigation while still allowing installation of the two leaves, and thus completion of the bridge, to progress. Additionally, because the comments indicated that large ship movements on the Miami River can only occur on the high tide, the temporary rule reduces the negative economic impact to commercial users of the Miami River by allowing use of one, and part of the second, daily high tide on the River to facilitate large vessel movement. This temporary rule is an effort to meet the reasonable needs of navigation and provide for the construction of the Second Avenue Bridge, which will ultimately improve the navigability of the Miami River.

Discussion of Comments

The Coast Guard received twenty-one comments on the proposed rule; four were in support of it, while seventeen were opposed to it.

Supporting Comments

Comments in support of the proposed rule were by submitted FDOT, the City of Miami City Manager's Office, the Miami-Dade County Public Works Department, and Miami-Dade County Manager's Office. The comment submitted by FDOT listed eight coordination meetings with various Miami River interests, along with the general attendees and discussion topics at the meetings to show the level of attempted coordination between FDOT and various Miami River stakeholders. The Coast Guard acknowledges these comments, but for reasons stated in the ''Background and Purpose'' section, has modified the original proposed rule and has implemented this temporary rule.

The proposed rule also had a provision temporarily eliminating the operating regulations that allowed Miami River bridges to not open during morning and afternoon vehicle traffic rush hours. Four comments were also in favor of this aspect of the proposed rule and requested it be made permanent. Thus, the Coast Guard kept this provision of the temporary rule. However, the permanency of this elimination is beyond the scope of this rulemaking.

Opposing Comments

Seventeen comments were opposed to the provision of the proposed rule that would allow the bridge owner and contractor to keep a single-span of the Second Avenue Bridge in the horizontal (down) position daily from 4 a.m. to 10 p.m. The Coast Guard changed this provision in this temporary rule as detailed throughout this document.

Eleven comments were in general opposition to allowing a single leaf of the bridge to be in the horizontal (down) position for a maximum of eighteen-hour timeframe. Some comments cited the general negative economic impact that allowing a single leaf of the Second Avenue Bridge to remain in the horizontal (down) position would have on the Miami River cargo industry (two comments) and indirect negative impact on the commenters' businesses because they rely on the larger vessel traffic flow for their businesses (seven comments). One comment asserted that shipping must get ''the priority use'' of rivers. One comment suggested that the obstruction of the Miami River due to installation of the Second Avenue Bridge leafs be limited to eight hours and any time beyond those eight hours where the Miami River is obstructed be mitigated by a financial subsidy from the bridge contractor to companies negatively impacted. The Coast Guard has no authority to require a subsidy of this type. Thus, it was not incorporated into the temporary rule.

Nine comments cited the negative economic impact that the proposed rule would likely have on the Miami River cargo shipping industry, which uses large vessels to ship goods.

The Coast Guard has considered these comments, and has changed the proposed rule based in part on them, in part on the comments from the bridge owner and contractor requesting to halve the maximum eighteen hour window reflected in the NPRM (*see* ''Background and Purpose''), and in part on other more detailed comments discussed below regarding the proposed rule. This temporary rule allows the Second Avenue Bridge to have single leaf openings six days a week for a maximum of nine hours per day, starting three hours after one of the two daily high tides. The rule requires both leaves of the Second Avenue Bridge to open on Wednesdays because Wednesdays are the busiest day for shipping on the Miami River. These changes directly address the comments about the economic impacts of the rule and will insure that the reasonable needs of navigation are met.

Construction Methodology

Two comments commented on the construction method of the Second Avenue Bridge, declaring that construction of the bridge in the horizontal position is unreasonable and that construction of the bridge must be done in the upright position. In June 2001, July 2002, and August 2002 representatives from the Coast Guard Seventh District Bridge Branch met with representatives of the bridge owner and contractor. The bridge owner and contractor explained the construction methodology behind the bridge and that it could not be practically constructed with leaves in the vertical (upright) position due to the sheer size of each bridge leaf and due to safety concerns for bridge construction workers. Miami River vessel traffic would be impacted for an equal amount of time if the bridge leaves were installed in the vertical (up) position as it would in the horizontal (down) position because of the safety hazard over the waterway that would exist while installing the leaves.

Construction Methodology

Two comments commented on the construction method of the Second Avenue Bridge, declaring that construction of the bridge in the horizontal position is unreasonable and that construction of the bridge must be done in the upright position. In June 2001, July 2002, and August 2002 representatives from the Coast Guard Seventh District Bridge Branch met with representatives of the bridge owner and contractor. The bridge owner and contractor explained the construction methodology behind the bridge and that it could not be practically constructed with leaves in the vertical (upright) position due to the sheer size of each bridge leaf and due to safety concerns for bridge construction workers. The Coast Guard notes that Miami River vessel traffic would be impacted for an equal amount of time if the bridge leaves were installed in the vertical (up) position as it would in the horizontal (down) position because of the safety hazard that would exist over the waterway requiring the limitation of the

River's horizontal clearance while installing the leaves. Two commenters requested a public meeting to provide a forum to review the assertion that the Second Avenue Bridge could not be constructed in the vertical (up) position because of the bridge's size and design. Because safety hazards would still exist on the waterway requiring a similar reduction in the horizontal clearance of the Miami River, the Coast Guard sees no new issues arising from a public meeting on this topic, so none was held.

The Proposed Rule Will Shut Down Shipping on the Miami River

Seven comments were opposed to the proposed rule's six-hour time window that the Second Avenue Bridge be open to all traffic because it was too small of a period to have unimpeded vessel traffic flow on the Miami River. Five comments declared that the proposed rule would ''basically shut down the river'' to all vessel traffic for the duration the rule would be in effect. Two comments cited the tug bottleneck that the proposed rule would create because the six-hour window would force all larger vessel traffic into that window for transiting the Miami River, and traffic would necessarily be delayed. The Coast Guard considered the impact of the proposed rule on the Miami River vessel traffic, noting that large vessel traffic flow is one way on the River due to the limited available width. Two comments mention that the period described in the proposed rule is the ''peak season'' on the Miami River, and thus would have ''devastating'' effects on the commerce that runs on the Miami River. One comment discussed Miami River tidal patterns and that at best there would be one high tide and one low tide during the six-hour window from 10 p.m. and 4 a.m. every six days, and large commercial vessel traffic is restricted to movements corresponding with the high tides. The changes in this temporary rule creates a fifteen-hour window that should reduce the traffic concerns that resulted from the limited six-hour window of unimpeded River navigability contained in the original proposed rule.

One of the comments from a marine terminal on the River asserted that the proposed rule would create an additional $2K to $5K expense per vessel. This terminal had over 100 sailings last year. As discussed in detail below, the Coast Guard has adopted a temporary rule that makes explicit the intent to obstruct the Miami River for not more than nine hours per day, six days per week. This should mitigate the economic impact to this terminal because large vessels will be able to use one high tide daily, and part of the second, for movements on the River. Also, the schedule will be published in advance, and should allow for flexibility in scheduling for parties involved on either side of this issue. The temporary rule should also reduce the bottleneck concern. Additionally, the Coast Guard will continue to accept comments on the temporary rule through the first construction phase, and may change it depending on the comments. Comments detailing specific economic impacts such as the one in this paragraph are particularly helpful in evaluating this rule.

The Proposed Rule Was Unfair to Shipping Industry

Three comments stated the proposed rule was unfair to the Miami River shipping industry. The comments state that the proposed rule would instill economic woes on the River shipping industry to benefit the bridge contractor, that it would be unfair to allow the bridge contractor and owner to reap benefits from this planned bridge construction despite their poor planning with local River stakeholders, that the marine industry is severely penalized by bridge design and building contracts that are beyond their control, and that the Coast Guard has chosen to sacrifice an important economic engine in favor of the bridge contractor's prospective profit.

One comment alleged bias shown by the Coast Guard in favor of construction of the Second Avenue Bridge over the needs of navigation.

The Coast Guard uses the ''reasonable needs of navigation'' as the standard when evaluating projects that potentially impact navigation. The bridge owner and contractor requested the proposed rule. The Coast Guard's view was that to better determine what the needs of navigation were, the proposed rule should be released to solicit comments which would provide the Coast Guard with a basis to determine the reasonable needs of navigation. The Coast Guard has considered these comments and, as noted above, has changed the proposed rule to mitigate the impact to commercial navigation. Through the additional comment period, the Coast Guard encourages comments on this temporary rule, and may make further changes in light of them.

Bridge Owner's Requested Revision

On 21 August 2002 the Coast Guard met with representatives of the bridge owner and contractor and made them aware of the generally negative tone of the comments in the docket at that time. Based on these objections, the bridge owner and contractor modified their request and put forth a proposal that cut in half the amount of time the Miami River could be obstructed by the Second Avenue Bridge. They requested that the Coast Guard revise the proposed rule to allow the Second Avenue Bridge to have one leaf in the down position for not more than nine hours starting three hours after one of the two daily high tides that occur on the Miami River. At all other times, both leaves would open on signal. GSC, as bridge contractor, and on behalf of the bridge owner, in consultation with the two major tug companies that assist in large vessel movements on the River, will submit a coordinated construction schedule to the Coast Guard, specifically, the Captain of the Port of Miami (COTP). The schedule will be reviewed by the COTP, who will promptly announce the schedule through broadcast local notices to mariners and local notices to mariners.

Commenters' Requested Changes

One tug operator on the Miami River commented that the proposed rule should not allow the Second Avenue Bridge to be in the horizontal (down) position for more than six hours, that it should fluctuate with the tidal cycles, that tug operators and GSC must coordinate when the Miami River would be obstructed by the single leaf in the horizontal (down) position, and that on Wednesdays the Miami River must remain unobstructed. The Miami River Commission (MRC), an entity created by the State of Florida to be an official clearinghouse for all public policy and projects on the Miami River, recommended similar provisions. The MRC's comment, however, included a six to ten hour daily window where the Miami River would be obstructed by the single leaf of the Second Avenue Bridge in the horizontal (down) position. Additionally, the MRC reiterates the bridge contractor's comment that details two separate six-week periods where bridge construction would occur. The Miami River Marine Group, a port cooperative trade association made up of stakeholders of the Miami River, commented that the leaf should be in the horizontal (down) position for not more than eight hours per day.

The Coast Guard has considered these comments in conjunction with the comment by the bridge owner and contractor to revise the proposed rule. The Coast Guard notes that MRC's proposal leaves open the option for a maximum ten-hour window daily period where the Miami River would be obstructed due to construction, and the

bridge contractor's stated commitment to working with Miami River stakeholders to minimize the impact to commercial marine interests, who necessarily rely on larger vessels that require both leaves to be in the vertical (up) position. The bridge owner and contractor indicated in the August 21, 2002 meeting that they required one hour at either end of their work day to set up and then secure. The Coast Guard has determined, based on all comments received, that nine hours is an appropriate maximum window to allow the installation of the Second Avenue Bridge leaves, which necessarily must be done in the horizontal (down) position, thus restricting the Miami River to an approximately 70-foot horizontal navigation clearance.

Changes to the Proposed Rule

After reviewing the comments received from the NPRM, the Coast Guard has revised the proposed rule to allow GSC to keep a single-leaf of the bridge in the horizontal (down) position nine hours each day except Wednesdays, starting three hours after one of the two daily high tides, generally the first daily high tide. The COTP will review and broadcast the bridge schedule. The bridge owner has agreed to publish the schedule each week, with a proposed schedule for the following week. In addition, tugs and tugs with tows will be exempt from the rush hour curfews on the drawbridges from the mouth of the Miami River to and including the N.W. 27th Avenue Bridge, except the new Second Avenue Bridge.

The bridge owner and contractors' requested revision includes two separate time windows of approximately six weeks each when they would install the two bridge leaves. The bridge contractor anticipates approximately one month between the two time windows. During the approximately one month period between the two construction windows, the Coast Guard does not anticipate the need to approve any schedule that requires the Second Avenue Bridge to impede navigability on the Miami River. The Coast Guard is also allowing an additional comment period and may change this rule based on comments received, and will terminate the rule early if construction is completed early.

This temporary rule incorporates the changes requested by the bridge owner and contractor, those recommended by the MRC as the State of Florida legislated clearinghouse for Miami River issues, and some requested changes from the Miami River Group as a representative entity of stakeholders on the Miami River. The Coast Guard regulates bridges across waterways to provide for the ''reasonable needs of navigation.'' The Coast Guard must ensure the public right of navigation is preserved while maintaining a reasonable balance between the competing needs of land and waterborne modes of transportation. The Coast Guard strives to promote and expedite projects that facilitate commerce and provide for the reasonable needs of present and prospective land and marine transportation. In this temporary rule the Coast Guard meets the reasonable needs of navigation while still permitting the construction of the Second Avenue Bridge, which will ultimately assist with navigation and the movement of vessel commerce on the Miami River. This temporary rule reduces the Second Avenue Bridge single leaf operations to not more than nine hours per day, six days a week. The Coast Guard may also allow minor deviations to the nine-hour maximum single leaf operation if large vessel traffic will not be affected by the deviation. Expansion of the construction windows through minor deviations should expedite bridge construction ultimately reducing the length of time that large commercial navigation will be potentially obstructed.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because this rule requires a multi-interest coordinated schedule based on the high tides that provides for fifteen hours of daily unobstructed vessel flow on the Miami River and use of at least part of both high tides by vessel traffic, the Miami River will be unimpeded by the Second Avenue Bridge on Wednesdays (the busiest day for cargo shipping on the River), approximately seventy feet of horizontal clearance be available twenty four hours each day (although short periods of under one hour with less horizontal clearance are possible due to temporary safety hazards), and the rule only temporarily restricts the waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether this rule will have a significant economic effect upon 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 will not have a significant economic impact on a substantial number of small entities because this rule requires a multi-interest coordinated schedule based on the high tides that provides for fifteen hours of daily unobstructed vessel flow on the Miami River and use of at least part of both high tides by large vessel traffic, the Miami River will be unimpeded by the Second Avenue Bridge on Wednesdays (the busiest day for cargo shipping on the River), approximately seventy feet of horizontal clearance will be available twenty four hours each day (although short periods of under one hour with less horizontal clearance are possible due to temporary safety hazards), and the rule only temporarily restricts the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard has created an additional comment period for this temporary rule, and is particularly interested in comments describing specific economic impacts to small entities. This will allow the Coast Guard to better evaluate impacts to small entities. We also have a point of contact for commenting on actions by employees of the Coast Guard. 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 calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although 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 will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Environment

The Coast Guard has considered the environmental impact of this action and has concluded that under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket we have indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.305 [Suspended]

2. From 12:01 a.m. October 7, 2002 until 11:59 p.m. on January 27, 2003, temporarily suspend § 117.305.

3. From 12:01 a.m. October 7, 2002 until 11:59 p.m. on January 27, 2003, add a new § 117.T306 to read as follows:

§ 117.T306 Miami River, Florida.

(a) The draws of each bridge from the mouth of the Miami River to and including N.W. 27th Avenue bridge, mile 3.7 at Miami, but excluding the new Second Avenue bridge, mile 0.5, Miami, Florida, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday except Federal holidays, the draws need not open for the passage of vessels other than public vessels of the United States, tugs and tugs with tows, and vessels in an emergency involving danger to life or property, which shall be passed at any time.

(b) The new Second Avenue Bridge, mile 0.5, Miami Florida, need open only a single-leaf of the bridge nine (9) hours per day, starting three (3) hours after one of the two high tides, every day except Wednesday. The Captain of the Port of Miami will review and announce a weekly schedule coordinated between the bridge contractor and tugboat operators on the Miami River. At all other times, including all day on Wednesdays, the bridge will open on signal.

Dated: October 1, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–25930 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR part 117

[CGD01–02–020]

RIN 2115–AE47

Drawbridge Operation Regulations: Mystic River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the S99 Alford Street Bridge, mile 1.4, across the Mystic River at Boston, Massachusetts. This final rule will allow the bridge to open on an advance notice from 3 p.m. to 7 a.m., November through March, when there have been few requests to open the bridge. This action is expected to relieve the bridge owner from the burden of crewing the bridge during the winter months at night when there have been few requests to open the bridge.

DATES: This rule is effective November 12, 2002.

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 (CGD01–02–020) and are

available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 3, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Mystic River, Massachusetts, in the **Federal Register** (67 FR 44582). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The S99 Alford Street Bridge has a vertical clearance of 7 feet at mean high water and 16 feet at mean low water.

The existing regulations for the bridge listed at § 117.609, require the bridge to open on signal from 7 a.m. to 11 p.m.; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m. From 11 p.m. to 7 a.m., at least an eight hour advance notice is required for bridge openings.

The bridge owner, the City of Boston, asked the Coast Guard to change the drawbridge operation regulations to allow the bridge to open on signal, from November 1 through March 31, between 7 a.m. and 3 p.m. In addition, all opening requests between 3 p.m. and 7 a.m. shall require an eight hour advance notice.

The number of bridge openings November through March, from 3 p.m. to 7 a.m., for the last two years were 11 requests in 2000, and 5 requests in 2001.

The Coast Guard believes it is reasonable to allow the bridge owner to not be required to crew this bridge during the 3 p.m. to 7 a.m. shift in the winter months as a result of the low number of requests to open the bridge during that time period. We also believe the eight hour advance notice is appropriate and will meet the reasonable needs of navigation. It will allow any vessel the opportunity to transit the bridge provided they give the required advance notice.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the bridge will open at all times for the passage of vessel traffic provided the eight hour notice is given.

Small Entities

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

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

This conclusion is based on the fact that the bridge will open at all times for the passage of vessel traffic provided the eight hour notice is given.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

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

We have 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.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.609 is revised to read as follows:

§ 117.609 Mystic River

(a) The draw of the S99 Alford Street Bridge, mile 1.4, shall open on signal; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m., daily. From November 1 through March 31, between 3 p.m. and 7 a.m., at least an eight-hour advance notice is required for bridge openings by calling the number posted at the bridge.

(b) The draw of the Wellington Bridge, mile 2.5, need not open for the passage of vessel traffic.

Dated: October 3, 2002.

J.L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 02–26007 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–023]

RIN 2115–AA97

Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety and security zones for liquefied natural gas carrier (LNGC) vessels and a liquefied natural gas facility within the Boston Captain of the Port Zone. Entry into or movement within these zones is prohibited without prior authorization from the Captain of the Port (COTP), Boston, MA. These zones are needed to safeguard the LNGC vessels and Liquid Natural Gas (LNG) facility, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and are needed to protect persons, vessels and others in the maritime community from the safety hazards associated with the transit and limited maneuverability of an LNGC vessel.

DATES: This rule is effective November 12, 2002.

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 [CGD01–02–023] and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109 between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Daniel Dugery, Marine Safety Office Boston, Waterways Security and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 26, 2002, we published a notice of proposed rulemaking (NPRM) entitled Safety and Security Zone; Liquefied Natural Gas Carrier (LNGC) Transits and Anchorage Operations, Boston, Marine Inspection Zone and Captain of the Port Zone in **Federal Register** (67 FR 48834). We received 1 letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

In light of the terrorist attacks in New York City and Washington, DC on September 11, 2001, safety and security zones are being established to safeguard the LNGC vessels and LNG facilities, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and to protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a LNGC vessel. These safety and security zones prohibit entry into or movement within the specified areas.

This rule establishes safety and security zones around LNGC vessels while the vessels are anchored in the waters of Broad Sound or moored at the Distrigas facility in Everett, MA. This rule also creates a moving safety zone around any LNGC vessel within navigable waters of the United States in the COTP Boston zone, as defined in 33 CFR 3.05–10. Under the Ports and Waterways Safety Act, navigable waters of the United States include all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States determined in accordance with international law.

The Captain of the Port anticipates some impact on vessel traffic due to this regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone.

Discussion of Comments and Changes

The only comment received on this rulemaking commended the Coast Guard on protecting the LNGCs entering the port. In light of this comment and the lack of additional comments, no changes have been made to this rule.

Discussion of Rule

Safety and Security Zones

This rule establishes three safety and security zones with identical boundaries, within the COTP Boston zone. The first safety and security zones

are all waters of Broad sound within a 500 yard radius of any anchored LNGC vessel located within an area bounded by a line starting at position 42°25′ N, 070°58′ W; then running southeast to position 42°22′ N, 070°56′ W; then running east to position 42°22′ N, 070°50′ W; then running north to position 42°25′ N, 070°50′ W; then running west back to the starting point. The second safety and security zones are all waters of the Mystic River within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA. Finally, except as enumerated above, safety and security zones will be two miles ahead and one mile astern, and 500 yards on each side of any LNGC vessel underway within the COTP Boston zone. All coordinates are NAD 83.

This rulemaking replaces the established safety zone listed at 33 CFR 165.110. That safety zone does not provide the current necessary level of protection. Section 165.110 recognizes the safety concerns with transits of LNGC vessels, but is inadequate to protect LNGC vessels from possible terrorist attack, sabotage or other subversive acts. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the flammable nature of LNGC vessels and impact the ignition of this cargo could have on the port of Boston and surrounding areas, increased protection of these vessels and the Distrigas facility is necessary.

This rulemaking provides increased protection for LNGC vessels moored at the Distrigas facility and establishes protection for the vessels in Broad Sound. It also provides continuous protection for LNGC vessels 2 miles ahead, 1 mile astern, and 500-yards on each side of an LNGC vessel anytime a vessel is underway within the COTP Boston zone, rather than limiting this protection to the limits of the Boston Main Ship Channel while a vessel is transiting Boston Harbor and Boston North Channel (as the previous zone in § 165.110).

The increased protection provided in this rule also recognizes the safety concerns associated with an unloaded LNGC vessel. 33 CFR 165.110 only establishes safety zones around loaded LNG tank vessels or while these vessels are transferring their cargo. This rule establishes safety and security zones around any LNGC vessel, loaded or unloaded, while anchored in Broad Sound, at the Distrigas facility pier, and any time a LNGC vessel is located in the Boston Marine Inspection Zone and Captain of the Port Zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. These zones provide necessary protection to unloaded vessels, which continue to pose a safety and security risk if unprotected. This rulemaking also recognizes the continued need for safety zones around LNGC vessels, which are necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a LNGC vessel laden with LNG or residual cargo.

No person or vessel will be able to enter or remain in these safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone will be required to obey any direction or order of the Captain of the Port. The Captain of the Port will be able to take possession and control of any vessel in a security zone and remove any person, vessel, article or thing from a security zone. No person will be able to board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1225, 1226, and 1231.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

There may be some adverse effects on the maritime community by this rule, but those effects will be minimized by: the minimal time that vessels will be restricted from the areas, the ample room for vessels to navigate around the zones in Broad Sound and, in most portions of the navigable waters of the United States, the fact that vessels can transit ahead, behind, or after the passage of LNGC vessels. In addition, vessels will be able to request permission from the Captain of the Port or representatives on scene to pass through the zones, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Broad Sound or Boston Harbor. For the reasons enumerated in the Regulatory Evaluation section above, in addition to the fact that small entities have been operating in the Captain of the Port Boston, MA, Zone under a similar regulation for over 18 years, these safety and security zones will not have a significant economic impact on a substantial number of small entities.

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 on them and participate in the rulemaking process. If your small business or organization will be affected by this rule and you have questions concerning its provisions or options for compliance, please call Chief Daniel Dugery, at (617) 223–3000. 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 comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has 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) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

Taking of Private Property

This rule does 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 analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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.

Environment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine security, 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, and 160.5; 49 CFR 1.46.

2. Revise § 165.110 to read as follows:

§ 165.110 Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Massachusetts.

(a) *Definition.* For purposes of this section, navigable waters of the United States includes all waters of the territorial sea as described in Presidential Proclamation No. 5928 of December 27, 1988. Presidential Proclamation No. 5928 of December 27, 1988 declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States.

(b) *Location.* The following areas are safety and security zones:

(1) *Vessels underway.* All navigable waters of the United States within the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10, two miles ahead and one mile astern, and 500 yards on each side of any liquefied natural gas carrier (LNGC) vessel while underway.

(2) *Vessels anchored in the Broad Sound.* All waters within a 500-yard radius of any anchored LNGC vessel located in the waters of Broad Sound bounded by a line starting at position 42 deg. 25′ N, 070 deg. 58′ W; then running southeast to position 42 deg. 22′ N, 070 deg. 56′ W; then running east to position 42 deg. 22′ N, 070 deg. 50′ W; then running north to position 42 deg. 25′ N, 070 deg. 50′ W; then running west back to the starting point (NAD 83).

(3) *Vessels moored at the Distrigas LNG facility.* All waters within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA.

(c) *Regulations.* (1) In accordance with the general regulations in Sec. 165.23 and Sec. 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Boston, or his/her authorized representative.

(2) All vessel operators shall comply with the instructions of the COTP or his/her designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the safety and security zones in this section unless previously authorized by the Captain of the Port, Boston, or his/her authorized patrol representative.

Dated: September 24, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–25794 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–227]

RIN 2115–AA97

Safety and Security Zones; High Interest Vessels—Boston Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety and security zones for vessels determined to be in need of a Coast Guard escort by the Captain of the Port (COTP), Boston. The safety and security zones close all waters of Boston Harbor one thousand (1000) yards ahead and astern and one hundred (100) yards on each side of an escorted vessel (EV) in transit. The zone prohibits entry into or movement within this portion of the COTP Boston zone without COTP authorization. The safety and security zone is needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. The zones will prohibit entry into or movement within this portion of the COTP Boston zone without COTP authorization.

DATES: This final rule is effective November 12, 2002.

ADDRESSES: Documents as indicated in this preamble are part of docket CGD01–01–227 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 29, 2002, we published ''Interim rule with request for comments'' in the **Federal Register** (67 FR 20909). As of the end of the comment period, June 28, 2002, the Coast Guard has not received additional comments on this rule. No additional public hearings were requested, and none were held. Public comments received in response to the NPRM, published on January 18, 2002 at 67 FR 2614, were incorporated into the interim final rule. No comments were received on the interim final rule and, therefore, no changes have been made in this final rule

Background and Purpose

The September 11, 2001 terrorist attacks on New York City and Washington, DC inflicted catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are necessary for vessels that may be targets of terrorist acts. This final rule establishes safety and security zones for vessels the Captain of the Port (COTP) Boston determines are in need of a Coast Guard escort.

Discussion of Comments and Changes

In the interim rule with requests for comments (67 FR 20909), the Coast Guard incorporated 22 comments from the public regarding this proposal. All comments received were considered in the development of this Final Rule. As of June 28, 2002 no additional changes have been proposed

Regulatory Evaluation

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this final rule will prevent some traffic from moving within a portion of Boston Harbor during EV transits, the effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area; vessels can pass safely around the zones at most points in the Harbor; vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston Harbor during EV transits. This final rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zones; vessels can pass safely around the zones at most points in Boston Harbor; vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Chief Daniel Dugery at the address listed under **ADDRESSES.**

Collection of Information

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

Federalism

The Coast Guard analyzed this final rule under Executive Order 13132 and has 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) governs the issuance of Federal regulations that

require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

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 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 pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has 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.

Environment

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

List of Subjects in 33 CFR Part 165

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

Accordingly, the interim rule amending 33 CFR part 165 which was published at 67 FR 20909 on April 29, 2002, is adopted as a final rule with the following change:

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, and 160.5; 49 CFR 1.

2. Revise § 165.114(b) to read as follows:

§ 165.114 Safety and Security Zones: Escorted Vessels—Boston Harbor, Massachusetts.

* * * * *

(b) *Escorted vessel definition.* For the purposes of this section, escorted vessels operating in Boston Harbor include the following: Any vessels deemed to be in need of escort protection by the Captain of the Port, Boston for security reasons.

* * * * *

Dated: September 24, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–25793 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–02–117]

RIN 2115–AE46

Special Local Regulations; Columbus Day Regatta, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Columbus Day Regatta. The event will be held from 9 a.m. to 5 p.m. on October 12 and 13, 2002 in Biscayne Bay, Miami, Florida. These regulations create a regulated area that limits the movement of non-participant vessels and are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 9 a.m. on October 12, 2002 until 5 p.m. on October 13, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD07–02–117] and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Victor Sorensen, Coast Guard Group Miami at (305) 535–4317.

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. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public due to the high volume of vessel traffic and risk of collision posed by the approximately 500 participant vessels, the approximately 50 spectator vessels, and the several hundred vessels which congregate annually for Columbus Day in Biscayne Bay.

For the same reasons, 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**.

Background and Purpose

Columbus Day Regatta, Inc., is sponsoring a sailboat race with approximately 500 sailboats, ranging in length from 20 to 60 feet participating in the event. The race will take place in Biscayne Bay from Dinner Key to Soldier Key on October 12 and 13, 2002. There will also be approximately 50 spectator craft and several hundred additional vessels in the area for an annual Columbus Day gathering. These regulations are intended to promote safe navigation on the waters of Biscayne Bay by controlling the traffic in the regulated area.

Discussion of Rule

This rule creates a regulated area and prohibits non-participant persons and vessels from entering the regulated area without the permission of the Coast Guard Patrol Commander. The regulated area encompasses all waters bound by a line connecting the following points:

Beginning with the point at 25°43.399′N, 080°12.500′W; thence to 25°43.399′N, 080°10.500′W; thence to 25°33.000′N, 080°11.500′W; thence to 25°33.000′N, 080°15.900′W; thence to 25°40–000′N, 080°15.000′W and then returning to the starting point.

All coordinates are North American Datum 1983.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because entry into the regulated area is prohibited for a limited time and vessels may be allowed to enter the regulated area with permission of the Coast Guard Patrol Commander.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for two days in an area of limited commercial traffic and the Coast Guard Patrol Commander may permit vessels to enter the regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may contact the person listed under **FOR MORE INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

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

We have 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

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.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.lD, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

33 CFR PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46.

2. A new temporary § 100.35T–07–117 is added to read as follows:

§ 100.35T–07–117 Columbus Day Regatta, Biscayne Bay, Miami, FL.

(a) *Regulated area.* A regulated area is established for the Columbus Day Regatta, Biscayne Bay, Miami Florida. The regulated area encompasses all waters bound by a line connecting the following points:

Beginning with the point at 25°43.399′N, 080°12.500′W; thence to
25°43.399′ N, 080°10.500′ W; thence to 25°33.000′ N, 080°11.500′ W; thence to 25°33.000′ N, 080°15.900′ W; thence to 25°40–000′ N, 080°15.000′ W, and then returning to the starting point.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Station Miami Beach.

(c) *Special local regulations.* (1) Entry into the regulated area by non-participant persons or vessels is prohibited unless authorized by the Coast Guard Patrol Commander.

(2) At the completion of scheduled races and exhibitions, and departure of participants from the regulated area, the Coast Guard Patrol Commander may permit traffic to resume normal operations.

(3) Between scheduled racing events, the Coast Guard Patrol Commander may permit traffic to resume normal operations for a limited time.

(4) A succession of not fewer than 5 short whistle or horn blasts from a Coast Guard patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision.

(d) *Dates.* This section is effective from 9 a.m. on October 12 until 5 p.m. October 13 2002.

Dated: October 2, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–25931 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1201

RIN 3095–AA77

Debt Collection

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is adopting as final regulations governing the collection of debts owed to it and other Federal agencies. Federal agencies are required to try to collect debts owed to the Federal Government. These regulations describe actions that NARA may take to collect debts, and apply, with certain exceptions, to any person or entity. These regulations also provide that NARA may enter into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to NARA.

EFFECTIVE DATE: This rule is effective on August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–713–2902 or fax number 301–713–0319.

SUPPLEMENTARY INFORMATION: The interim rule was published in the July 5, 2002, **Federal Register** (67 FR 44757) for a 60-day comment period. NARA did not receive any comments. Therefore, NARA is adopting the interim rule as final without change. This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications. This rule is not a major rule.

List of Subjects in 36 CFR Part 1201

Administrative practice and procedure, Claims, Debts, Government employees, Wages.

PART 1201—COLLECTION OF CLAIMS

Accordingly, the interim rule adding 36 CFR part 1201 which was published at 67 FR 44757 on July 5, 2002, is adopted as a final rule without change.

Dated: October 4, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–25971 Filed 10–10–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AB14

Researcher Identification Cards

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising the general regulations concerning availability of records and donated historical materials to change the time period researcher identification cards are valid. NARA is reducing the valid time period to increase NARA's ability to obtain accurate address and telephone information. This will allow NARA to contact researchers if necessary and will ensure better protection of NARA's holdings, buildings, personnel, and the public. This final rule will affect individuals who do research in archival materials at NARA facilities.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps on 301–837–1801 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the July 10, 2002, **Federal Register** (67 FR 45684) for a 60-day public comment period. NARA notified several researcher organizations of the availability of the proposed rule. A copy of the proposed rule was also posted on the NARA Web site.

NARA received no comments on the proposed rule. The final rule is published without change. The rule will apply to researcher identification cards issued on or after the effective date. Cards issued prior to that date will remain valid for the period indicated on the card.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to individuals. This rule has no federalism or tribalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics.

For the reasons set forth in the preamble, NARA amends part 1254 of title 36, Code of Federal Regulations, as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Revise § 1254.6(a) to read as follows:

§ 1254.6 Researcher identification card.

(a) An identification card is issued to each person whose application is approved to use records other than microfilm. Cards are valid for 1 year and may be renewed upon application. Cards issued at one NARA facility are valid at each facility, except as described in paragraph (b) of this section. They are not transferable and must be presented if requested by a guard or research room attendant.

* * * * *

Dated: October 4, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–25972 Filed 10–10–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN144–1a; FRL–7390–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to Particulate Matter (PM) control requirements for certain natural gas combustion sources in Indiana. EPA is also approving various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM nonattainment area. The Indiana Department of Environmental Management (IDEM) submitted these revisions to Title 326 of the Indiana Administrative Code, Section 6–1 (326 IAC 6–1) as a requested revision to the Indiana State Implementation Plan (SIP) on December 19, 2001. The requested SIP revision eliminates PM emissions limits on certain natural gas combustion sources in specified counties, and replaces the limits with a requirement that such sources may only burn natural gas. The requested SIP revision also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the requested SIP revision adds PM contingency measures for the Lake County, Indiana PM nonattainment area.

DATES: This rule is effective on December 10, 2002, unless EPA receives relevant adverse written comments by November 12, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean EPA.

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III. What are the environmental effects of this action?
IV. EPA rulemaking action.
V. Administrative requirements.

I. What Is the EPA Approving?

EPA is approving changes to 326 IAC 6–1 as a revision to the Indiana SIP. These changes eliminate PM emissions limits on certain natural gas combustion sources, and replace the limits with a requirement that such sources may only burn natural gas. The changes also contain many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the changes add PM contingency measures for the Lake County, Indiana PM nonattainment area.

a. Provisions for Natural Gas Combustion Sources

Revised 326 IAC 6–1–1(c) states that PM limitations shall not be established for combustion units that burn only natural gas at sources or facilities identified in sections 8.1, 9, and 12 through 18 of the rule, as long as the units continue to burn only natural gas.

This revision replaces PM limitations on gas fired combustion units with the requirement that they only burn natural gas. Since natural gas combustion sources generally have very low PM emissions, enforcement of the ''natural gas only'' requirement will ensure that these units do not emit PM in excess of what would have been required under the previously approved rules.

Since this revised rule does not allow increased emissions over the current version, this change is not expected to have an adverse effect on air quality. Therefore, we are approving this requested SIP revision.

b. Cleanup Revisions

These revisions affect 326 IAC 6–1–1 through 6–1–6, and 6–1–8.1 through 6–1–18. They generally consist of minor wording changes, updating of source and facility names, and elimination of reference to sources or facilities which have ceased operations. While these changes will not result in a decrease in actual PM emissions, removal of sources and facilities which have shut down will result in a decrease in the emissions allowed under the rules.

c. Continuous Compliance Plan Requirements

In addition, IDEM has submitted ''Continuous Compliance Plan'' provisions in 326 IAC 6–1–10.1(l–v). These provisions have been a part of the State rules since 1993, but have not previously been submitted for EPA approval. These provisions required certain large sources in Lake County to submit ''Continuous Compliance Plans'' to the Indiana Department of Environmental Management by December 10, 1993. The plans were to contain documentation on operation and maintenance practices, a compliance schedule, and various recordkeeping requirements. The Continuous Compliance Plan provisions also contain 20% 3-minute average opacity limits on disposal and reclamation on iron and steel; maintenance of process vessels; and steel scrap burning or cutting and oxygen lancing operations. Approval of these regulations will strengthen the existing SIP.

These revisions improve the rule and have no impact on previously approved emissions limitations. Therefore, we are approving these requested SIP revisions.

d. Contingency Measures

Indiana has established certain PM contingency measures in 326 IAC 6–1–11.2. The contingency measures require emissions reductions from Lake County sources which are ''culpable'' for an

exceedance of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). Culpability is defined as a contribution of 25 $\mu g/m^3$ for a source (entire plant) or 5 $\mu g/m^3$ for a facility (individual emissions unit). If there is a violation of either the 24-hour average (150 $\mu g/m^3$) or annual average (50 $\mu g/m^3$) PM_{10} NAAQS, culpable sources and facilities will be required to submit reduction measures to reduce actual PM_{10} emissions by 25%. Contributions are to be determined by the Indiana Department of Environmental Management.

Please note that we are making no determination at this time as to whether these contingency measures meet applicable Clean Air Act requirements, but we are approving the submitted contingency measures for the strengthening effect they will have on the SIP.

II. Analysis of the Requested SIP Revision

This SIP revision will not result in an increase in PM emissions, and several components of the revision will have a strengthening effect on the SIP, as discussed above. Therefore, we are approving the requested SIP revision.

III. What Are the Environmental Effects of This Action?

Since this SIP revision does not relax any emissions limits it will not have an adverse effect on PM air quality. The elimination of limits on sources which have shut down will result in lower overall allowed emissions of PM. Also, approval of the Continuous Compliance Plan provisions and the Lake County Contingency Measures will strengthen the SIP.

IV. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to PM control requirements for natural gas combustion sources in Indiana, as well as various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM_{10} nonattainment area. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by November 12, 2002. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on December 10, 2002.

V. Administrative Requirements

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

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

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: September 19, 2002.

William E. Muno,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(152) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(152) On December 19, 2001, Indiana submitted revised Particulate Matter (PM) control requirements for certain natural gas combustion sources in Indiana, as well as various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM_{10} nonattainment area. The submittal eliminates PM emissions limits on natural gas combustion sources and replaces the limits with a requirement that such sources may only burn natural gas. The submittal also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the requested State Implementation Plan revision adds PM contingency measures for the Lake County, Indiana PM nonattainment area. (i) Incorporation by reference. Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 1: Applicability, Section 1.5: Definitions, Section 2: Particulate emission limitations; fuel combustion steam generators, asphalt concrete plant, grain elevators, foundries, mineral aggregate operations; modification by commissioner, Section 3: Nonattainment area particulate limitations; compliance determination, Section 4: Compliance schedules, Section 5: Control strategies, Section 6: State Implementation Plan revisions, Section 8.1: Dearborn County particulate matter emissions limitations, Section 9: Dubois County, Section 10.1: Lake County PM^{10} emission requirements, Section 11.1: Lake County fugitive particulate matter control requirements, Section 11.2: Lake County particulate matter contingency measures, Section 12: Marion County, Section 13: Vigo County, Section 14: Wayne County, Section 15: Howard County, Section 16: Vanderburgh County, Section 17: Clark County, and Section 18: St. Joseph County. Added at 25 In. Reg. 709. Effective December 8, 2001.

[FR Doc. 02–25854 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 047—6021a; FRL–7391–3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; To Prevent and Control Air Pollution From the Operation of Hot Mix Asphalt Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). These revisions establish emission limitations for hot mix asphalt plants. The revision to this rule will streamline the requirements to specify standards for opacity and particulate test methods. This revision will also clarify the relationship between the New Source Performance Standards and the West Virginia Office of Air Quality's permit requirements for hot mix asphalt plants. EPA is approving this revision to the SIP in accordance with the Clean Air Act.

DATES: This rule is effective on December 10, 2002 without further notice, unless EPA receives adverse written comment by November 12, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter K. Wilkie, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, or by e-mail at *Lewis.Janice@epa.gov.* Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to address the requirements for the Operation of Hot Mix Asphalt Plants. The revision consists of the adoption of Rule 45CSR3—To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants.

A. Summary of the SIP Revisions

This revision restructures and reorganizes Regulations 45CSR3, governing the prevention and control air pollution from the operation of hot mix asphalt plants. This revision specifies standards for opacity and particulate test methods. This revision also changes the opacity standard during start-up and shutdown from 60% to 40% with averaging of emissions using approved EPA test methods.

B. EPA's Evaluation of the SIP Revisions

The EPA has determined that this revision to 45CSR3—To Prevent and Control Air Pollution From the Operation of Hot Mix Asphalt Plants meet all Federal criteria for approval.

II. Final Action

EPA is approving West Virginia's Rule 45CSR3, submitted as a SIP revision on September 21, 2000, into the West Virginia SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 10, 2002 without further notice unless EPA receives adverse comment by November 12, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2002. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to West Virginia's regulation to prevent and control air pollution from the operation of hot mix asphalt plants does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 30, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(48) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(48) Revisions to West Virginia Rule 45CSR3 submitted on September 21, 2000, by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the Secretary of the West Virginia Department of Environmental Protection, pertaining to Regulation 45CSR3—To Prevent and Control Air Pollution from the Operating of Hot Mix Asphalt Plants.

(B) Revised Regulation 45CSR3, effective August 31, 2000.

(ii) Additional Material—Other materials submitted by the State of West Virginia in support of and pertaining to Rules 45CSR3 listed in paragraph (c)(48)(i)of this section.

[FR Doc. 02–25852 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7793]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this

rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance and Mitigation Administrator, 500 C Street, SW.; Room 435, Washington, DC 20472, (202) 646–3443.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management programs aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Maine: Brighton Plantation, Somerset County.	230538	April 25, 1975, Emerg.; April 30, 1984, Reg; October 4, 2002.	October 4, 2002	October 4, 2002
Region IV				
Georgia: White County, Unincorporated Areas.	130191	November 9, 1987, Emerg.; September 1, 1989, Reg; October 18, 2002.	October 18, 2002	October 18, 2002
Region V				
Illinois:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Andalusia, Village of, Rock Island County.	170583	February 18, 1975, Emerg.; January 20, 1982, Reg; October 18, 2002.	.....do	Do.
Carbon Cliff, Village of, Rock Island County.	170584	May 23, 1975, Emerg.; June 1, 1982, Reg; October 18, 2002.	.....do	Do.
Coal Valley, Village of, Rock Island County.	170585	September 26, 1974, Emerg.; December 4, 1979, Reg; October 18, 2002.	.....do	Do.
Cordova, Village of, Rock Island County.	170586	April 18, 1975, Emerg.; December 1, 1981, Reg; October 18, 2002.	.....do	Do.
East Moline, City of, Rock Island County.	170587	March 5, 1976, Emerg.; October 15, 1982, Reg; October 18, 2002.	.....do	Do.
Hampton, Village of, Rock Island County.	170588	May 29, 1975, Emerg.; January 6, 1982, Reg; October 18, 2002.	.....do	Do.
Hillsdale, Village of, Rock Island County.	170589	February 11, 1974, Emerg.; July 19, 1982, Reg; October 18, 2002.	.....do	Do.
Milan, Village of, Rock Island County.	170590	April 3, 1975, Emerg.; March 18, 1980, Reg; October 18, 2002.	.....do	Do.
Moline, City of, Rock Island County.	170591	March 4, 1975, Emerg.; February 1, 1980, Reg; October 18, 2002.	.....do	Do.
Port Byron, Village of, Rock Island County.	170592	October 2, 1974, Emerg.; September 2, 1981, Reg; October 18, 2002.	.....do	Do.
Rapids City, Village of, Rock Island County.	170593	April 1, 1975, Emerg.; January 6, 1982, Reg; October 18, 2002.	.....do	Do.
Reynolds, Village of, Rock Island County.	170883	March 24, 1998, Emerg.; October 18, 2002 October 18, 2002.	.....do	Do.
Rock Island, City of, Rock Island County.	175171	July 9, 1971, Emerg.; June 9, 1972, Reg; October 18, 2002.	.....do	Do.
Rock Island County, Unincorporated Areas.	170582	May 14, 1971, Emerg.; August 2, 1982, Reg; October 18, 2002.	.....do	Do.
Silvis, City of, Rock Island County.	170595	April 27, 1979, Emerg.; September 19, 1983, Reg; October 18, 2002.	.....do	Do.
Region VIII				
Missouri: Greene County, Unincorporated Areas.	290782	April 15, 1975, Emerg.; June 15, 1983, Reg; October 18, 2002.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 3, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance Administration and Mitigation Administration.

[FR Doc. 02–25959 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7529]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt

or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida:					
Seminole	City of Altamonte Springs.	May 1, 2002, May 8, 2002, *The Orlando Sentinel*.	Mr. Phillip D. Penland, Manager of the City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, Florida 32701.	Aug. 7, 2002	120290 E
Seminole	City of Altamonte Springs.	Aug. 30, 2002, Sep. 6, 2002, *The Orlando Sentinel*.	Mr. Phillip D. Penland, Manager of the City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, Florida 32701.	Dec. 6, 2002	120290 E
Seminole	Unincorporated Areas.	May 1, 2002, May 8, 2002, *The Orlando Sentinel*.	Mr. Kevin Grace, Manager of Seminole County, County Seminole Services Building, 1101 East First Street, Sanford, Florida 32771.	Aug. 7, 2002	120289 E
Seminole	Unincorporated Areas.	Aug. 30, 2002, Sep. 6, 2002, *The Orlando Sentinel*.	Mr. Kevin Grace, Manager of Seminole County, County Seminole Services Building, 1101 East First Street, Sanford, Florida 32771.	Dec. 6, 2002	120289 E
Illinois:					
Kane	Village of Sleepy Hollow.	Aug. 9, 2002, Aug. 16, 2002, *The Courier News*.	Mr. Stephen K. Pickett, Village of Sleepy Hollow President, 1 Thorobred Lane, Sleepy Hollow, Illinois 60118.	Aug. 1, 2002	170331
Kane	Village of West Dundee.	Aug. 9, 2002, Aug. 16, 2002, *The Daily Herald*.	Mr. Larry Keller, Village of West Dundee President, 102 South 2nd Street, West Dundee, Illinois 60118.	Aug. 1, 2002	170335
Maine: Knox	Town of Camden	Aug. 15, 2002, Aug. 22, 2002, *The Camden Herald*.	Mr. Roger Moody, Manager of the Town of Camden, P.O. Box 1207, Camden, Maine 04843.	July 17, 2002	230074 B
North Carolina: Wake.	Town of Wake Forest.	May 9, 2002, May 16, 2002, *The Wake Weekly*.	The Honorable George C. Mackie, Jr., Mayor of the Town of Wake Forest, 401 Elm Street, Wake Forest, North Carolina 27587.	May 2, 2002	370244 E
Ohio: Franklin	City of Grove City	June 5, 2002, June 12, 2002, *Grove City Record*.	The Honorable Cheryl Grossman, Mayor of the City of Grove City, 4035 Broadway, Grove City, Ohio 43123.	Sep. 11, 2002	390173 G

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–25961 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
CONNECTICUT	
Newtown (Town), Fairfield County (FEMA Docket No. D–7516)	
Pond Brook:	
Approximately 850 feet downstream of Currituck Road	*331
Approximately 440 feet upstream of U.S. Route 6	*403
Maps available for inspection at the Edmond Town Hall, 45 Main Street, Newtown, Connecticut.	
ILLINOIS	
Milan (Village), Rock Island County (FEMA Docket Nos D–7512 and D–7528)	
Eckhart Creek (Zone AO):	
East of Chaney Lane and approximately 500 feet south of Interstate Route 280	#1
Approximately 600 feet north of W 10th Avenue and approximately 450 feet east of 9th Street	#1
Northwest of Missouri Kansas and Texas Railroad and approximately 600 feet south of Interstate Route 280	#1
Rock River:	
Approximately 0.63 mile downstream of Missouri, Kansas, and Texas Railroad	*564
Approximately 530 feet upstream of U.S. Route 67	*564
North Channel Rock River:	
At confluence with Rock River	*564
Approximately 300 feet downstream of the Sears Dam	*564
Maps available for inspection at the Village of Milan Administrative Office, 321 West 2nd Avenue, Milan, Illinois.	
INDIANA	
Carmel (City), Hamilton County (FEMA Docket No. D–7512)	
Cool Creek:	
Approximately 0.975 mile upstream of confluence with West Fork White River	*743
At East 146th Street	*818

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Hot Lick Creek:	
At confluence with Cool Creek	*770
Approximately 450 feet upstream from confluence with Cool Creek	*770
Little Cool Creek:	
At confluence with Cool Creek	*806
Approximately 150 feet downstream of most upstream crossing of East 136th Street	*845
Little Eagle Creek:	
At county boundary	*861
At West 146th Street	*865
Kirkendall Creek:	
At confluence with Vestal Ditch	*768
At East 146th Street	*770
Mitchener Ditch:	
Approximately 100 feet downstream of Cherry Tree Road	*771
At East 146th Street	*804
Spring Mill Run:	
Approximately 300 feet upstream of confluence with Williams Creek	*794
At confluence with Well Run	*853
Vestal Ditch:	
At confluence with West Fork White River	*746
At East 146th Street	*769
Well Run:	
At confluence with Spring Mill Run	*853
Approximately 1,000 feet downstream of Torrey Pines Circle	*860
Maps available for inspection at the City of Carmel Department of Community Services, 1 Civic Square, Carmel, Indiana.	
Cicero (Town), Hamilton County (FEMA Docket No. D–7510)	
Morse Reservoir:	
Entire shoreline within community	*814
Maps available for inspection at the Cicero Town Hall, 70 North Byron Street, Cicero, Indiana.	
Fishers (Town), Hamilton County (FEMA Docket No. D–7510)	
Mud Creek:	
At East 96th Street	*781
At East 126th Street	*815
Sand Creek:	
At East 106th Street	*785
At Interstate 69	*806
West Fork White River:	
Approximately 1.2 miles downstream of confluence of Britton Branch	*745
Approximately 0.8 mile upstream of confluence of Britton Branch	*748
Britton Branch:	
At confluence with West Fork White River	*746
Approximately 100 feet downstream of State Route 37	*809
Maps available for inspection at the Town of Fishers Administrative Offices, One Municipal Drive, Fishers, Indiana.	
Hamilton County (Unincorporated Areas) (FEMA Docket No. D–7510)	
Mud Creek:	
Approximately 180 feet downstream of East 146th Street	*831
At Atlantic Road	*845
Sand Creek:	
At East 146th Street	*821
At Prairie Baptist Road	*840
Musselman Ditch:	
Approximately 1,400 feet upstream of Promise Road	*780
Approximately 0.5 mile upstream of Victory Chapel Road	*795
Kirkendall Creek:	
At East 146th Street	*770
At Hinkle Road	*821
Vestal Ditch:	
At East 146th Street	*769
Approximately 1,600 feet downstream of East 161st Street	*775
Maps available for inspection at the Hamilton County Government and Judicial Center, One Hamilton County Square, Noblesville, Indiana.	
Noblesville (City), Hamilton County (FEMA Docket No. D–7510)	
Britton Branch:	
Just upstream of Allisonville Road	*751
Just downstream of Norfolk and Western Railroad	*800
Elmwood-Wilson Ditch:	
At confluence with Stony Creek	*756
Approximately 500 feet downstream of State Route 37	*768
Kirkendall Creek:	
Just upstream of abandoned railroad	*785
Just downstream of East 156th Street	*793
Mallery Granger Ditch:	
At confluence with West Fork White River	*765
Approximately 800 feet downstream of East 211th Street	*805
Mill Creek:	
At confluence with Sly Run	*766
Approximately 600 feet upstream of Little Chicago Road	*819
Morse Reservoir:	
Entire shoreline within community	*814
Musselman Ditch:	
At confluence with West Fork White River	*771
Approximately 1,400 feet upstream of Promise Road	*780
Sly Run:	
At confluence with Cicero Creek	*762
At confluence of Sly Run East Fork and Sly Run West Fork	*821
Vestal Ditch:	
Approximately 200 feet downstream of abandoned railroad	*772
Just downstream of East 161st Street	*776
Sly Run East Fork:	
At confluence of Sly Run West Fork	*821
Just downstream of Hinkle Road	*865
Sly Run West Fork:	
At confluence of Sly Run East Fork	*821
Approximately 125 feet upstream of Little Chicago Road	*830
Maps available for inspection at the City of Noblesville Department of Planning and Development, 16 South Tenth Street, Noblesville, Indiana.	
Westfield (Town), Hamilton County (FEMA Docket No. D–7510)	
Cool Creek:	
Just upstream of East 146th Street	*818
Just downstream of East 186th Street	*870
Grassy Branch:	
Approximately 600 feet downstream of Westfield Park Road	*894
Approximately 0.57 mile upstream of State Route 32	*906
Kirdendall Creek:	
Just upstream of Hinkle Road	*822
Just downstream of East 161st Street	*832
Little Eagle Creek:	
Approximately 1,250 feet downstream of West 146th Street	*861
Just downstream of Casey Road	*911
North Cool Creek:	
Just upstream of East 186th Street	*870
Just downstream of intersection of Tomlinson Road and East 191st Street	*892
Sly Run East Fork:	
Just upstream of Hinkle Road	*866
Approximately 0.4 mile upstream of Hinkle Road	*872

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Maps available for inspection at the Westfield Town Hall, 130 Penn Street, Westfield, Indiana.	
NEW HAMPSHIRE	
Errol (Town), Coos County (FEMA Docket No. D–7516)	
Akers Pond:	
Entire shoreline within community	*1,231
Maps available for inspection at the Errol Town Office Building, 33 Main Street, Errol, New Hampshire.	
NORTH CAROLINA	
Belmont (City), Gaston County (FEMA Docket No. D–7512)	
Catawba River:	
Approximately 3,650 feet downstream of Norfolk Southern Railroad	*585
Approximately 250 feet upstream of Interstate 85	*587
South Fork Catawba River:	
Approximately 3.18 miles downstream of Armstrong Ford Road	*571
At Armstrong Ford Road	*571
Curtis Branch:	
At the confluence with South Fork Catawba River	*571
Approximately 980 feet upstream of the confluence with South Fork Catawba River	*571
Maps available for inspection at the Belmont City Hall, 115 North Main Street, Belmont, North Carolina.	
Bessemer City (City), Gaston County (FEMA Docket No. D–7512)	
Unnamed Tributary 2 to Long Creek:	
Approximately 1,645 feet downstream of Iowa Avenue	*793
Approximately 325 feet upstream of Maine Avenue	*820
Oates Creek:	
Approximately 1.12 miles upstream of Interstate 85	*790
Approximately 1.5 miles upstream of Interstate 85	*840
Unnamed Tributary 1 to Long Creek:	
Approximately 290 feet downstream of Arrowood Dam	*788
Approximately 1,190 feet upstream of Arrowood Dam	*830
Unnamed Tributary to Abernathy Creek:	
Approximately 650 feet upstream of Eleventh Street	*789
Approximately 875 feet upstream of Eleventh Street	*790
Maps available for inspection at the Bessemer City Hall, 132 West Virginia Avenue, Room 207, Bessemer City, North Carolina.	
Cherryville (Town), Gaston County (FEMA Docket No. D–7512)	
Beaverdam Creek:	
Approximately 150 feet downstream of Sullivan Drive	*868
Approximately 500 feet upstream of Pink Street	*916
Maps available for inspection at the Cherryville Town Hall, 116 South Mountain Street, Cherryville, North Carolina.	
Cramerton (Town), Gaston County (FEMA Docket No. D–7524)	
Duharts Creek:	
At the confluence with South Fork Catawba River	*577
Approximately 1.31 miles upstream of 8th Avenue	*611
Maps available for inspection at the Cramerton Town Hall, 155 North Main Street, Cramerton, North Carolina.	
Gaston County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Catawba Creek:	
Approximately 838 feet downstream of Union New Hope Road	*588
Approximately 1,475 feet upstream of Beaty Road	*626
Catawba River:	
At the confluence with Lake Wylie	*571
Approximately 2.8 miles upstream of the confluence with Dutchman's Creek	*594
Duharts Creek:	
Approximately 0.60 mile downstream of Cramerton Road	*604
Approximately 0.35 mile upstream of Lowell-Bethesda Road	*656
Fites Creek:	
Approximately 25 feet downstream of CSX Transportation	*615
Approximately 1.1 miles upstream of West Catawba Avenue	*674
Tributary R–5:	
Approximately 150 feet downstream of Interstate 85	*714
Approximately 0.50 mile upstream of Oates Road	*814
Unnamed Tributary 1 to Long Creek:	
Approximately 625 feet upstream of the confluence with Long Creek	*773
Approximately 325 feet downstream of Arrowood Dam	*788
Unnamed Tributary 2 to Long Creek:	
At the confluence with Long Creek	*741
Approximately 1,645 feet downstream of Iowa Avenue	*793
Unnamed Tributary to Abernathy Creek:	
At the confluence with Abernathy Creek	*721
Approximately 625 feet upstream of Eleventh Street	*789
Abernathy Creek:	
Approximately 2,250 feet downstream of the confluence of Unnamed Tributary to Abernathy Creek	*716
Approximately 660 feet upstream of Interstate 85	*771
Beaverdam Creek:	
Approximately 425 feet downstream of Dallas Cherryville Highway/State Route 277	*834
Approximately 25 feet upstream of Pink Street	*916
Oates Creek:	
Approximately 100 feet downstream of Interstate 85	*726
Approximately 1.1 miles upstream of Interstate 85	*790
Tributary C–10:	
At the confluence of Tributary C–10–1	*715
Approximately 100 feet upstream of East Hudson Boulevard	*732
Tributary C–10–1:	
Approximately 575 feet downstream of East Hudson Boulevard	*720
Approximately 650 feet upstream of East Hudson Boulevard	*731
Kittys Branch:	
At the confluence with Catawba River	*585
Approximately 40 feet downstream of CSX Transportation	*585
South Fork Catawba River:	
At the confluence with Catawba River	*571
At Armstrong Ford Road	*571
Nancy Hanks Branch:	
At confluence with Catawba River	*585
Approximately 3,620 feet upstream of the confluence with Catawba River	*585
Stowe Branch:	
At the confluence with Catawba River	*585
Approximately 1,470 feet upstream of the confluence of Stowe Tributary	*585
Stowe Tributary:	
At the confluence with Stowe Branch	*585

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 1,260 feet upstream of the confluence with Stowe Branch	*585
Maps available for inspection at the Gaston County Planning/Code Enforcement Office, 212 West Main Avenue, Gastonia, North Carolina.	
Gaston County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Gastonia (City), Gaston County (FEMA Docket No. D–7512)	
Forest Brook Branch:	
At confluence with Catawba Creek	*635
Approximately 125 feet upstream of Pineridge Avenue	*821
Duharts Creek:	
Approximately 1,200 feet upstream of Cramerton Road	*629
Approximately 450 feet upstream of Redbud Drive	*666
Catawba Creek:	
Approximately 0.85 mile downstream of the confluence with Forest Brook Branch	*625
Approximately 650 feet upstream of Vance Street	*769
Crowders Creek:	
Approximately 2,000 feet upstream of the confluence of Tributary R–4	*688
Approximately 850 feet upstream of the confluence of Tributary R–5	*688
Tributary C–3:	
At the confluence with Catawba Creek	*649
Approximately 1,200 feet upstream of Steeple Chase Road	*696
Tributary C–4:	
At the confluence with Catawba Creek	*655
Approximately 2,000 feet upstream of the confluence with Catawba Creek	*681
Tributary C–5:	
At the confluence with Catawba Creek	*658
Approximately 1,350 feet upstream of East Hudson Boulevard	*681
Tributary C–5–1:	
Approximately 25 feet upstream of the confluence with Tributary C–5	*658
Approximately 1,325 feet upstream of East Hudson Boulevard	*680
Tributary C–6:	
At the confluence with Catawba Creek	*680
Approximately 0.4 mile upstream of East Hudson Boulevard	*735
Tributary C–7:	
Approximately 250 feet upstream of the confluence with Catawba Creek	*695
Approximately 480 feet upstream of Laurel Lane	*731
Tributary C–8:	
At the confluence with Catawba Creek	*699
Approximately 0.34 mile upstream of Scotch Drive	*736
Tributary C–9:	
At the confluence with Catawba Creek	*702
Approximately 0.30 mile upstream of confluence with Catawba Creek	*717
Tributary C–10:	
At the confluence with Catawba Creek	*715
Approximately 100 feet upstream of East Hudson Boulevard	*732
Tributary C–10–1:	
At the confluence with Tributary C–10	*715
Approximately 575 feet downstream of East Hudson Boulevard	*720
Tributary C–11:	
At the confluence with Catawba Creek	*717
Approximately 1,210 feet upstream of Efird Street	*759
Tributary C–12:	
At the confluence with Catawba Creek	*718
Approximately 275 feet upstream of Oakland Street (Abandoned)	*760
Tributary C–14:	
At the confluence with Catawba Creek	*728
Approximately 300 feet upstream of Tenth Avenue	*735
Tributary C–15:	
At the confluence with Catawba Creek	*737
Approximately 540 feet upstream of Home Trail	*746
Tributary C–16:	
At the confluence with Catawba Creek	*744
Approximately 475 feet upstream of the confluence of Tributary C–16–1	*753
Tributary C–16–1:	
At the confluence with Tributary C–16	*747
Approximately 1,310 feet upstream of the confluence with Tributary C–16	*758
Tributary R–5:	
Approximately 140 feet downstream of the confluence of Oates Creek	*707
Approximately 410 feet upstream of the confluence of Oates Creek	*714
Avon Creek:	
At the confluence with Catawba Creek	*703
Approximately 75 feet downstream of U.S. Route 29/74	*778
Oates Creek:	
At the confluence with Tributary R–5	*708
Approximately 100 feet downstream of Interstate 85	*726
Maps available for inspection at the City of Gastonia Engineer's Office, 181 South Street, Gastonia, North Carolina.	
McAdenville (Town), Gaston County (FEMA Docket No. D–7512)	
South Fork Catawba River:	
Approximately 2,950 feet downstream of Main Street	*584
Approximately 1.9 miles upstream of Highway 85	*611
Maps available for inspection at the McAdenville Town Hall, 125 Main Street, McAdenville, North Carolina.	
Mount Holly (City), Gaston County (FEMA Docket No. D–7512)	
Catawba River:	
Approximately 230 feet upstream of Interstate 85	*587
Approximately 1,910 feet upstream of confluence of Dutchmans Creek	*591
Fites Creek:	
At confluence with Catawba River	*589
Approximately 75 feet downstream of CSX Transportation	*613
Dutchmans Creek:	
At confluence with Catawba River	*592
Approximately 3,750 feet upstream of North Main Street	*592
Maps available for inspection at the Mount Holly City Hall, 131 South Main Street, Mount Holly, North Carolina.	
Wisconsin	
Lincoln County (Unincorporated Areas) (FEMA Docket No. D–7528)	
Wisconsin River:	
Approximately 1.37 miles downstream of Alexander Dam	*1,258
At downstream side of Alexander Dam	*1,261
Prairie River:	
Approximately 660 feet downstream of Mill Street	*1,263
Approximately 1.1 miles upstream of U.S. Business Highway 51	*1,274
Maps available for inspection at the Lincoln County Zoning Office, 1110 East Main Street, Merrill, Wisconsin.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
River Falls (City), St. Croix and Pierce Counties (FEMA Docket No. D–7528)	
Kinnickinnic River:	
Approximately 1.1 miles downstream of the confluence of South Fork Kinnickinnic River	*806
Approximately 400 feet upstream of State Route 35/65	*898
Rocky Branch:	
Approximately 850 feet upstream of confluence with Kinnickinnic River	*805
Approximately 2,230 feet upstream of confluence with Kinnickinnic River	*814
South Fork Kinnickinnic River:	
At confluence with Kinnickinnic River	*828
Approximately 575 feet upstream of State Route 35/65	*906
South Fork Kinnickinnic River Tributary No. 2:	
At confluence with South Fork Kinnickinnic River	*906
Approximately 950 feet upstream of South Fork Kinnickinnic River	*907
Maps available for inspection at the River Falls City Hall, 123 East Elm Street, River Falls, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–25958 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 90 and 95

[WT Docket No. 98–182; FCC 02–139]

1998 Biennial Regulatory Review—Private Land Mobile Radio Services

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses six petitions for reconsideration or clarification of the Report and Order in WT Docket No. 98–182. The Commission affirms the decision to create a new Citizens Band Radio Service named the Multi-Use Radio Service (MURS), updates the Airport Terminal Use (ATU) and adopts additional revisions to the Commission's rules on its own motion. The Commission also adopts a rule revision to remove the low power restriction from certain frequencies currently reserved for low power operation on a primary basis for cargo handling purposes at docksides. The Commission also eliminates the eligibility restriction on school and park operations in the Public Safety Pool.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Guy Benson, Esquire at (202) 418–2946 <*gbenson@fcc.gov*>, Mr. Brian Marenco at 418–0838 <*bmarenco@fcc.gov*>, or John Evanoff, Esquire at 418–0848 <*jevanoff@fcc.gov*>, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Memorandum Opinion and Order and Second Report and Order, FCC 02–139, adopted on May 2, 2002 and released on May 23, 2002 as corrected in Erratum DA–02–2256 adopted September 12, 2002 and released September 13, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission'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.

1. The major decisions we adopt in the *Memorandum Opinion and Order* today include:

• *MURS:* We affirm the decision to license by rule (*i.e.*, eliminate individual licensing for, and instead license by rule) five VHF frequencies that were formerly licensed under Part 90 for low-power, industrial/business use, by placing frequencies in a new Part 95 Citizens Band Radio Service named the Multi-Use Radio Service (MURS).

• *Eligibility:* We decline to restrict the use of MURS to Part 90 Industrial/Business Pool eligibles. The general public is licensed by rule to use MURS for communications related to personal or business activities.

• *Technical provisions:* We revise the MURS technical rules to balance the benefits of adding technical flexibility against the disadvantages of potential degradation of the existing operations of business and industrial users. As with other services licensed by rule, the rules we adopt for MURS focus on technical equipment certification requirements. We also clarify that MURS is a two-way, short-distance, voice or data communication service intended for transmissions that do not typically require long duty cycles.

Under the revised rules, MURS units are:

• Permitted to have detachable antennas;

• Permitted to have external antennas up to 6.1 meters (20 feet) above a structure or 18.3 meters (60 feet) above the ground, whichever is higher;

• Permitted to have a total power output (TPO) of up to two (2) watts (instead of two (2) watts effective radiated power);

• Not permitted to be used as cordless telephones, radiofacsimile (imaging), or for continuous carrier mode operations; and

• Not permitted to be used for repeater operations.

• *ATU list:* We update the Airport Terminal Use (ATU) list found in Section 90.35(c)(61) of the Rules. The ATU list identifies, by name and reference coordinates, the airports at which certain 450 MHz band frequencies are reserved for stations located on or near the airports and used in connection with the servicing and supplying of aircraft.

2. The major decisions we adopt in the *Second Report and Order* include:

• *''Dockside'' frequencies for high-power:* We also address the comments and other filings in response to the *Further Notice* in this proceeding. Specifically, we adopt the proposal of the American Automobile Association (AAA) to revise the power limit on certain frequencies currently reserved for low power operations on a primary basis for cargo handling purposes at docksides. We are not, however, adopting AAA's proposal to require all applicants to obtain AAA's concurrence to use these frequencies.

• *Public Safety Pool eligibility:* We adopt our proposal to eliminate the eligibility restriction on school and park operations in the Public Safety Pool under Section 90.20 of our Rules. We also eliminate the restriction prohibiting State highway maintenance systems from operating on certain Public Safety Pool channels.

I. Procedural Matters

Final Regulatory Flexibility Analysis

3. A Supplemental Final Regulatory Flexibility Analysis with respect to this *Memorandum Opinion and Order* has been prepared and is included. A Final Regulatory Flexibility Analysis has been prepared for the *Second Report and Order* and is included.

II. Supplemental Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix D of the *Report and Order and Further Notice of Proposed Rule Making (R&O),* 65 FR 60869, October 13, 2000. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) considers the current *Memorandum Opinion and Order and Second Report and Order (MO&O)* and updates information contained in the FRFA. The present SFRFA, contained in the *MO&O*, conforms to the RFA.

Need for, and Objectives of, the MO&O

5. This proceeding was initiated in conjunction with the Commission's 1998 biennial review of regulations pursuant to section 11 of the Communications Act of 1934, as amended (the Communications Act). On September 30, 1998, the Commission adopted a *NPRM*, 63 FR 65568, November 27, 1998, proposing a comprehensive review of the rules applicable to the PLMR services to determine which regulations were not in the public interest, obsolete, overly complex, required editorial change, or were redundant in nature. In the *R&O* adopted June 29, 2000, the Commission, among other things: expanded the availability of thirty-one ''dockside'' frequencies, doubled the PLMR license term from five years to ten years, and increased the time period in which certain PLMR stations must be placed in operation. The Commission also clarified the frequency coordination process for Public Safety Pool channels in the 220–222 MHz band and authorized Public Safety Pool licensees to share their licensed radio facilities with federal public safety providers. In addition, the Commission clarified the definitions of centralized and decentralized trunking and established a new process for licensing trunked systems. Finally, the Commission ''licensed by rule,'' *i.e.*, eliminated the individual licensing requirements for, five VHF frequencies that were allocated to the Part 90 Industrial/Business Pool for low power (1- or 2-watt) operations. Under this decision, the Commission reallocated the five VHF frequencies to the Part 95 Personal Radio Services and established a new Multi-Use Radio Service (MURS) under the Citizens Band Radio Services.

6. The rules adopted in this *MO&O* continue our efforts to consolidate and streamline the Part 90 Rules, allow more efficient use of the spectrum, and provide Part 90 licensees with greater flexibility and clarity concerning their operations. In particular, we affirm the decision to license by rule (*i.e.*, eliminate individual licensing for, and instead license by rule) five VHF frequencies that were formerly licensed under Part 90 for low-power, industrial/business use, by placing frequencies in a new Part 95 Citizens Band Radio Service named the Multi-Use Radio Service (MURS). In addition, we decline to restrict the use of MURS to Part 90 Industrial/Business Pool eligibles. The general public is licensed by rule to use MURS for communications related to personal or business activities, and we revise the MURS technical rules to balance the benefits of adding technical flexibility against the disadvantages of potential degradation of the existing operations of business and industrial users.

Summary of Significant Issues Raised by the Public in Response to the FRFA

7. No reconsideration petitions discussed issues directly in response to the previous FRFA.

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

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

9. *Public Safety radio services and Governmental entities.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

10. *Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more that 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated

during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

11. *Equipment Manufacturers.* We anticipate that radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. We expect that, at most, the rules adopted herein will result in nominal new reporting, recordkeeping, or other compliance requirements imposed on entities affected in this proceeding.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant alternative that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage.

14. Regarding our decision to express maximum operating power in terms of transmit power output (TPO) rather than effective radiated power (ERP), we do not believe that this will significantly impact small entities. Prior to the creation of MURS, the subject frequencies were restricted in terms of TPO, and our decision to retain this standard will provide continuity as well as the ability for users to utilize detachable gain-adding antennas (which would not be feasible were we to use the ERP standard).

15. Regarding our decision to restrict antenna height to 20 feet above structure or 60 feet above ground, whichever is higher, we do not anticipate any significant impact on small entities. Prior to the creation of MURS, transmitting antennas using the subject frequencies were limited in height due to a provision that restricted the distance between the radio control point and the center of the radiating portion of the antenna. Consequently, the new antenna height limits should not affect small entities that continue to operate on the subject frequencies. Moreover, we believe that antenna height restrictions will benefit small entities in that such restrictions promote spectrum sharing and re-use of the frequencies, thus enabling more small entities to take advantage of this radio service.

16. Regarding our decision to prohibit repeater operations, small (and other) entities wishing to extend the range of communications will not be allowed to do so. On balance, however, this restriction should benefit small entities in that it promotes spectrum sharing and frequency re-use, thus allowing a greater number of users to take advantage of this radio service. Moreover, any potential negative impact on small entities is mitigated due to our decision to grandfather existing operations on the subject frequencies. Consequently, any user that was authorized to use repeaters on the subject frequencies prior to the creation of MURS will continue to be allowed to do so. An alternative would be to allow repeater operations, but we believe that the resulting benefits of extended communications capabilities are outweighed by accommodating a greater number of users on these channels.

17. Regarding our decision to prohibit MURS radios from interconnecting with the Public Switched Network (PSN), small (and other) entities that want to use MURS frequencies for telephone or other interconnected types of service will not be allowed to do so. Allowing interconnection, however, would be inconsistent with the intent of this radio service, which is a two-way, short distance voice and data communications service of *short duration.* Typically, communications over the PSN last longer than the types of communications envisioned for MURS. An alternative would be to allow interconnection, but because PSN interconnected communications are typically duplex in nature, thus occupying two of five channels in a given area, this would severely limit the number of available channels at one time. In this connection, we believe that the prohibition on PSN interconnection will likely generally benefit small entities in that such restrictions promote spectrum sharing and re-use of the frequencies, thus enabling more small entities to take advantage of this radio service. Finally, any potential negative impact on small entities is mitigated due to our decision to grandfather existing operations on the subject frequencies. Consequently, any user that was authorized to interconnect with the PSN on the subject frequencies prior to the creation of MURS will continue to be allowed to do so.

18. Our decision to prohibit MURS users from operating in the continuous carrier mode, could impact small (and other) entities in that they will be prevented from doing so, and the alternative would be to allow such operations. As with antenna height limits, repeater use, and PSN interconnection, however, we believe that the benefits of increased spectrum sharing and frequency re-use far outweigh the potential negative impact on small entities. Moreover, the potential impact on small entities is mitigated due to our decision to grandfather existing operations on the subject frequencies. Consequently, any user that was authorized to operate in the continuous carrier transmit mode on the subject frequencies prior to the creation of MURS will continue to be allowed to do so.

19. Regarding our decision to prohibit the transmission of lengthy data image signals over MURS, we do not anticipate any significant impact on small entities. Transmissions of this type of communications was never allowed on the subject frequencies and allowing them now in MURS would be inconsistent with the intent of the service.

20. We do not anticipate that our decision to change the permissible bandwidth from 12.5 kHz to 20 kHz for frequencies 154.570 MHz and 154.600 MHz, will have any significant impact on small entities. Prior to the creation of MURS, the permissible bandwidth for these frequencies was 20 kHz, and changing it in the *R&O* to 12.5 kHz was an inadvertent error.

21. Our decision to prohibit the integration of MURS frequencies and FRS frequencies into a single radio unit, should not have a significant adverse impact on small entities. FRS is a narrowly tailored service intended for private two-way, very short distance voice communications for facilitating family and group activities. Small (and other) businesses are currently not

eligible to operate on FRS frequencies and therefore, this prohibition should not have any adverse impact.

22. We also decline to delay the implementation of MURS by declining to adopt a transition/migration period, which might have assisted small entities that might face increased congestion and potential interference from the introduction of non-business operations on the subject frequencies. We have, however, adopted technical restrictions in this *Memorandum Opinion and Order* to mitigate the potential for harmful interference to small (and other) business operations. Furthermore, as noted above, as the subject frequencies are shared, business users were never insured of interference-or congestion-free operations. Finally, Motorola's suggested migration plan is too speculative, as it relies on the outcome of a pending proceeding. Consequently, based on the totality of the record, we believe that the public interest would not be served were we to delay MURS, and the impact, if any, of this decision on small entities is likely to be minimal.

23. Regarding our decision to update the airport terminal use (ATU) list, we do not anticipate any significant impact on small entities. Small entities that wish to operate on these ATU frequencies will have expanded opportunities to do so. Moreover, this decision should have little impact on small entity non-airport terminal business radio users located near these airports, because such operations will continue to be allowed.

III. Final Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Report and Order and Further Notice of Proposed Rule Making (Further Notice). The Commission sought written public comment on the proposals in the Further Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Adopted Rules

25. To further consolidate and streamline the Part 90 of the rules, reduce regulatory requirements, provide Part 90 licensees with greater flexibility concerning their operations, and promote increased spectrum sharing, the Commission amends Part 90 of its rules to (1) remove the restriction preventing school districts and authorities and park districts and authorities from being eligible for licenses in the Public Safety Pool; (2) remove the restriction preventing State highway maintenance systems from operating on certain channels in the Public Safety Pool; and (3) remove the power restriction on seven ''dockside'' channels in the Industrial/Business Pool.

26. These rule changes are needed in order to give park districts and authorities and school districts and authorities access to spectrum needed for important communications functions. Additionally, we believe that allowing such entities to operate on the Public Safety Pool channels will facilitate interoperability between park or school district personnel and other public safety entities, which can be very important especially during emergencies. Similarly, the inclusion of State highway maintenance systems on certain Public Safety Pool frequencies should give such systems access to spectrum needed for important communications functions. Finally, removal of the power restriction on the dockside channels will facilitate increased range and more reliable communications for Industrial/Business Pool eligibles.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

27. No comments were submitted specifically in response to the IRFA. We have nonetheless considered the effect of these rule changes on small entities and considered other alternatives. We expect, however, that our actions will benefit all entities subject to these rule changes, including small entities.

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

28. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

29. *Public Safety radio services and Governmental entities.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

30. *Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged

in radiotelephone communications employing no more that 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

31. *Equipment Manufacturers.* We anticipate that radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

32. The Rules adopted in this Order have minimal additional reporting or recordkeeping requirements for PLMR licensees.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternative that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage.

34. Regarding our decision to eliminate eligibility restrictions on park districts and authorities and school districts and authorities so that these entities may obtain licenses to operate on Public Safety Pool channels, *see* paras. 52–54, *supra*, there should be no significant adverse impact on small entities. Indeed, small entities should benefit from this decision, as they will have greater opportunities for licensing now that they will be allowed to operate on the Public Safety Pool frequencies. An alternative to this proposal would be to retain the current rule, which would be unsatisfactory because it would leave the parks without any possibility of operating radio stations for the transmission of communications essential to their official activities.

35. Regarding our decision to eliminate the rule restricting State highway maintenance systems from operating on certain Public Safety Pool frequencies, we do anticipate any adverse impact on small entities. An alternative to this decision would be to continue the prohibition. This would, however, be unsatisfactory, as allowing State highway maintenance systems to operate on the subject frequencies furthers the important Commission goals of increased spectrum sharing and interoperability of public safety communications.

36. Finally, our decision to eliminate the power restriction on seven of the thirty-one ''dockside'' channels, should not have any adverse impact on small entities. The potential to pair these dockside frequencies with the AERS or other Industrial/Business Pool frequencies will result in greater opportunities for small (and other) business due to increased signal coverage and more reliable communications. In addition, concerns of harmful interference to existing low power users on the subject frequencies are mitigated, because operation on these frequencies will continue to require frequency coordination from a Commission-certified frequency coordinator.

IV. Ordering Clause

37. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by Motorola, Inc. on November 13, 2000, *is denied*.

38. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by RadioShack Corporation on January 3, 2001, *is denied*.

39. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by the Personal Radio Steering Group, Inc. on November 13, 2000, *is granted* to the extent indicated herein and otherwise *denied*.

40. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by William C. Easterday on November 13, 2000, *is dismissed* as moot.

41. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by the Personal Communications Industry Association, Inc. on November 13, 2000, is *granted*.

42. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by the American Association of State Highway and Transportation Officials on November 13, 2000, *is granted* to the extent indicated herein and otherwise *denied*.

43. The amendments of the Commission's Rules as set forth in the rule changes *are adopted*, effective November 12, 2002.

44. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 98–182, including the Supplemental Final and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 0, 90 and 95

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 amends 47 CFR parts 0, 90 and 95 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.331 is amended by revising paragraph (d) introductory text to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) *Authority concerning rulemaking proceedings.* The Chief, Wireless Telecommunications Bureau shall not have the authority to act upon notices of proposed rulemaking and inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such orders involving ministerial conforming amendments to rule parts, or orders conforming any of the applicable rules to formally adopted international conventions or agreements where novel questions of fact, law, or policy are not involved. In addition, revisions to the airport terminal use list in § 90.35(c)(61) of this chapter need not be referred to the Commission. Also, the addition of new Marine VHF frequency coordination committee(s) to § 80.514 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law, as well as requests by the United States Coast Guard to:

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Amend § 90.20 as follows:

a. Revise paragraph (a)(1)(i).

b. In paragraph (c)(3) remove Limitation code 43 from all frequencies wherever it appears and remove coordinator codes PP and PS from the following frequencies 220.8025 through 220.8475 and 221.8025 through 221.8475.

c. Remove and reserve paragraph (d)(43).

The revisions read as follows:

§ 90.20 Public Safety Pool.

(a) * * *

(1) * * *

(i) A district and an authority;

* * * * *

5. Amend § 90.35 as follows:

a. Revise paragraph (b)(2)(iii).

b. In paragraph (b)(3), remove limitation code 11, from the following frequencies: 457.525, 457.550, 457.5625, 457.575, 457.5875, 457.600 and 457.6125.

c. Revise paragraph (c)(60)(ii) and (c)(60)(iii).

d. Revise paragraph (c)(61)(iii) and (c)(61)(iv).

The revisions read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(2) * * *

(iii) For frequencies above 150 MHz, applications for new or modified facilities on frequencies shared prior to radio service consolidation by the former Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service, the Telephone Maintenance Radio Service and the Automobile Emergency Radio Service may be coordinated by any certified Industrial/Business Pool coordinator. However, in the event that the interference contour of a proposed station would overlap the service contour of an existing station licensed on one of these previously shared frequencies, the written concurrence of the coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station, shall be obtained. For the purposes of this § 90.35, the service contour for UHF stations is the 39 dBu contour; and the interference contour for UHF stations is the 21 dBu contour; the service contour for VHF stations is the 37 dBu contour; and the interference contour for VHF stations is the 19 dBu contour.

* * * * *

(c) * * *

(60) * * *

(ii) This frequency is also available for low power non-cargo handling operations, both voice and non-voice, on a secondary basis to cargo handling communications. Such operations are not subject to the power limitations in paragraph (c)(60)(i) of this section on the following frequencies: 457.525 MHz, 457.550 MHz, 457.5625 MHz, 457.575 MHz, 457.5875 MHz, 457.600 MHz, and 457.6125 MHz. This frequency will not be assigned for non-cargo handling operations at temporary locations.

(iii) For mobile relay operations under paragraph (c)(60)(i) of this section, frequency pairing is as follows:

Mobile relay (MHz) [1]	Mobile (MHz)
457.525	467.750
457.53125	467.75625
457.5375	467.7625
457.54375	467.76875
457.550	467.775
457.55625	467.78125
457.5625	467.7875
457.56875	467.79375
457.575	467.800
457.58125	467.80625
457.5875	467.8125
457.59375	467.81875
457.600	467.825
457.60625	467.83125
457.6125	.....
457.61875	.....

[1] The mobile relay frequencies may also be used for single frequency simplex.

(61) * * *

(iii) To stations in the Industrial/Business Pool for secondary use at locations 16 km (10 miles) or more from the coordinates of the listed airports at a maximum transmitter power output of 2 watts. Use of the frequency is restricted to the confines of an industrial complex or manufacturing yard area. Stations licensed prior to November 12, 2002 may continue to operate with facilities authorized as of that date.

(iv) The airports and their respective reference coordinates are (coordinates are referenced to North American Datum 1983 (NAD83)):

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
Aberdeen, SD: Aberdeen Regional (ABR)	45°26′56.6″	98°25′18.6″
Agana, GU: Guam International (GUM)	13°29′00.4	144°47′45.5″ E
Akron, OH: Akron-Canton Regional (CAK)	40°54′58.7″	81°26′32.9″
Alamosa, CO: San Luis Valley Regional/Bergman Field (ALS)	37°26′05.7″	105°51′59.6″
Albany, NY: Albany Int'l (ALB)	42°44′53.2″	73°48′10.7″
Albuquerque, NM: Albuquerque International Sunport (ABQ)	35°02′24.8″	106°36′33.1″
Allentown-Bethlehem, PA: Lehigh Valley Int'l (ABE)	40°39′08.5″	75°26′25.5″
Amarillo, TX: Amarillo International (AMA)	35°13′09.7″	101°42′21.3″

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
Anchorage, AK: Ted Stevens Anchorage International (ANC)	61°10′27.6″	149°59′46.3″
Appleton, WI: Outagamie County Regional (ATW)	44°15′26.7″	88°31′10.1″
Aspen, CO: Aspen-Pitkin County/Sardy Field (ASE)	39°13′23.4″	106°52′07.9″
Atlanta, GA:		
Atlanta International (ATL)	33°38′25.6″	84°25′37.0″
Dekalb-Peachtree (PDK)	33°52′32.2″	84°18′07.1″
Fulton County (FTY)	33°46′44.9″	84°31′16.9″
Austin, TX: Austin Bergstrom International (AUS)	30°11′40.3″	97°40′11.5″
Bakersfield, CA: Meadows Field (BFL)	35°26′00.9″	119°03′24.4″
Baltimore, MD: Baltimore-Washington Int'l (BWI)	39°10′31.5″	76°40′05.5″
Baton Rouge, LA: Baton Rouge Metropolitan (BTR)	30°31′59.4″	91°08′58.7″
Billings, MT: Billings Logan International (BIL)	45°48′27.6″	108°32′34.3″
Birmingham, AL: Birmingham Int'l (BHM)	33°33′46.6″	86°45′12.8″
Bismarck, ND: Bismarck Municipal (BIS)	46°46′21.8″	100°44′44.7″
Boise, ID: Boise Air Terminal (BOI)	43°33′52.0″	116°13′22.0″
Boston, MA: Logan International (BOS)	42°21′51.7″	71°00′18.7″
Bozeman, MT: Gallatin Field (BZN)	45°46′36.8″	111°09′10.8″
Bridgeport, CT: Sikorsky Memorial (BDR)	41°09′48.5″	73°07′34.2″
Buffalo, NY: Buffalo Niagara Int'l (BUF)	42°56′25.9″	78°43′55.8″
Burlington, VT: Burlington Int'l (BTV)	44°28′18.7″	73°09′11.8″
Cedar Rapids, IA: The Eastern Iowa (CID)	41°53′04.5″	91°42′39.1″
Charleston, SC: Charleston AFB/International (CHS)	32°53′55.1″	80°02′25.8″
Charlotte, NC: Charlotte-Douglas Int'l (CLT)	35°12′50.4″	80°56′35.3″
Chattanooga, TN: Lovell (CHA)	35°02′06.9″	85°12′13.6″
Chicago, IL-Northwest, IN:		
Chicago-Wheeling-Palwaukee (PWK)	42°06′51.1″	87°54′05.3″
Meigs (CGX)	41°51′31.8″	87°36′28.5″
South Bend Regional (SBN)	41°42′32.2″	86°19′06.5″
Midway (MDW)	41°47′09.5″	87°45′08.7″
O'Hare International (ORD)	41°58′46.5″	87°54′16.1″
West Chicago-Dupage (DPE)	41°54′24.8″	88°14′54.3″
Cincinnati, OH:		
Cincinnati-Blue Ash (ISZ)	39°14′48.1″	84°23′20.3″
Lunken (LUK)	39°06′12.0″	84°25′07.0″
Cleveland, OH:		
Burke Lakefront (BKL)	41°31′03.0″	81°41′00.0″
Cuyahoga County (CGF)	41°33′54.5″	81°29′10.9″
Hopkins International (CLE)	41°24′39.2″	81°50′57.8″
Columbia, SC: Columbia Metropolitan (CAE)	33°56′19.8″	81°07′10.3″
Columbus, GA: Columbus Metropolitan (CSG)	32°30′58.8″	84°56′19.9″
Columbus, OH:		
Port Columbus Int'l (CMH)	39°59′52.8″	82°53′30.8″
Rickenbacker International (LCK)	39°48′49.5″	82°55′40.3″
Corpus Christi, TX: Corpus Christi International (CRP)	27°46′13.3″	97°30′04.4″
Covington/Cincinnati, KY: Cincinnati/Northern Kentucky Int'l (CVG)	39°02′46.1″	84°39′43.8″
Crescent City, CA: Jack McNamara Field (CEC)	41°46′48.6″	124°14′11.5″
Dallas, TX:		
Addison (ADS)	32°58′06.8″	96°50′11.2″
Dallas-Ft. Worth Int'l (DFW)	32°53′45.4″	97°02′13.9″
Dallas-Love Field (DAL)	32°50′49.6″	96°51′06.4″
Red Bird (RBD)	32°40′51.1″	96°52′05.5″
Davenport, IA (Rock Island, Moline, IL):		
Davenport Municipal (DVN)	41°36′37.0″	90°35′18.0″
Quad City (MLI)	41°26′54.7″	90°30′27.1″
Dayton, OH: Dayton International (DAY)	39°54′08.6″	84°13′09.8″
Denver, CO:		
Centennial (APA)	39°34′12.5″	104°50′57.5″
Colorado Springs Municipal (COS)	38°48′20.9	104°42′00.9″
Jeffco (BJC)	39°54′31.6″	105°07′01.9″
Denver International (DEN)	39°51′30.3″	104°40′01.2″
Des Moines, IA: Des Moines Int'l (DSM)	41°32′05.8″	93°39′38.5″
Detroit, MI:		
Detroit City (DET)	42°24′33.1″	83°00′35.5″
Detroit Metro-Wayne County (DTW)	42°12′43.4″	83°20′55.8″
Oakland-Pontiac (PTK)	42°39′54.7″	83°25′07.4″
Willow Run (YIP)	42°14′16.5″	83°31′49.5″
Duluth, MN: Duluth International (DLH)	46°50′31.5″	92°11′37.1″
Durango, CO: Durango-La Plata County (DRO)	37°09′05.5″	107°45′13.6″
Eagle, CO: Eagle County Regional (EGE)	39°38′33.2″	106°55′03.7″
El Paso, TX: El Paso International (ELP)	31°48′24.0″	106°22′40.1″
Eugene, OR: Mahlon Sweet Field (EUG)	44°07′23.7″	123°13′07.3″
Eureka, CA: Eureka Municipal (033)	40°46′51.4″	124°12′44.2″

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
Fargo, ND: Hector International (FAR)	46°55′09.7″	96°48′53.9″
Flint, MI: Bishop (FNT)	42°57′55.8″	83°44′36.4″
Ft. Lauderdale-Hollywood, FL:		
Ft. Lauderdale Executive (FXE)	26°11′50.2″	80°10′14.6″
Ft. Lauderdale-Hollywd Int'l (FLL)	26°04′21.3″	80°09′09.9″
Ft. Meyers, FL: Page Field (FMY)	26°35′11.8″	81°51′47.7″
Ft. Meyers, FL: Southwest Florida International (RSW)	26°32′10.2″	81°45′18.6″
Ft. Wayne, IN: Fort Wayne International (FWA)	40°58′42.5″	85°11′42.5″
Ft. Worth, TX:		
Fort Worth Alliance (AFW)	32°59′12.5″	97°19′07.7″
Meacham (FTW)	32°49′11.2″	97°21′44.8″
Fresno, CA:		
Fresno-Chandler Downtown (FCH)	36°43′56.5″	119°49′11.6″
Fresno Yosemite Int'l (FAT)	36°46′34.3″	119°43′05.3″
Gainesville, FL: Gainesville Regional (GNV)	29°41′24.2″	82°16′18.4″
Grand Forks, ND: Grand Forks International (GFK)	47°56′57.3″	97°10′34.0″
Grand Rapids, MI: Gerald R. Ford Int'l (GRR)	42°52′51.0″	85°31′22.1″
Great Falls, MT: Great Falls International (GTF)	47°28′55.2″	111°22′14.5″
Green Bay, WI: Austin Straubel Int'l (GRB)	44°29′06.3″	88°07′46.5″
Greensboro, NC: Piedmont Tirad International (GSO)	36°05′51.9″	79°56′14.3″
Greer, SC: Greenville-Spartanburg Int'l (GSP)	34°53′44.4″	82°13′07.9″
Gunnison, CO: Gunnison County (GUC)	38°32′02.2″	106°55′58.9″
Hana, HI: Hana (HNM)	20°47′44.3″	156°00′52.0″
Harlingen, TX: Valley International (HRL)	26°13′42.6″	97°39′15.8″
Harrisburg, PA:		
Capital City (CXY)	40°13′01.7″	76°51′05.3″
Harrisburg Int'l (MDT)	40°11′36.6″	76°45′48.3″
Hartford, CT (Windsor Locks):		
Bradley Int'l (BDL)	41°56′20.0″	72°40′59.6″
Hartford-Brainard (HFD)	41°44′10.6″	72°39′00.8″
Hayden, CO: Yampa Valley (HDN)	40°28′52.2″	107°13′03.6″
Hilo, HI: Hilo Int'l (ITO)	19°43′12.9″	155°02′54.5″
Honolulu, HI: Honolulu International (HNL)	21°19′07.3″	157°55′20.7″
Houston, TX:		
W.P. Hobby (HOU)	29°38′43.5″	95°16′44.0″
D.W. Hooks Memorial (DWH)	30°03′42.7″	95°33′10.0″
George Bush Intercontinental (IAH)	29°58′49.7″	95°20′23.0″
Indianapolis, IN: Indianapolis Int'l (IND)	39°43′02.4″	86°17′39.8″
Jackson Hole, WY: Jackson Hole (JAC)	43°36′26.4″	110°44′15.9″
Jacksonville, FL:		
Craig Municipal (CRG)	30°20′10.8″	81°30′52.0″
Jacksonville Int'l (JAX)	30° 29′38.6″	81°41′16.3″
Kalamazoo, MI: Kalamazoo/Battle Creek International (AZO)	42°14′05.5″	85°33′07.4″
Kalispell, MT: Glacier Park International (FCA)	48°18′41.1″	114°15′18.2″
Kansas City, MO–KS:		
Kansas City Int'l (MCI)	39°17′51.4″	94°42′50.1″
Kansas City Municipal Dntn (MKC)	39°07′23.7″	94°35′33.9″
Kauna Kakai, HI: Molokai (MKK)	21°09′10.4″	157°05′46.5″
Knoxville, TN: McGhee Tyson (TYS)	35°48′44.9″	83°59′34.3″
Lacrosse, WI: Lacrosse Municipal (LSE)	43°52′46.5″	91°15′24.6″
Lansing, MI: Capital City (LAN)	42°46′43.3″	84°35′14.5″
Las Vegas, NV: McCarran Int'l (LAS)	36°04′49.3″	115°09′08.4″
Lihue, HI: Lihue (LIH)	21°58′33.5″	159°20′20.3″
Lincoln, NE: Lincoln Municipal (LNK)	40°51′03.5″	96°45′33.3″
Little Rock, AR: Adams Field (LIT)	34°43′48.8″	92°13′27.3″
Los Angeles,CA:		
Burbank-Glendale-Pasadena (BUR)	34°12′02.2″	118°21°30.6″
Catalina (AVX)	33°24′17.8″	118°24′57.1″
Long Beach-Daugherty Field (LGB)	33°49′03.8″	118°09′05.8″
Los Angeles Int'l (LAX)	33°56′33.1″	118°24′29.1″
Ontario Int'l (ONT)	34°03′21.6″	117°36′04.3″
Santa Ana-John Wayne-Orange City (SNA)	33°40′32.4,″	117°52′05.6″
Louisville, KY: Louisville Int'l-Standiford Field (SDF)	38°10′27.8″	85°44′09.6″
Lubbock, TX: Lubbock International (LBB)	33°39′49.1″	101°49′22.0″
Lynchburg, VA: Lynchburg Regional-Preston Glen Field (LYH)	37°19′36.1″	79°12′01.6″
Madison, WI: Dane County Regional-Truax Field (MSN)	43°08°23.5″	89°20′15.1″
Manchester, NH: Manchester (MHT)	42°56′04.3″	71°26′13.4″
Memphis, TN: Memphis Int'l (MEM)	35°02′32.7″	89°58′36.0″
Miami, FLA:		
Miami Int'l (MIA)	25°47′35.7″	80°17′26.0″
Opa Locka (OPF)	25°54′25.2″	80°16′42.2″
Kendall-Tamiami Executive (TMB)	25°38′52.4″	80°25′58.0″

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
Milwaukee, WI: General Mitchell Int'l (MKE)	42°56′50.0″	87°53′47.7″
Minneapolis-St. Paul, MN: Minneapolis-St. Paul Int'l (MSP)	44°52′49.9″	93°13′00.9″
Minot, ND: Minot International (MOT)	48°15′33.8″	101°16′49.2″
Missoula, MT: Missoula International (MSO)	46°54′58.7″	114°05′26.0″
Mobile, AL: Mobile Regional (MOB)	30°41′29.1″	88°14′34.2″
Modesto, CA: Modesto City-County (MOD)	37°37′32.9″	120°57′15.9″
Monterey, CA: Monterey Peninsula (MRY)	36°35′13.1″	121°50′34.6″
Montrose, CO: Montrose Regional (MTJ)	38°30′31.9″	107°53′37.8″
Nashville, TN: Nashville Int'l (BNA)	36°07′28.1″	86°40′41.5″
New Haven, CT: Tweed-New Haven Municipal (HVN)	41°15′50.0″	72°53′13.6″
New Orleans, LA:		
Lakefront (NEW)	30°02′32.7″	90°01′41.7″
New Orleans Int'l (MYS)	29°59′36.2″	90°15′28.9″
Newburgh, NY: Stewart International (SWF)	41°30′14.7″	74°06′17.4″
Newport News-Hampton,VA: Newport News/Williamsburg (PHF)	37°07′54.8″	76°29′34.8″
New York-Northeast, NJ:		
Republic (FRG)	40°43′43.6″	73°24′48.3″
JFK International (JFK)	40°38′23.1″	73°46′44.1″
LaGuardia (LGA)	40°46′38.1″	73°52′21.4″
Long Island-McArthur (ISP)	40°47′42.8″	73°06′00.8″
Morristown Municipal (NJ) (MMU)	40°47′57.7″	74°24′53.5″
Newark Int'l (FWR)	40°41′32.9″	74°10′07.2″
Teterboro (NJ) (TEB)	40°51′00.4″	74°03′39.0″
Norfolk, VA: Norfolk Int'l (ORF)	36°53′40.6″	76°12′04.4″
Oklahoma City, OK:		
Wiley Post (PWA)	35°32′04.4″	97°38′49.9″
Will Rogers World (OKC)	35°23′35.1″	97°36′02.6″
Omaha, NE: Eppley Airfield (OMA)	41°18′09.1″	95° 53′39.0″
Orlando, FL:		
Orlando Executive (ORL)	28°32′43.7″	81°19′58.6″
Orlando Int'l (MCO)	28°25′44.0″	81°18′57.7″
Palm Springs, CA: Palm Springs International (PSP)	33°49′46.8″	116°30′24.1″
Peoria, IL: Greater Peoria Regional (PIA)	40°39′51.3″	89°41′35.9″
Philadelphia, PA–NJ:		
Northeast Philadelphia (PNE)	40°04′55.0″	75°00′38.1″
Philadelphia Int'l (PHL)	39°52′19.0″	75°14′28.1″
Phoenix, AZ:		
Phoenix-Sky Habor Int'l (PHX)	33°26′03.0″	112°00′29.0″
Scottsdale (SDL)	33°37′22.3″	111°54′37.9″
Pittsburgh, PA:		
Allegheny County (AGC)	40°21′15.9″	79°55′48.9″
Pittsburgh Int'l (PIT)	40°29′29.3″	80°13′58.3″
Portland, ME: Portland International Jetport (PWM)	43°38′46.2″	70°18′31.5″
Portland, OR:		
Portland-Hillsboro (HIO)	45°32′25.4″	122°56′59.4″
Portland International (PDX)	45°35′19.4″	122°35′51.0″
Portland-Troutdale (TTD)	45°32′57.7″	122°24′04.5″
Providence-Pawtucket, RI–MA:		
North Central State (SFZ)	41°55′14.7″	71°29′29.0″
T.F. Green State (PVD)	41°43′26.4″	71°25′41.6″
Pueblo, CO: Pueblo Memorial (PUB)	38°17′20.7″	104°29′47.7″
Raleigh/Durham, NC: Raleigh-Durham International (RDU)	35°52′39.5″	78°47′14.9″
Rapid City, SD: Rapid City Regional (RAP)	44°02′43.2″	103°03′26.5″
Reno, NV: Reno/Tahoe International (RNO)	39°29′54.8″	119°46′05.0″
Richmond, VA: Richmond International (RIC)	37°30′18.6″	77°19′10.8″
Roanoke, VA: Roanoke Regional/Woodrum Field (ROA)	37°19′31.7″	79°58′31.5″
Rochester, MN: Rochester International (RST)	43°54′26.0″	92°29′56.4″
Rochester, NY: Greater Rochester Int'l (ROC)	43°07′07.9″	77°40′20.6″
Sacramento, CA:		
Sacramento Executive (SAC)	38°30′45.1″	121°29′36.5″
Sacramento Int'l (SMF)	38°41′43.5″	121°35′26.8″
Saginaw, MI: MBS International (MBS)	43°31′58.5″	84°04′46.7″
Saipan Isl., CQ: Saipan International (GSN)	15°07′08.4″	145°43′45.7″ E
St. Louis, MO–IL:		
Spirit of St. Louis (SUS)	38°39′42.7″	90°39′04.4″
St. Louis-Lambert Int'l (STC)	38°44′51.7″	90°21′35.9″
St. Petersburg, FL:		
Albert Whitted Municipal (SPG)	27°45′54.4″	82°37′37.1″
St. Petersburg Clearwater Int'l (PIE)	27°54′38.8″	82°41′14.9″
Salt Lake City, UT: Salt Lake City Int'l (SLC)	40°47′18.2″	111°58′39.9″
San Antonio, TX: San Antonio Int'l (SAT)	29°32′01.3″	98°28′11.2″
San Diego, CA: San Diego Lindbergh Int'l (SAN)	32°44′00.8″	117°11′22.8″

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
San Francisco-Oakland, CA:		
Metropolitan Oakland Int'l (OAK)	37°43′16.7″	122°13′14.6″
San Francisco Int'l (SFO)	37°37′08.4″	122°22′29.4″
San Jose, CA: San Jose Int'l (SJC)	37°21′42.7″	121°55′44.4″
San Juan, PR: Luis Munoz (SJU)	18°26′21.9″	66°00′06.6″
Santa Barbara, CA: Santa Barbara Municipal (SBA)	34°25′34.4″	119°50′25.3″
Santa Fe, NM: Santa Fe Municipal (SAF)	35°37′00.4″	106°05′17.3″
Sarasota, FL: Sarasota/Bradenton International (SRQ)	27°23′43.2″	82°33′14.8″
Savannah, GA: Savannah International (SAV)	32°07′39.3″	81°12′07.7″
Seattle, WA:		
Boeing/King County Int'l (BFI)	47°26′47.9″	122°18′33.5″
Seattle-Tacoma Int'l (SEA)	47°26′56.3″	122°18′33.5″
Shreveport, LA:		
Shreveport Downtown (DTN)	32°32′24.8″	93°44′42.1″
Shreveport Regional (SHV)	32°26′47.9″	93°49′32.2″
Sioux City, IA: Sioux Gateway (SUX)	42°24′09.4″	96°23′03.7″
Sioux Falls, SD: Joe Foss Field (FSD)	43°34′52.9″	96°44′30.1″
South Bend, IN: South Bend Regional (SBN)	41°42′32.2″	86°19′06.5″
Spokane, WA:		
Grant County Int'l (MWH)	47°12′27.5″	119°19′12.7″
Spokane Int'l (GEG)	47°37′11.5″	117°32′01.8″
Springfield, MA:		
Barnes Municipal (BAF)	42°09′27.8″	72°42′56.2″
Westover ARB/Metropolitan (CEF)	42°11′53.8″	72°32′03.3″
Springfield, MO: Springfield-Branson Regional (SGF)	37°14′39.6″	93°23′12.7″
Syracuse, NY: Syracuse-Hancock Int'l (SYR)	43°06′40.3″	76°06′22.7″
Tacoma, WA: Tacoma Narrows (TIW)	47°16′04.6″	122°34′41.2″
Tallahassee, FL: Tallahassee Regional (TLH)	30°23′47.5″	84°21′01.2″
Tampa, FL: Tampa Int'l (TPA)	27°58′31.7″	82°31′59.7″
Telluride, CO: Telluride Regional (TEX)	37°57′13.5″	107°54′30.5″
Toledo, OH: Toledo Express (TOL)	41°35′12.5″	83°48′28.2″
Trenton, NJ–PA: Trenton Mercer (TTN)	40°16′36.1″	74°48′48.5″
Tucson, AZ: Tucson Int'l (TUS)	32°06′57.9″	110°56′27.7″
Tulsa, OK:		
R.L. Jones, Jr. (RVS)	36°02′22.7″	95°59′04.7″
Tulsa Int'l (TUL)	36°11′54.1″	95°53′17.7″
Washington, DC:		
Dulles International (IAD)	38°56′40.3″	77°27′20.9″
Ronald Reagan National (DCA)	38°51′07.5″	77°02′15.8″
Waterloo, IA: Waterloo Municipal (ALO)	42°33′25.5″	92°24′01.2″
West Palm Beach, FL: Palm Beach International (PBI)	26°40′59.4″	80°05′44.1″
White Plains, NY: Westchester County (HPN)	41°04′01.1″	73°42′27.3″
Wichita, KS: Mid-Continent (ICT)	37°38′59.9″	97°25′58.9″
Scranton, PA: Wilkes-Barre/Scranton Int'l (AVP)	41°20′17.3″	75°43′27.4″
Wilmington, DE: New Castle County (ILG)	39°40′43.4″	75°36′23.5″
Worcester, MA: Worcester Regional (ORH)	42°16′02.4″	71°52′32.6″
Youngstown-Warren, OH–PA: Youngstown-Warren Regional (YNG)	41°15′38.7″	80°40′44.8″

[1] Coordinates followed by an ''E'' are east longitude.

6. Section 90.175 is amended by revising paragraph (b)(1) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(b) * * * (1) A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b) recommending the most appropriate frequency. In addition, for frequencies above 150 MHz, if the interference contour of a proposed station would overlap the service contour of a station on a frequency formerly shared prior to radio service consolidation by licensees in the Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service, the Telephone Maintenance Radio Service or the Automobile Emergency Radio Service, the written concurrence of the coordinator for the industry-specific service, or the written concurrence of the licensee itself, must be obtained. Requests for concurrence must be responded to within 20 days of receipt of the request. The written request for concurrence shall advise the receiving party of the maximum 20 day response period. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain and other factors which may serve to minimize potential interference. In addition:

* * * * *

7. Section 90.210 is amended by revising the introductory text of paragraphs (b), (c), (g), (h), (i), and (j) to read as follows:

§ 90.210 Emission masks.

* * * * *

(b) *Emission Mask B.* For transmitters that are equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier power (P) as follows:

* * * * *

(c) *Emission Mask C.* For transmitters that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier output power (P) as follows:

* * * * *

(g) *Emission Mask G.* For transmitters that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier power (P) as follows:

* * * * *

(h) *Emission Mask H.* For transmitters that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier power (P) as follows:

* * * * *

(i) *Emission Mask I.* For transmitters that are equipped with an audio low pass filter, the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) as follows:

* * * * *

(j) *Emission Mask J.* For transmitters that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) as follows:

* * * * *

§ 90.242 [Amended]

8. In § 90.242 remove and reserve paragraph (a)(1).

PART 95—PERSONAL RADIO SERVICES

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

10. Section 95.401 is amended by revising paragraph (f) to read as follows:

§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?

* * * * *

(f) The Multi-Use Radio Service (MURS)—a private, two-way, short-distance voice or data communications service for personal or business activities of the general public. The rules for this service are contained in subpart J of this part.

11. Section 95.603 is amended by revising paragraph (g) to read as follows:

§ 95.603 Certification required.

* * * * *

(g) Each Multi-Use Radio Service transmitter (a transmitter that operates or is intended to operate in the MURS) must be certificated in accordance with Subpart J of Part 2 of this chapter, Provided however, that those radio units certificated as of November 12, 2002 need not be recertificated.

12. Section 95.631 is amended by revising paragraph (j) as follows:

§ 95.631 Emission types.

* * * * *

(j) A MURS transmitter must transmit only emission types A1D, A2B, A2D, A3E, F2B, F1D, F2D, F3E, G3E. Emission types A3E, F3E and G3E include selective calling or tone-operated squelch tones to establish or continue voice communications. MURS transmitters are prohibited from transmitting in the continuous carrier mode.

13. Section 95.632 is amended by revising paragraph (b) to read as follows:

§ 95.632 MURS transmitter frequencies.

* * * * *

(b) The authorized bandwidth is 11.25 kHz on frequencies 151.820 MHz, 151.880 MHz and 151.940 MHz. The authorized bandwidth is 20.0 kHz on frequencies 154.570 and 154.600 MHz.

* * * * *

14. Section 95.633 is amended by revising paragraph (f) to read as follows:

§ 95.633 Emission bandwidth.

* * * * *

(f) The authorized bandwidth for any emission type transmitted by a MURS transmitter is specified as follows:

(1) Emissions on frequencies 151.820 MHz, 151.880 MHz, and 151.940 MHz are limited to 11.25 kHz.

(2) Emissions on frequencies 154.570 and 154.600 MHz are limited to 20.0 kHz.

(3) Provided, however, that all A3E emissions are limited to 8 kHz.

15. Section 95.635 is amended by revising paragraph (e) to read as follows:

§ 95.635 Unwanted radiation.

* * * * *

(e) For transmitters designed to operate in the MURS, transmitters shall comply with the following:

Frequency	Mask with audio low pass filter	Mask without audio low pass filter
151.820 MHz, 151.880 MHz and 151.940 MHz	(1)	(1)
154.570 MHz and 154.600 MHz	(2)	(3)

(1) *Emission Mask 1*—For transmitters designed to operate with a 12.5 kHz channel bandwidth, any emission must be attenuated below the power (P) of the highest emission contained within the authorized bandwidth as follows:

(i) On any frequency from the center of the authorized bandwidth f_o to 5.625 kHz removed from fo: Zero dB.

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5.625 kHz but no more than 12.5 kHz: at least $7.27(f_d - 2.88$ kHz) dB.

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 12.5 kHz: at least 50 + 10 log (P) dB or 70 dB, whichever is the lesser attenuation.

(2) *Emission Mask 2*—For transmitters designed to operate with a 25 kHz channel bandwidth that are equipped with an audio low-pass filter, the power of any emission must be below the unmodulated carrier power (P) as follows:

(i) On any frequency removed from the assigned frequency by more than 50 percent, but not more than 100 percent of the authorized bandwidth: at least 25 dB.

(ii) On any frequency removed from the assigned frequency by more than 100 percent, but not more than 250 percent of the authorized bandwidth: at least 35 dB.

(iii) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: at least 43 + 10 log (P) dB.

(3) *Emission Mask 3*—For transmitters designed to operate with a 25 kHz channel bandwidth that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier output power (P) as follows:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz, but not more than 10 kHz: at least 83 log (f_d/5) dB.

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz, but not more than 250 percent of the authorized bandwidth: at least 29 log (f_d^2/11) dB or 50 dB, whichever is the lesser attenuation.

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: at least 43 + 10 log (P) dB.

16. Section 95.639(h) is amended by revising paragraph (h) to read as follows:

§ 95.639 Maximum transmitter power.

* * * * *

(h) No MURS unit, under any condition of modulation, shall exceed 2 Watts transmitter power output.

17. Section 95.655 is amended by adding paragraph (d) to read as follows:

§ 95.655 Frequency capability.

* * * * *

(d) No transmitter will be certificated for use in MURS if it is equipped with a frequency capability not listed in § 95.632.

18. Section 95.1307 is revised to read as follows:

§ 95.1307 Permissible communications.

(a) MURS stations may transmit voice or data signals as permitted in this subpart.

(b) A MURS station may transmit any emission type listed in § 95.631(j) of this chapter.

(c) MURS frequencies may be used for remote control and telemetering functions. MURS transmitters may not be operated in the continuous carrier transmit mode.

(d) MURS users shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference.

19. Section 95.1311 is added to read as follows:

§ 95.1311 Repeater operations and signal boosters prohibited.

MURS stations are prohibited from operating as a repeater station or as a signal booster. This prohibition includes store-and-forward packet operation.

20. Section 95.1313 is added to read as follows:

§ 95.1313 Interconnection prohibited.

MURS stations are prohibited from interconnection with the public switched network. *Interconnection Defined.* Connection through automatic or manual means of multi-use radio stations with the facilities of the public switched telephone network to permit the transmission of messages or signals between points in the wireline or radio network of a public telephone company and persons served by multi-use radio stations. Wireline or radio circuits or links furnished by common carriers, which are used by licensees or other authorized persons for transmitter control (including dial-up transmitter control circuits) or as an integral part of an authorized, private, internal system of communication or as an integral part of dispatch point circuits in a multi-use radio station are not considered to be interconnection for purposes of this rule part.

21. Section 95.1315 is added to read as follows:

§ 95.1315 Antenna height restriction.

The highest point of any MURS antenna must no be more than 18.3 meters (60 feet) above the ground or 6.10 meters (20 feet) above the highest point of the structure on which it is mounted.

22. Section 93.1317 is added to read as follows:

§ 95.1317 Grandfathered MURS Stations.

Stations that were licensed under Part 90 of the Commission's Rules to operate on MURS frequencies as of November 13, 2000, are granted a license by rule that authorizes continued operations under the terms of such nullified part 90 authorizations, including any rule waivers.

[FR Doc. 02–25396 Filed 10–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 73

[MM Docket 00–39; FCC 02–230]

Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to require that new broadcast television receiving equipment include the capability to receive digital television (DTV) signals and to reference the most recent version of the Advanced Television System Committee's (ATSC) DTV standard. It also refrains at this time from adopting labeling requirements for TV receivers that are not able to receive over-the-air digital broadcast signals and denies a petition for reconsideration requesting that the Commission consider imposing minimum performance thresholds for DTV receivers if manufacturers do not promptly implement performance standards on their own.

DATES: This rule is effective November 12, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 418–2925, TTY (202) 418–2989, e-mail: *astillwe@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order and Second Memorandum Opinion and Order* in MM Docket 00–39, FCC 02–230, adopted August 8, 2002 and released August 9, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. It is also available on the Commission's internet site at *http://www.fcc.gov.* The complete text of this document also may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, *qualexint@aol.com* email, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Summary of Second Report and Order and Second Memorandum Opinion and Order

1. DTV Reception Capability. In the *Report and Order and Further Notice of Proposed Rule Making* (*Report and Order/Further NPRM*), 66 FR 65122, January 18, 2001, the Commission recognized the arguments of broadcasters that DTV receivers are not yet available in the market in large quantities, and certainly not in sufficient volume to support a rapid transition to an all-digital broadcast television service. It therefore requested comment on whether it should require that new TV receivers have the capability to demodulate and decode over-the-air DTV signals, and if so, on how to implement such a requirement. The Commission recognized that it would not be economically feasible at this point to require that DTV reception capability in smaller screen receivers. It stated that it intended to consider an approach that would minimize the cost of a DTV reception capability requirement by phasing it in over time. The Commission indicated that it believed this approach would allow manufacturers to take advantage of the declining costs associated with increasing manufacturing volumes.

2. Based on analysis of the record, the Commission concludes that consumer electronics manufacturers are not voluntarily incorporating DTV reception capability into new receivers on a schedule that will enable the transition to proceed towards the December 31, 2006, target completion date set forth in the Communications Act by Congress (47 U.S.C. 309(j)(14). It therefore is amending its rules to require that new

broadcast television receiving equipment include the capability to receive DTV signals. The Commission stated that this requirement will be phased in over time to avoid imposing undue costs on manufacturers or consumers and to minimize any disruption of the TV receiver market. In this regard, the Commission stated that the implementation plan it is adopting reflect and account for the facts that: (1) Including DTV reception capability in new television receivers will require the redesign of product lines, (2) the cost of including that capability in receivers will initially result in an incremental price increase on the order of approximately $200, and perhaps more, per unit, and (3) prices will decline significantly as economies of scale are achieved with increasing volumes of production and production efficiencies that are introduced over time. It stated that this plan will ensure that consumers are provided the capability to receive broadcasters' DTV signals so that the transition of the broadcast television service from analog to digital transmission technology can progress rapidly.

3. The new rules will require that a party responsible for television receiving equipment (''responsible party'') under the Commission's rules, generally the manufacturer or importer, include DTV tuners in a certain percentage of that party's entire production or importation of receivers in specific categories. Responsible parties will be required to equip new television receiving equipment that manufactured is shipped in interstate commerce or manufactured in the United States and for which they are responsible with the capability to tune and decode over-the-air DTV signals on all of the channels allocated for TV service in accordance with the following schedule:

—Receivers with screen sizes 36″ and above −50% of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005;

—Receivers with screen sizes 25″ to 36″ −50% of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective July 1, 2006;

—Receivers with screen sizes 13″ to 24″ −100% of all such units must include DTV tuners effective July 1, 2007.

—Other Devices (videocassette recorders (VCRs), digital video disk and digital versatile disk (DVD) players/recorders, etc.) that receive television signals-100% of all such units must include DTV tuners effective July 1, 2007.

4. For purposes of these requirements, screen sizes are to be measured diagonally across the picture viewing area. The rules will also allow responsible parties to include combinations of DTV monitors and set-top DTV tuners in meeting the required percentages of units with a DTV tuner if such combinations are marketed together with a single price. Where set-top boxes and DTV monitors are sold as a combination, the screen size of the DTV monitor will determine the receiver size category towards which the combination may be counted.

5. *Update of the DTV Transmission Standard.* In comments responding to the *Notice of Proposed Rule Making* (*NPRM*), 65 FR 15600, March 23, 2000, in this proceeding, ATSC indicated that it has made a number of changes to its ''ATSC Digital Television Standard (A/53),'' since 1996, when that standard was adopted by the Commission as the standard for terrestrial DTV broadcast service. ATSC indicated that these changes include removing constraints associated with the ''program paradigm,'' updating references to the underlying MPEG standards, replacing references to obsolete ATSC standards for Electronic Program Guide and System Information with a reference to the subsequently developed ''ATSC Program and System Information Protocol (PSIP) Standard, A/65,'' and requiring a signal to identify colorimetry. It further noted that it was considering an increase in the maximum allowable audio bit rate. ATSC requested that the Commission revise its rules to reference the latest version of the ATSC DTV Standard A/53. In the *Report and Order/Further NPRM,* the Commission sought comment on whether is should revise its rules to include reference the latest version of the standard as requested by ATSC.

6. The Commission found that it is desirable and appropriate to revise the rules to update its DTV rules to specify the August 7, 2001, version of ATSC DTV Standard A/53B in place of the September 16, 1995, version originally adopted. It stated that updating the rules to reflect improvements in the standard will benefit both the public and broadcasters by allowing broadcasters to make technical improvements in their service that will enhance the quality of DTV services they provide. Accordingly, the Commission is revising § 73.682(d) of its rules to specify ATSC Doc A/53B (ATSC Digital Television Standard, 7 Aug 01), except for Section 5.1.2 (''Compression format constraints'') of Annex A (''Video Systems Characteristics'') and the phrase ''see Table 3'' in Section 5.1.1 Table 2 and Section 5.1.2 Table 4. These exceptions are as provided in the current § 73.682(d) and were set forth in the Commission's decision adopting the ATSC standards for DTV service in *Fourth Report and Order* in the DTV proceeding.

7. In its comments responding to the *NPRM,* ATSC also requested that the Commission require use of the ATSC PSIP Standard as part of the DTV transmission standard. In responding to this request in the *Report and Order/Further NPRM,* the Commission stated that it believes that an industry approach is generally the most appropriate means for managing the implementation of a PSIP system. However, the Commission recognized that the transport stream identifiers (TSIDs) used with the PSIP system must be unique to each individual television station and that there is a need to coordinate TSID assignments for stations in the border areas with our neighbors in Canada and Mexico. The Commission therefore agreed that TSID assignments should be made part of its process for broadcast television stations and stated that it will begin the process to incorporate this function into that process in the near future.

8. In *Second Report and Order and Second Memorandum Opinion and Order,* the Commission stated that it recognizes the benefits for broadcasters and consumers of the service features offered by the ATSC PSIP specification. It stated that in view of the of the broadcast and consumer electronics industries' support for incorporation of this specification in the rules, it will address the possible adoption of the ATSC PSIP specification into the rules in the Notice of Proposed Rule Making in our forthcoming Second Review of our policies for the DTV transition. The Commission further stated that in the interim, it we will include a reference to the ATSC PSIP Standard in § 73.682(d) of the rules as a document that licensees may consult for guidance.

9. *Other Issues.* The Commission also refrained at this time from adopting its proposal to require that TV receivers that are not able to receive over-the-air digital broadcast signals be labeled that they are not able to receive such signals. The Commission indicated at that at this point, it does not know when—or if—such products will become commercially available or how they will be marketed. It stated that it will continue to monitor the state of the

marketplace and will take additional steps if necessary to protect consumers' interests.

Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Report and Order and Further Notice of Proposed Rule Making* in MM Docket No. 00–39 (*Report and Order/Further NPRM*).'' [2] The Commission sought written public comment on several issues concerning the transition to digital television (DTV), including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need For, and Objectives of, the Report and Order

12. Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television. That resulted in several Commission decisions including those adopting a digital television (DTV) standard, DTV service rules, and a Table of DTV Allotments. The Table of DTV Allotments provides each existing television broadcaster with a second channel on which to operate a DTV station for the transition period after which one of its channels will revert to the government for use in other services. The transition deadline established by Congress is December 31, 2006. The Commission is permitted to extend that deadline on a market-by-market basis if more than 15 percent of viewers will be left without service from (1) a digital television receiver; (2) an analog television receiver equipped with a digital/analog converter; or (3) a multi-channel video provider that carries local broadcast stations.

13. The Commission has determined that a requirement to include DTV reception capability in new television sets is necessary due to the lack of progress by the market in including DTV reception capability in new television receivers. In particular, the Commission is concerned that continued marketing of analog-only TV sets can only serve to delay the transition. In order for the DTV transition to move forward towards the year 2006 target completion date established by Congress, or thereafter as close to that date as possible, receivers with DTV capability need to be on the market in quantity and at reasonable prices very soon. Since it was adopted by the Commission in 1996, the DTV transmission standard has been updated by its developers to include new features and to improve several aspects of its performance. The rules need to be revised to allow television stations to implement these new features and improvements.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

14. No comments were filed in response to the IRFA.

C. 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, if adopted.[4] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act.[6] 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.[7]

16. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [8] Nationwide, as of 1992, there were approximately 275,801 small organizations.[9] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.'' [10] As of 1992, there were approximately 85,006 local governments in the United States.[11] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[12] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

17. Rules adopted in this proceeding will apply to manufacturers of television transmitting and receiving equipment and to television stations. The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Under this standard, business firms are considered small if they have 750 or fewer employees.[13] Census data for 1997 indicate that, for that year, there were a total of 1,215 establishments [14] in this category.[15] Of those, there were 1150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of broadcast equipment manufacturers to others in this category is approximately 22%,[16] so we estimate that the number of broadcast equipment manufacturers with employment under 500 was actually closer to 253, with an additional 8 establishments having employment of between 500 and 999. Television manufacturers alone (*i.e.,* without radio) accounted for yet smaller numbers. Given the above, we estimate that the great majority of television broadcasting equipment manufacturers are small.

18. The SBA has also established a small business size standard for Audio

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *Report and Order and Further Notice of Proposed Rule Making* in MM Docket No. 00–39, 16 FCC Rcd 5946 (2001).

[3] *See* 5 U.S.C. 604.

[4] 5 U.S.C. 603(b)(3).

[5] *Id.* 601(6).

[6] *Id.* 601(3).

[7] 15 U.S.C. 632

[8] 5 U.S.C. 601(4).

[9] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[10] 5 U.S.C. 601(5).

[11] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[12] *Id.*

[13] 13 CFR 121.201, NAICS code 334220.

[14] The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small bueinsses. In this category, the census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

[15] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, ''Industry Statistics by Employment Size,'' Table 4, NAICS code 334220 (issued Aug. 1999).

[16] *Id.* Table 5, ''Industry Statistics by Industry and Primary Product Class Specialization: 1997.''

and Video Manufacturing, which includes the manufacturing of television sets. Under this standard, business firms are considered small if they have 750 or fewer employees.[17] Census data for 1997 indicate that, for that year, there were a total of 554 establishments in this category.[18] Of those, there were 542 that had employment under 500, and an additional 9 that had employment of 500 to 999.[19] The percentage of television set manufacturers to others in this category is approximately 6.3%, [FN H] so we estimate that the number of broadcast equipment manufacturers with employment under 500 was actually closer to 34, with an additional zero or one establishment having employment of between 500 and 999. Given the above, we estimate that virtually all television set manufacturers are small.

19. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.[20] According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, fewer than 800 commercial TV broadcast stations (65%) subject to our proposal have revenues of less than $10.5 million dollars. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, our estimate may overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. It would appear that there will be no more than 800 entities affected.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The actions taken in the Second Report and Order and Second Memorandum Opinion and Order impose no reporting or recordkeeping requirements on television broadcast stations, large or small, or on manufacturers of television transmitting or receiving equipment, large or small. The only compliance burden adopted in this Second Report and Order and Second Memorandum Opinion and Order is the requirement that new television receivers be capable of tuning over-the-air DTV signals, which is described in Section E, *infra*.[21]

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

21. 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 (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[22]

22. The Commission recognizes that requiring DTV reception capability in new television receivers that action will pose new burdens on consumer electronics manufacturers, especially in the initial period when production volumes are relatively low. It further recognizes that the cost considerations associated with DTV reception capability are such that it would not be economically feasible at this point in time to include DTV capability in smaller screen receivers. However, as production increases, the price and size of the components needed for DTV reception will decline substantially, so that the incremental cost of including that capability in TV receivers will eventually become low.

23. The plan for implementing the DTV tuner requirement adopted in the Second Report and Order and Second Memorandum Opinion and Order is designed to be as simple and inexpensive to manufacturers as possible, including any small entities. This plan will minimize the impact on receiver manufacturers by phasing the requirement in over time. By applying the requirement first to large screen receivers, some models of which now already include an integrated DTV tuner, the plan will provide time for manufacturers to develop the economic efficiencies needed to produce TV sets with DTV tuners at lower cost. Over time the percentage of units that will have to have DTV reception capability will increase and the requirement would also be extended to smaller screen units in the same incremental manner. To minimize the impact on costs to manufacturers, receivers will only be required to have the capability to receive and decode over-the-air DTV signals. Thus, TV sets subject to the requirement will only have to provide useable picture and sound commensurate with their video and sound capabilities when receiving any of the recognized ATSC video formats; there is no requirement for full HDTV capability.

24. While extending the phase in period beyond July 1, 2007,[23] would have provided additional time for manufacturers to develop cost reductions, the Commission found that imposing the requirement on all receivers by this date was necessary in order to be consistent with the statutory specification of this date as the target for completing the DTV transition. The Commission also chose not to adopt an alternative that would have based the measure of compliance on the percentage of models that a manufacturer produces with DTV tuners. The plan adopted bases the measure of compliance on a manufacturer's total production of TV receivers. However, the Commission did allow manufacturers to include set-top DTV tuners marketed together with a DTV-ready receiver in the number of units that count towards meeting this requirement.

25. The Commission's action to update the DTV transmission standard to reflect the most recent version that has been issued by the Advanced Television Systems Committee is expected to have no adverse on any small entity. In this regard, the changes in the most recent version are all backwards compatible with the specifications of the version of the standard that was previously adopted and thereby with the capabilities of existing DTV transmission and receiving equipment.

26. As noted, we received comments asking, *inter alia,* that requirements we adopt be phased in more quickly,[24] and we chose instead to adopt the phase in schedule described. We believe that rejecting the alternative of a quicker transition will assist those manufacturers that are also small entities.

[17] 13 CFR 121.201, NAICS code 334310.

[18] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, ''Industry Statistics by Employment Size: 1997,'' Table 4, NAICS code 334310 (issued Aug. 1999). In this category, the census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 524.

[19] *Id.* Table 5, ''Industry Statistics by Industry and Primary Product Class Specialization: 1997.''

[20] 13 CFR 121.201 (NACIS Code 513120).

[21] *See also* para. 2, *supra*, describing receiver cost/price increases.

[22] 5 U.S.C. 603(c).

[23] *See* para. 3, *supra,* describing the implementation schedule for the DTV tuner requirement.

[24] *See* paras. 11 and 13, *supra.*

F. Report to Congress

27. The Commission shall send a copy of the Second Report and Order and Second Memorandum Opinion and Order in MM Docket No. 00–39, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission shall send a copy of the Second Report and Order and Second Memorandum Opinion and Order in MM Docket No. 00–39, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and Second Memorandum Opinion and Order in MM Docket No. 00–39 and FRFA (or summaries thereof) will also be published in the **Federal Register**, see 5 U.S.C. 604(b).

List of Subjects in 47 CFR Parts 15 and 73

Digital television broadcasting, Incorporation by reference, Radio, and television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 15 and 73 as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 303, 303, 304, 307, and 554A.

2. Section 15.117 is amended by revising paragraph (a); redesignating paragraph (h) as paragraph (j); and adding new paragraphs (h) and (i) to read as follows:

§ 15.117 TV broadcast receivers.

(a) All TV broadcast receivers shipped in interstate commerce or imported into the United States, for sale or resale to the public, shall comply with the provisions of this section, except that paragraphs (f) and (g) of this section shall not apply to the features of such sets that provide for reception of digital television signals. The reference in this section to TV broadcast receivers also includes devices, such as TV interface devices and set-top devices that are intended to provide audio-video signals to a video monitor, that incorporate the tuner portion of a TV broadcast receiver and that are equipped with an antenna or antenna terminals that can be used for off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter.

* * * * *

(h) *Digital television reception capability.* TV broadcast receivers are required only to provide useable picture and sound commensurate with their video and audio capabilities when receiving digital television signals.

(i) *Digital television reception capability implementation schedule.* (1) Responsible parties, as defined in § 2.909 of this chapter, are required to equip new TV broadcast receivers that are shipped in interstate commerce or imported from any foreign country into the United States and for which they are responsible to comply with the provisions of this section in accordance with the following schedule:

—Receivers with screen sizes 36″ and above—50% of all of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005

—Receivers with screen sizes 25″ to 36″—50% of all of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective July 1, 2006

—Receivers with screen sizes 13″ to 24″—100% of all such units must include DTV tuners effective July 1, 2007

—Other devices (videocassette recorders (VCRs), digital video disk and digital versatile disk (DVD) players/recorders, etc.) that receive television signals—100% of all such units must include DTV tuners effective July 1, 2007.

(2) For purposes of this implementation schedule, screen sizes are to be measured diagonally across the picture viewing area. The requirement for equipping new TV broadcast receivers with DTV reception capability does not apply to units with integrated tuners/displays that have screen sizes measuring less than 7.8 inches vertically, *i.e.*, the vertical measurement of a screen in the 4:3 aspect ratio that measures 13″ diagonally across the picture viewing area.

(3) Responsible parties may include combinations of DTV monitors and set-top DTV tuners in meeting the required percentages of units with a DTV tuner if such combinations are marketed together with a single price.

* * * * *

PART 73—RADIO BROADCAST SERVICES

3. The authority citation for part 73 continues to read as follows:

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

4. Section 73.682(d) is revised to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(d) *Digital broadcast television transmission standard.* Transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in Advanced Television Systems Committee (ATSC) Doc. A/52, ATSC Standard Digital Audio Compression (AC–3), December 20, 1995 and ATSC Doc. A/53B, Revision B, with Amendment 1, ATSC Digital Television Standard, August 7, 2001, except for Section 5.1.2 (''Compression format constraints'') of Annex A (''Video Systems Characteristics'') and the phrase ''see Table 3'' in Section 5.1.1 Table 2 and Section 5.1.2 Table 4. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Federal Communications Commission, 445 12th St., SW, Washington, DC 20554 or at the Office of the Federal Register, 800 N. Capitol St., NW, Suite 700, Washington, DC. Copies of ATSC A/52, A/53, A/54, and A/65 can be obtained from the Commission's contract copier or from the Advanced Television Systems Committee, 1750 K St., NW, Washington, DC 20006. They are also available in their entirety on the Internet at *http//:www.atsc.org.* Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, Guide to Use of the ATSC Digital Television Standard, October 4, 1995, and ATSC Doc. A/65A, Program System and Information Protocol (PSIP) for Terrestrial Broadcast and Cable, December 23, 1997 for guidance.

[FR Doc. 02–25767 Filed 10–10–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–10773; Notice 3]

RIN 2127–AI26

Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts amendments that implement the foreign safety recall and safety campaign reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 3(a) of the TREAD Act requires a manufacturer of motor vehicles or motor vehicle equipment to report to the National Highway Traffic Safety Administration (NHTSA) whenever it has decided to conduct a safety recall or other safety campaign in a foreign country covering vehicles or equipment that are identical or substantially similar to vehicles or equipment offered for sale in the United States. The manufacturer must also report whenever it has been notified by a foreign government that a safety recall or safety campaign must be conducted covering such vehicles or equipment.

DATES: Effective Date: The effective date of the final rule is November 12, 2002. Petitions for Reconsideration: Petitions for reconsideration of the final rule must be received not later than November 25, 2002.

ADDRESSES: Petitions for reconsideration of the final rule must refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

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I. Background

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Public Law 106–414) was enacted on November 1, 2000. The TREAD Act, among other things, amended 49 U.S.C. 30166 to add new subsection (l), ''Reporting of defects in motor vehicles and products in foreign countries,'' and new subsection (m), ''Early warning reporting requirements.'' Because the TREAD Act required us to publish a final rule on early warning reporting by June 30, 2002, and did not impose a deadline for reporting of foreign defects, we accorded priority to implementing Section 30166(m). We issued an advance notice of proposed rulemaking (ANPRM) on January 22, 2001 (66 FR 6532) in which we sought comments on two issues that were also related to the reporting of foreign defects: manufacturers to be covered by the new regulations and the definition of ''substantially similar'' motor vehicles and equipment. The comments on the ANPRM assisted us in addressing both these issues in the NPRM on the reporting of foreign defects, to be codified in Subpart B of 49 CFR part 579, published on October 11, 2001 (66 FR 51907), and in the NPRM on early warning reporting, to be codified in Subpart C of 49 CFR part 579, published on December 21, 2001 (66 FR 66190). In addition, the NPRM on early warning proposed a Subpart A to Part 579, which contains a statement of application and terminology that would apply to both Subpart B and Subpart C.

We encouraged readers to review the two NPRMs in parallel to ensure consistency (66 FR 66191). The comments in response to both these NPRMs raised some issues applicable to both rulemakings, which were resolved in the early warning final rule, published on July 10, 2002 (67 FR 45822). To the extent that the resolution of these issues is equally applicable to the foreign defect reporting final rule, we shall not discuss them in the detail that we did in the early warning final rule, but shall incorporate relevant discussions by reference and provide page citations for them.

Comments on the October 11, 2001 NPRM were submitted by manufacturers of motor vehicles (the Alliance of Automobile Manufacturers (the Alliance) (whose members are BMW, DaimlerChrysler, Fiat, Ford, General Motors, Isuzu, Mazda, Mitsubishi, Nissan, Porsche, Toyota, Volvo and Volkswagen), the Association of International Automobile Manufacturers, Inc. (AIAM), Ford Motor Company (Ford), Volkswagen of America, Inc. (VW) including Volkswagen AG and Audi AG, Nissan North America, Inc. (Nissan), the Truck Manufacturers Association (TMA), and Harley-Davidson Motor Company (Harley-Davidson), equipment manufacturers (the Motor Equipment Manufacturers Association (MEMA) together with the Original Equipment Suppliers Association, Breed Technologies (Breed), Delphi Automotive Systems, LLC (Delphi), Johnson Controls (Johnson), and Bendix Commercial Vehicle Systems, LLC (Bendix)), public interest groups (Advocates for Highway and Auto Safety (Advocates) and Public Citizen (PC)), and the National Automobile Dealers Association (NADA). The Juvenile Products Manufacturers Association (JPMA) represented the views of child restraint system manufacturers. The Rubber Manufacturers Association (RMA) represented those of the tire industry. The early warning rule identifies entities that commented on the term ''manufacturer'' and the phrase ''substantially similar motor vehicles and equipment'' in the context of that rulemaking.

As the preamble to the October 2001 NPRM noted, during 2000, NHTSA's Office of Defects Investigation (ODI) became aware of three ''Owner Notification Programs'' that Ford Motor Company (Ford) had conducted on

Ford-manufactured sport utility vehicles equipped with ATX and Wilderness tires manufactured by Bridgestone/Firestone, Inc. (Firestone). These vehicles had been sold for use in the Persian Gulf region, Thailand, and Venezuela. In each case, Ford explained to owners that it was offering to replace the tires because they might experience interior tire degradation and tread separation, due to usage patterns and environmental conditions unique to each geographical region, ''resulting in a loss of vehicle control.'' In none of the three cases did Ford immediately notify NHTSA that it was taking this action, because, as it explained later, there was no regulation requiring it to do so.

Manufacturers of motor vehicles and replacement equipment were, and are, under a longstanding obligation to notify NHTSA if the manufacturer ''learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety.'' (49 U.S.C. 30118(c)(1)). Similarly, under Section 30118(c)(2), when the manufacturer decides in good faith that a vehicle or equipment item does not comply with an applicable Federal motor safety standard, it must report the noncompliance to NHTSA. The precursor to Section 30118(c), which contained substantially similar language, has been held to impose upon a manufacturer the duty ''to notify and remedy *whether it actually determined, or it should have determined,* that its [products] are defective and the defect is safety-related.'' *United States* v. *General Motors Corp. (X-Cars),* 656 F. Supp. 1555, 1559 n.5 (D.D.C. 1987) (emphasis added), *affirmed,* 841 F. 2d 400 (D.C. Cir. 1988), citing *United States* v. *General Motors Corp.,* 574 F. Supp. 1047, 1050 (D.D.C. 1983).

Pursuant to 49 U.S.C. 30166, NHTSA has extensive investigative authority. However, until the TREAD Act, the only regulatory requirements to provide information to NHTSA about *potential* defects were established by 49 U.S.C. 30166(f), ''Providing copies of communications about defects and noncompliance,'' as implemented by 49 CFR 573.8, ''Notices, bulletins, and other communications'' (now 49 CFR 579.5(a)). Section 30166(f) provides that:

> A manufacturer shall give [NHTSA] a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard * * * in a vehicle or equipment that is sold or serviced.

To implement Section 30166(f), NHTSA adopted 49 CFR 573.8, which specifies that:

> Each manufacturer shall furnish to the NHTSA a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax or other electronic means, and including warranty and policy extension communiques and product improvement bulletins), other than those required to be submitted by Sec. 573.5(c)(9), sent to more than one manufacturer, distributor, dealer, lessor, lessee, or purchaser, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or flaw or unintended deviation from design specifications), whether or not such defect is safety related. Copies shall be in readable form and shall be submitted monthly, not more than five (5) working days after the end of each month.[1]

PC accurately commented that the regulation does not explicitly exclude the submission of communications provided to dealers overseas. However, NHTSA has never interpreted Section 573.8 to specifically address manufacturer communications only to overseas dealers, and this question was not within the scope of the NPRM. Accordingly, we are not addressing it further in this rule.

To address foreign reporting and other issues, the TREAD Act (Public Law 106–414) was enacted on November 1, 2000. Section 3(a) of the TREAD Act amended 49 U.S.C. 30166 to add a new subsection (l), which reads as follows:

> (1) REPORTING OF DEFECTS IN MOTOR VEHICLES AND PRODUCTS IN FOREIGN COUNTRIES—
>
> (1) REPORTING OF DEFECTS, MANUFACTURER DETERMINATION—Not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.
>
> (2) REPORTING OF DEFECTS, FOREIGN GOVERNMENT DETERMINATION—Not later than 5 working days after receiving notification that the government of a foreign country has determined that a safety recall or other safety campaign must be conducted in the foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.
>
> (3) REPORTING REQUIREMENTS—The Secretary shall prescribe the contents of the notification required by this subsection.

The obligation to report under the first two paragraphs above was effective on the day that the TREAD Act was signed into law, November 1, 2000. Since that date, NHTSA has, in fact, received numerous notifications of foreign safety campaigns being conducted by vehicle and equipment manufacturers. The content, format, and scope of these reports have varied, which supports the need for a regulation that defines and standardizes the information provided, as required by the third subparagraph. For example, at the time of the NPRM, Ford was conducting a ''field action'' in Thailand, Malaysia, and Fiji to replace faulty brake caliper bodies on certain Mazda Fighter and Ford Ranger J97 vehicles. Ford advised us that ''This model is not marketed in the United States.'' This leaves unanswered the question whether the model is substantially similar to one marketed in the United States, or whether the brake caliper bodies are identical or substantially similar to brake caliper bodies on Ford/Mazda vehicles that are sold in the United States. At the same time, Firestone was conducting a ''Customer Satisfaction Program'' in the Middle East covering certain tires manufactured in its Wilson, North Carolina plant that were original equipment on 589 vehicles manufactured by Ford, specifically model year 1998 and 1999 Ford Taurus and Mercury Sable sedans and station wagons. Its letter to us did not state whether similar tires were used on vehicles in the United States.

II. Part 579, Subparts A and B

A. Introduction

With the recent publication of the early warning reporting final rule (67 FR 45822), 49 CFR part 579 was reissued with the title ''Reporting of Information and Communications About Potential Defects,'' and the previous provisions of Part 579 were moved and incorporated into 49 CFR Part 573. The notice issuing the early warning final rule established both Subparts A (General) and C (Reporting of Early Warning Information) of Part 579. Subpart A is comprised of sections that establish the scope of Part 579, and its purpose, application, and terminology. That subpart also specifies the address and manner for submitting reports and other information under Part 579, and establishes requirements governing certain notices, bulletins, and other communications to more than one manufacturer, distributor, dealer, lessor,

[1] The notices, bulletins, and other communications required to be submitted by Sec. 573.5(c)(9), which Sec. 573.8 excludes, are those that relate directly to a noncompliance or a safety-related defect that NHTSA or a manufacturer has determined to exist under 49 U.S.C. 30118(b) or (c).

lessee, owner, or purchaser in the United States. See Section 579.5(a). The rule we are issuing today on foreign campaign reporting establishes Subpart B (Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries).

The October 2001 NPRM proposed to establish Sections 579.11, ''Additional definitions for subpart B,'' 579.12, ''Identical or substantially similar vehicles and equipment,'' 579.13, ''Reporting responsibilities,'' 579.14, ''Content of reports,'' and 579.15, ''Who may submit reports.'' As mentioned above, thereafter the December 2001 NPRM on early warning reporting, among other things, noted that it included in Subpart A provisions, applicability, and terminology that would apply to both Subpart B on foreign defect reporting and Subpart C on early warning reporting. We address applicability and the term ''manufacturer'' under point B below. For organizational purposes of locating all definitions in Subpart A, we will add definitions of ''foreign country,'' ''foreign government,'' ''safety recall,'' and ''other safety campaign'' to Section 579.4 rather than provide a separate definitions section in Subpart B. These definitions and substantive issues related to them are addressed in under point C below.

B. Applicability

In Subpart A of Part 579, which was published on July 10, 2002 and applies to today's rule, we defined manufacturer as:

> a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale. This term includes any parent corporation, any subsidiary or affiliate, and any subsidiary or affiliate of a parent corporation of such a person.

Under Application (Section 579.3(a)), the rule states that:

> [t]his part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in the United States by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in a foreign country by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and are [identical or] substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States [emphasis supplied]. [The statutory words ''identical or'' were inadvertently omitted and have been added by this final rule.]

In developing these provisions, we considered numerous comments. A number of commenters had taken the same positions in their comments on both the October 2001 and the December 2001 NPRMs, which was understandable given that both addressed foreign events involving substantially similar vehicles and equipment and the statement in the preamble to the December 2001 NPRM that Subpart A would apply to both foreign defect reporting and early warning reporting. For example, on foreign defect reporting VW urged NHTSA ''to refrain from attempting to assert jurisdiction over entities with no nexus to the United States.'' Nissan had a similar comment. They made similar comments in response to the early warning NPRM (see 67 FR 45825–45828). Inasmuch as we addressed these and other comments related to applicability and the definition of manufacturer in the course of the final rule published on July 10, 2002, there is no need to repeat our response here. We incorporate that notice by reference. See 67 FR 45825–45834.

In the October 2001 NPRM, we proposed that ''manufacturer'' would include agents of manufacturers, through the proposed definitions of ''safety recall'' and ''other safety campaign'' (the proposed text is set out in point C below). Nissan and the Alliance specifically objected to the inclusion of ''agent.'' The Alliance asserted that even in the United States, case law does not establish a ''bright line'' test to determine in advance whether an entity, such as a dealer, is an ''agent'' of a vehicle manufacturer. The Alliance asserted that use of the term ''agent'' in a foreign business environment is ''particularly problematic'' because manufacturers in foreign countries ''may have entities (such as independent distributorships) acting on their behalf for certain purposes, but not others.'' We have carefully considered these comments. Noting that we did not use the term ''agent'' in the early warning reporting final rule, we have decided that we do not need it for purposes of foreign defect reporting. The definition of ''manufacturer'' in Section 579.4(c) provides adequate breadth.

Also, both the foreign defect reporting NPRM and the early warning reporting NPRM proposed transferring the provisions of Section 573.8 on notices, bulletins, and other communications to Part 579, the latter NPRM adding the limitation that its provisions applied to documents sent ''in the United States.'' The early warning reporting final rule adopted this proposal, Section 573.8 becoming Section 579.5(a). The limitation addresses AIAM's comment to the foreign defect reporting NPRM expressing concern that, without limiting it to documents sent in the United States, the provision could be construed to require submission of documents relating to foreign non-safety defect communications.

There were additional comments on the foreign defect reporting NPRM that were not raised in the early warning reporting rulemaking and thus not addressed in the July 10 rule. NADA suggested that ''Section 579.3 should include language similar to that in 49 CFR 577.3 indicating that *manufacturers* should include all 'stage' manufacturers.'' Section 577.3 applies in part to ''manufacturers of incomplete motor vehicles,'' and, in the case of vehicles manufactured in two or more stages, allows compliance with the obligation to notify and remedy noncompliances or safety-related defects by either the manufacturer of the incomplete vehicle or any subsequent manufacturer.

We have reviewed this comment and have concluded that vehicle safety concerns do not require that manufacturers of incomplete vehicles be included in the foreign defect reporting requirements with respect to those vehicles. On an average, NHTSA receives only 10 to 15 Part 573 reports each year that apply only to incomplete vehicles. Given the widely varying configurations of incomplete vehicles when completed, and given the relatively few such vehicles that are either exported from or imported into the United States, we believe that the number of foreign safety recalls or other safety campaigns on these unfinished vehicles will be even fewer than experienced in this country, and information about such recalls is likely to be of no real added value in detecting defect trends. Therefore, we have not adopted this suggestion.

In addition, NADA suggested that ''registered importers subject to Part 573 and Part 577 defect and noncompliance reporting and notification requirements also should be subject to the Part 579 [foreign defect campaign] reporting requirements.'' Parts 573 and 577 apply to registered importers (RIs) because 49 U.S.C. 30147 specifically requires RIs to notify and remedy safety-related defects and noncompliances in vehicles they import. However, because RIs are not original manufacturers exporting vehicles, they will not be conducting, or ordered to conduct, campaigns outside

the United States. To the extent that there is a campaign conducted abroad covering vehicles that are identical or substantially similar to those that an RI imports, the campaign will usually be reported to NHTSA by the fabricating manufacturer or its representative. Although foreign campaigns might not be reported which cover vehicles that RIs are authorized to import that have no U.S. certified counterpart (see VCP column, Appendix A, Part 593), these vehicles are few in number and their overall impact upon safety is negligible. Thus, there is little reason to require RIs to report under Subpart B.

C. Additional Definitions in Section 579.4(c), Including ''Safety Recall'' and ''Other Safety Campaign.''

Section 30166(l) requires that a manufacturer of motor vehicles or motor vehicle equipment report to us when it has decided, or has been required by a foreign government, to conduct ''a safety recall or other safety campaign'' outside the United States that involves vehicles or equipment that are identical or substantially similar to products sold in the United States. As we noted in the NPRM, the TREAD Act does not define ''safety recall or other safety campaign.'' Further, NHTSA does not have comprehensive information about the laws of jurisdictions outside the United States relating to recalls of motor vehicles and motor vehicle equipment, and thus does not have detailed knowledge of the terminology or specific practices used in foreign countries to address potential safety problems. For example, some countries may not differentiate defects from noncompliances with safety standards or with safety guidelines. Accordingly, we cannot presume that a procedure abroad will follow that specified in 49 U.S.C. 30118–30120 and 49 CFR Part 573; *e.g.*, a notification to a government agency within 5 days after the manufacturer determines that its product contains a safety-related defect or noncompliance, followed by notification to owners, purchasers, and dealers containing an offer to remedy through repair, repurchase, or replacement.

In the United States, the elements of a ''safety recall'' are established by 49 U.S.C. 30118–30120. In general, these elements are (1) a determination by a manufacturer of motor vehicles or motor vehicle equipment, or by NHTSA, that a safety-related defect or noncompliance exists, (2) notification by the manufacturer to NHTSA within a reasonable time (defined in redesignated 49 CFR 573.6(b) to be within 5 business days of its determination), and (3) notification by the manufacturer to owners, purchasers, and dealers advising of the determination and potential safety consequences, and offering a free remedy.

We proposed to characterize a ''safety recall'' abroad as involving a determination by a manufacturer or one of its affiliates or subsidiaries (or a foreign government) that there is a problem with specific motor vehicles or motor vehicle equipment that relates to motor vehicle safety (*e.g.*, a defect or noncompliance with a local safety standard or governmental guideline), followed by an offer by the manufacturer to provide remedial action. The offer could be made either by notifying the owner directly or through notifying dealers, who would then communicate with owners. Such safety recalls would have to be reported, whether or not the problem at issue would constitute a safety-related defect or noncompliance under U.S. law.

The TREAD Act also does not define ''other safety campaign.'' As discussed in the NPRM, we would distinguish an ''other safety campaign'' from a ''safety recall'' in two ways. First, a manufacturer would not necessarily make any acknowledgement, express or otherwise, that a safety problem existed. Second, the ''campaign'' would not necessarily involve the provision of a remedy. It could include such actions as an extended warranty or simply a warning to owners or dealers about a possible problem that could relate to safety. It would not include ad hoc good will repairs or replacements solely by local dealers for individual owners. Thus, a ''safety campaign'' would be defined as an action in which a manufacturer communicates with owners and/or dealers with respect to conditions under which a vehicle or equipment item should be operated, repaired, or replaced, that relate to safety. As used above, the words ''relate to'' would have the same broad meaning they do in 49 U.S.C. 30118(b) and (c). See, *e.g.*, *Morales* v. *Trans World Airlines, Inc.,* 504 U.S. 374, 383 (1992).

Taking these factors into consideration, we proposed that a ''safety recall'' be defined as:

> An offer by a manufacturer, including but not limited to a foreign subsidiary or affiliate or agent of a manufacturer, to owners of vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or guideline.

We proposed that ''other safety campaign'' mean:

> An action in which a manufacturer, including but not limited to a foreign subsidiary or affiliate or agent of a manufacturer, communicates with owners and/or dealers in a foreign country with respect to conditions under which vehicles or equipment should be operated, repaired, or replaced, that relate to safety.

Before turning to the terms ''safety recall'' and ''other safety campaign,'' we note that these proposed definitions included references to subsidiaries, affiliates, and agents of manufacturers. However, as finally defined in Section 579.4(c) and as discussed above, ''manufacturer'' includes subsidiaries and affiliates, and does not include agents. To avoid redundancy, and consistent with the approach taken with respect to early warning reporting, we are eliminating those references in the definitions of ''safety recall'' and ''other safety campaign'' adopted in this final rule, and simply use the term ''manufacturer'' as defined in Section 579.4(c).

There was little comment on the proposed definition of ''safety recall.'' Nissan noted with approval that the core elements of a safety recall established by the Vehicle Safety Act are present in the proposed definition of ''safety recall.'' However, one of these core elements is that the remedy be without charge. We are not familiar with the laws of other countries on safety recalls and do not wish to imply that provision of free remedy or reimbursement is a necessary component of a ''safety recall'' under the TREAD Act. We are clarifying this in the final definition of ''safety recall,'' which means:

> An offer by a manufacturer to owners of vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or guideline, whether or not the manufacturer agrees to pay the full cost of the remedial action.

Some commenters contended that the definition of ''other safety campaign'' should relate more closely to that of ''safety recall.'' Nissan contended that ''Congress intended to capture only those 'other safety campaigns' that would be equivalent to a recall if conducted in the United States.'' Noting NHTSA's comment (66 FR 51910) that a manufacturer ''would not necessarily make any acknowledgement, express or otherwise, that a safety problem existed,'' Nissan commented that this statement was inconsistent with the ''determination'' language of the statute. Nissan recommended that ''other safety campaign'' should be defined ''to refer to any campaign that would meet the definition of a safety recall but, because of variations in foreign regulatory

schemes, was not conducted as part of a formal remedy system.'' This in essence was also the position of JPMA and of the Alliance, which suggested that ''other safety campaign'' be defined to mean ''an offer by a manufacturer to owners of two or more vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety, when that foreign country does not have a statutory or regulatory program requiring safety recalls.''

We believe that this is too narrow and misreads congressional intent. It would require a manufacturer to reach the conclusion that a defect exists and that that defect relates to motor vehicle safety. It has been our experience that manufacturers often conduct campaigns in the United States that relate to safety without acknowledging that a defect exists or that there is a safety relationship of a defect. In many cases, after becoming aware of such campaigns pursuant to 49 CFR 573.8 (2001) (now 49 CFR 579.5(a)), NHTSA has required manufacturers to conduct them as safety recalls and also has required manufacturers to broaden the scope of the campaigns. In our view, under the TREAD Act, NHTSA should be apprised of these campaigns in foreign countries at least to the extent we are aware of them in the United States. Moreover, we view the term ''offer'' as a narrower term than our proposed term ''communication by a manufacturer.'' Under our proposal, no safety defect need be identified even implicitly. Precautionary advice provided by a manufacturer on the conditions under which the vehicle is to be operated, repaired, or replaced may reflect the existence of a safety problem. In order to effectuate the purpose of the foreign defect reporting requirement, we have concluded that it is appropriate to adopt an encompassing definition of ''other safety campaign'' that goes beyond a ''safety recall.''

Nissan, RMA, the Alliance, Bendix, AIAM, MEMA, Breed, and JPMA also asserted that the proposed definition of ''other safety campaign'' was too broad. Illustrative of this viewpoint was Nissan's comment that ''other safety campaign'' would cover a wide range of communications including many unrelated to the purpose of Section 3(a) of the TREAD Act. For example, ''a general owner communication campaign providing consumers with tips on safety winter driving of a Nissan vehicle in Europe would be included * * * and thus reportable to NHTSA.'' AIAM expressed concern that the term might be construed to include ''routine maintenance instructions in an owner's manual, advertising relating to maintenance, or even seat-belt use campaign or anti-drunk driving materials.'' MEMA commented that the final definition should exclude ''materials such as promotional information, operational instructions or owner's manuals which accompany the vehicle or equipment at the time of first sale.'' RMA would add a qualifier: ''This definition does not include customer satisfaction, general maintenance, operating or safety information applicable to a broad range of vehicles or equipment and is not directed toward a particular identified safety issue or safety defect in such vehicles or equipment.''

These comments are similar to those we received on the definition we proposed in the early warning reporting rule for ''Customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment.'' We responded to these comments by modifying the definition adopted in the final rule to specifically exclude:

> promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale; or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment [67 FR 45822, 45874].

We are adding the same exclusions to the definition of ''other safety campaign.''

PC would replace the ending phrase ''that relate to safety'' with the phrase ''as a result of a defect or potential defect.'' PC would not leave to manufacturers the determination of whether an action is safety-related. However, substitution of the suggested phrase would still leave it to a manufacturer to decide whether the subject of its communications involved a ''defect'' or ''potential defect.'' Moreover, contrary to PC's comment, our definition does not leave the determination of a safety relationship to the manufacturer. A communication either relates to safety or it does not, regardless of the express words used. Therefore, we are not adopting this suggestion.

Section 30166(l)(2) requires each manufacturer to report to NHTSA after notification by ''the government of a foreign country'' that it must conduct a safety recall or other safety campaign. We proposed in Section 579.13(b) to also require manufacturers to report to NHTSA if they had been ordered by a political subdivision of a foreign country to conduct such a campaign.

RMA objected to including political subdivisions in the foreign reporting requirements. The commenter asserted that the TREAD Act does not require this, and that a political subdivision should not be included unless it has been given the specific authority to make determinations of recalls or other safety campaigns.

It is settled that a political subdivision of a country may be included within the term ''foreign country.'' In *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1 (1932), the Court recognized that the term ''foreign country'' ''may mean a foreign government which has authority over a particular area or subject-matter, although not an international person but only a component part, or a political subdivision, of the larger international unit.'' 285 U.S. 1, 5–6. The Court observed that ''the term 'foreign country' is not a technical or artificial one, and the sense in which it is used in a statute must be determined by reference to the purpose of the particular legislation.'' See also, *Wisconsin Public Intervenor* v. *Mortier*, 501 U.S. 597, 607 (1991).

This principle is equally applicable to the TREAD Act's foreign campaign reporting requirement. The purpose of this requirement is to alert NHTSA to the possibility of safety-related defects existing in foreign countries that might also exist in the United States. Some foreign countries may have political subdivisions that have authority to direct the manufacturer of a product to conduct a recall or safety campaign. In at least one foreign country, Canada, its Provinces, which are political subdivisions, may issue their own safety standards and enforce them. It is possible to envision a defect whose consequences only occur under conditions of use prevalent in one political subdivision of a foreign country and not another, and that the government of the locale where the condition is occurring might institute action rather than the central government. Thus, we are requiring reporting when any foreign governmental unit with authority to do so orders a manufacturer to conduct a safety recall or other safety campaign on substantially similar vehicles or equipment.

To remove any doubt that may exist as to the scope of foreign recall or campaign reporting, we are adopting definitions of ''foreign country'' and ''foreign government'' in Section 579.4(c). A ''foreign country'' means a country other than the United States. The term ''foreign government'' means the central government of a foreign country as well as the government of

any political subdivision of that country.

D. Definitions of ''Identical or Substantially Similar'' Motor Vehicles, Motor Vehicle Equipment Other Than Tires, and Tires

The obligation to report foreign campaigns to NHTSA applies to recalls and campaigns involving vehicles or equipment items that are ''identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.'' A parallel reporting obligation also exists under the early warning reporting provisions (Section 30166(m)(3)(C)), under which manufacturers of vehicles or equipment must report:

> all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment * * * in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.

1. The Meaning of ''Identical''

In the NPRM, we tentatively concluded that a definition of ''identical'' was not needed (66 FR 51907 at 910–911) because if there were good faith doubts whether a vehicle or equipment item is exactly ''identical'' to one that is sold in the United States, it is likely that the vehicle or equipment would be ''substantially similar'' to the U.S. vehicle or equipment, and therefore be covered by the reporting requirement in any case. We came to the same conclusion in the early warning NPRM and final rule, and did not adopt a definition of ''identical.'' No commenter specifically addressed this issue, and we have not defined ''identical'' in this final rule either.

2. Substantially Similar Motor Vehicles

In the October 2001 NPRM, we proposed that substantial similarity of motor vehicles be determined on the basis of meeting one or more of five criteria (66 FR 51917–51918; see 66 FR 51911–51913):

> (a) A motor vehicle sold or in use outside the United States is identical or substantially similar to a motor vehicle sold or offered for sale in the United States if such a vehicle (1) has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards; (2) is listed in Appendix A to part 593 of this chapter or determined to be eligible for importation into the United States in any agency decision issued between amendments to Appendix A to part 593; (3) is manufactured in the United States for sale in a foreign country; (4) is a counterpart of a vehicle sold or offered for sale in the United States or (5) and a vehicle sold or offered for sale in the United States both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, without regard to the vehicle platform on which the components or systems is installed and regardless of whether the part numbers are identical.

With the exception of the fifth criterion, we proposed the identical criteria for substantial similarity of vehicles in the early warning NPRM. 66 FR 66199–66200. On the basis of comments received on that NPRM, we adopted the following definition of ''substantially similar'' motor vehicles in the early warning final rule (49 CFR 579.4(d)):

> (1) A motor vehicle sold or in use outside the United States is identical or substantially similar to a motor vehicle sold or offered for sale in the United States if—
>
> (i) Such a vehicle has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards;
>
> (ii) Such a vehicle is listed in the VSP or VSA columns of Appendix A to part 593 of this chapter;
>
> (iii) Such a vehicle is manufactured in the United States for sale in a foreign country; or
>
> (iv) Such a vehicle uses the same vehicle platform as a vehicle sold or offered for sale in the United States.

It will be noted that we did not adopt the proposed criterion of ''a counterpart of a vehicle sold or offered for sale in the United States.'' For the reasons expressed in the early warning final rule preamble, we are also not adopting the vehicle counterpart criterion in the foreign defect reporting final rule. However, we are adopting each of the other criteria established by the early warning final rule. The first three of these criteria were adopted largely on the basis of the discussion in the October 2001 NPRM (66 FR 51907 at 51911–51913).

The first criterion in section 579.4(d) is that a vehicle will be substantially similar to a vehicle sold in Canada or certified to conform to the Canadian motor vehicle safety standards (CMVSS). To be sold in Canada, a vehicle has to be certified to conform to the CMVSS. Over 99 percent of gray market vehicles imported into the United States each year are certified to conform to the CMVSS. Generally, they have required only a few modifications of labels (and perhaps modifications to daytime running lamp systems) to meet the U.S. FMVSS. Because of the near identicality of the safety standards of the two countries, Canadian and American vehicles are substantially similar to each other.

The second criterion is that the vehicle is listed in the VSP or VSA columns of Appendix A to 49 CFR part 593. This is a list of gray market vehicles that NHTSA has found to be ''substantially similar'' under 49 U.S.C. 30141(a)(1)(A)(i) to U.S.''certified vehicles of the same make, model, and model year.

The Alliance, NADA, and Nissan questioned the applicability of the third criterion, commenting that it should not apply unless the vehicle that is manufactured in the United States for sale in a foreign country is also sold in the United States. However, none of these commenters gave a specific example of a vehicle manufactured in the United States for sale abroad that is not also sold in the United States. Also, the United States is not a low cost manufacturing environment that, based on economics, would be selected for assembly operations of such vehicles. Further, if a manufacturer produced such a vehicle, the vehicle would ordinarily contain a substantial number of parts manufactured in the United States and used in vehicles produced by that manufacturer, which could be involved in a foreign recall or other safety campaign. The comments have not persuaded us, and we are applying the third criterion to Subpart B.

This leaves us to consider the final criterion that we proposed for foreign defect campaign reporting:

> both [vehicles] contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, without regard to the vehicle platform on which the components or systems is installed and regardless of whether the part numbers are identical.

This criterion reflected a components or system-based approach that is different from the final criterion of the early warning reporting rule, which is platform-based. As we noted in the preamble to the October 2001 NPRM, when a vehicle is the subject of a defect recall or safety campaign, the vehicle in its entirety is not defective; instead, a manufacturer will recall a vehicle because of a defect or problem in one or more of its components or systems that may or may not be used in other vehicles that the manufacturer builds. Therefore, we proposed to require a manufacturer to report a foreign campaign that the manufacturer conducts in which the defective component or system is substantially similar to the component or system that the manufacturer used on a vehicle which it sells in the U.S., even if the vehicle itself is on a different platform

or would not be ''substantially similar'' under other criteria.

TMA supported this concept, commenting that substantial similarity for purposes of medium and heavy duty trucks should be defined around major component systems rather than the vehicle make and model. Thus, if medium and heavy duty trucks share identical component parts, they would be considered substantially similar.

However, there were a number of objections to this criterion. The Alliance objected for four principal reasons. First, the Alliance asserted that the proposal would be unworkable because it would require new, extensive recordkeeping systems to track worldwide the application of parts. In accord was AIAM, which commented that it knew of no company that tracks at the component or subcomponent level. VW also commented that it would be burdensome to maintain lists of utilization for the over 10,000 components per vehicle.

Second, in the Alliance's opinion, ''the proposal will not produce much information of value that NHTSA would not obtain anyway.'' The Alliance asserted that manufacturers ''already have a routine practice of determining whether components involved in an actual safety recall in a foreign country might also have made their way into the U.S. market, and whether the same safety risk is presented in the U.S. market.''

The Alliance also argued that there was no definition of what a substantially similar component might be. It asked whether, for example, an air bag inflator would be considered '''substantially similar' to all other air bag inflators, because they perform the same intended function? Or must two air bag inflators have to contain the same lot number and be built at the same factory before they would be considered 'substantially similar'? Or is the 'substantial similarity' found somewhere in between?''

In the Alliance's opinion, the proposal also appeared to require a vehicle manufacturer to report if it finds that the part involved in a foreign vehicle recall is installed on another manufacturer's vehicle in the United States. We do not understand this reasoning. Section 30166(l) clearly requires a manufacturer to report only campaigns that the manufacturer conducts, and not to report other manufacturer's campaigns, even if they involve substantially similar vehicles or equipment.

Harley-Davidson raised the scenario of equipment incorporated from outside suppliers that may have been subject to a recall that is not relevant to its application in a Harley-Davidson product, and of which it might be unaware. The company argued that this possibility may ''place a burden on an ultimate vehicle manufacturer that cannot be met.'' Harley-Davidson misunderstood the thrust of the foreign defect reporting requirement. Harley-Davidson must report on campaigns that Harley-Davidson itself (or its subsidiaries or affiliates) conducts in a foreign country. If Harley-Davidson determines that a campaign by one of its foreign equipment suppliers relates to equipment that Harley-Davidson uses on one of its foreign (or domestic) vehicles, and then determines to conduct a campaign, only at that point would the company be required to report its vehicle campaign to NHTSA.

Advocates commented that the component-based approach ''unduly restricts reporting only to those situations involving 'substantially similar' defective components.'' It ''believes that Congress intended [Section 30166(l)] to cast a wider net and requires notification of foreign recalls and campaigns on 'substantially similar' vehicles even if the particular defective part is not 'substantially similar.' ''

We have carefully reviewed these comments and considered the possible burden adduced by manufacturers against the safety value of the information that might be provided were we to adopt the proposed fifth criterion. We have concluded that the simplest, most productive course is to adopt the same approach as we did in the early warning final rule: to dispense with a component-based approach and to consider vehicles substantially similar if they use the same vehicle platform (this takes into account our proposal and comments and is an outgrowth from them). In Section 579.4(c), we defined ''platform'' to mean:

> * * * the basic structure of a vehicle including, but not limited to, the majority of the floorpan or undercarriage, and elements of the engine compartment. The term includes a structure that a manufacturer designates as a platform. A group of vehicles sharing a common structure or chassis shall be considered to have a common platform regardless of whether such vehicles are of the same type, are of the same make, or are sold by the same manufacturer.

The term ''platform'' is commonly used in conjunction with light vehicles. TMA pointed out in its comment to the early warning reporting NPRM that manufacturers of medium-heavy vehicles, buses, and trailers generally do not use the term ''platform'' to apply to their products. We observed (67 FR 45843) that

> The terminology used by manufacturers is not determinative in this context. In addition to reporting on the basis of a structure that a manufacturer designates as a platform, we expect these manufacturers to report foreign deaths involving vehicles built with a structure similar to those used in the United States. To guard against possible underreporting of such incidents, we are including the word ''chassis'' in the definition of ''platform'' in this rule.

This means, under the uniform criteria that we are adopting, that vehicles that are substantially similar for early warning reporting purposes will also be substantially similar for reporting of foreign recalls and other safety campaigns (we are making an appropriate modification in the heading and first sentence of Section 579.4(d) to accomplish this). We believe that many of these vehicles will share identical or substantially similar components or systems which could be the subject of a foreign campaign.

3. Substantially Similar Motor Vehicle Equipment Other Than Tires

Section 30166(l) also requires reports of foreign recalls and safety campaigns pertaining to substantially similar motor vehicle equipment. As we noted in the preamble to the NPRM, recalls and other safety campaigns involving problems with original equipment (OE) components or systems abroad, as here in the United States, are likely to be conducted by the manufacturer of the vehicle in which they were installed, although under certain circumstances an OE manufacturer is required to notify NHTSA of a defect or noncompliance in U.S. vehicles. *See* 49 CFR 573.5(e) and (f) (2001) and the discussion at 66 FR 51907 at 51913. Nevertheless, in those instances in which an OE manufacturer decides to conduct a foreign recall or safety campaign involving substantially similar equipment, it would have the duty to report that campaign to us. Similarly, if a foreign government notified an OE manufacturer that it was required to conduct a safety recall or other campaign, the OE manufacturer would be obligated to provide notice to us under Section 30166(l)(2). However, if all vehicle manufacturers using the item in question timely provide us with a report of a foreign safety recall or other safety campaign, we proposed that the OE component manufacturer would not be obligated to provide notice under Section 30166(l)(1) (66 FR 51907 at 51913).

Ordinarily, recalls and other safety campaigns involving problems with replacement equipment, abroad or in

the United States, would be conducted by the replacement equipment manufacturer. Examples of replacement equipment recalls conducted in the United States are those involving defects and noncompliances in child restraint systems, lighting equipment, suspension components, brake hoses, and brake fluids.

We proposed, at 66 FR 51918, that motor vehicle equipment other than tires would be substantially similar:

> * * * if such equipment and the equipment sold or offered for sale in the United States are the same component or system, or both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, regardless of whether the part numbers are identical.

We also stated that we would regard foreign child restraint systems as substantially similar (if not identical) to U.S. child restraint systems if they incorporated one or more parts that are used in U.S. models of child restraint systems, regardless of whether the restraints are designed for children of different sizes than those sold in the United States and regardless of whether they share the same model number or name. For example, if buckles, tether hooks, anchorages, or straps are common throughout a manufacturer's range of models, the child restraint systems would be substantially similar even though the buckles, hooks, anchorages, or straps might be used on a variety of add-on, backless, belt positioning, rear-facing, or booster seats produced by the manufacturer. However, a manufacturer would not have to report a foreign campaign on its child seats if the problem that led to the foreign campaign involved a component or part that was not used on any child restraint system sold or offered for sale in the United States.

JPMA commented that it had ''three important reservations.'' The first of these was based upon its belief that the proposed definition ''would impute a reporting obligation on a manufacturer conducting a foreign recall if the component or part involved in the foreign recall was used on a child restraint sold in the United States by *another manufacturer*.'' JPMA related that child restraint manufacturers frequently obtain the same component from a common supplier. ''Because the manufacturer conducting a recall in this example would not necessarily know that one of its competitors was installing on a U.S. child restraint a component or part that was also installed on the recalled product in the foreign country, the recalling manufacturer cannot be expected to report that foreign recall to NHTSA.'' To address this reservation, JPMA suggested language clarifying that the equipment that is sold in the United States must be manufactured by the same manufacturer that conducted the foreign campaign.

We do not understand the basis for this JPMA concern. Under the proposed and final rules, a manufacturer is required only to report its own foreign safety recalls and campaigns, and it is not obliged to report safety recalls by other manufacturers of products even if those products incorporate components common to its own recalled product. If the safety recall is conducted by the component manufacturer itself, the component manufacturer would have to notify NHTSA if the component is used in substantially similar vehicles or equipment sold in the United States. We have concluded that no amendment is required to clarify this aspect of the reporting obligation.

The second reservation was that ''it is unclear whether NHTSA intended to limit the foreign recall reporting to instances in which the *same* component or system is used in both the foreign and the U.S. model, or whether * * * the foreign recall reporting [extends] to instances in which the component or system at issue is *substantially similar* to a component or system used in a U.S. child restraint model manufactured by that manufacturer.'' JPMA explained that the regulatory text indicated the same component or system but that the preamble suggested that NHTSA may want reports on substantially similar components. In our preamble language at 66 FR 51914, we observed that ''if * * * buckles * * * are common throughout a manufacturer's range of models, the child restraints would be substantially similar even though the buckles * * * might be used on a variety of add-on, backless, belt positioning, rear-racing or booster seats produced by the manufacturer.'' JPMA then commented that all child restraint system buckles are to some extent substantially similar to other such buckles because they all perform the same function using similar designs and materials, but that there can be substantial differences in buckle performance based on hardware specifications, quality of the manufacturer, and interaction among the buckle components.

We do not consider the variations in buckle performance that JPMA mentioned as relevant as to whether a manufacturer ought to report. Foreign recalls or campaigns involving substantially similar child restraint systems must be reported to NHTSA; however, the reporting manufacturer may include its arguments as to why a defect would not exist in identical or substantially similar child restraint systems sold in the United States. This resolves JPMA's comment.

Finally, JPMA argued that the definition of ''substantially similar equipment'' proposed for purposes of foreign defect reporting could not be applied for early warning reporting purposes. We addressed early warning issues in the December 2001 early warning NPRM and modified the proposal in the early warning final rule. We note that for equipment, there is no ''platform'' comparable to that for motor vehicles. Therefore, a platform-based definition would not be workable.

The Alliance commented that, considering the separate definitions for original and replacement equipment, the proposed rule ''appears to require reports of foreign recalls involving subcomponents used on *dissimilar* vehicles in the United States.'' Because, in its opinion, this interpretation would make the definition of ''substantially similar motor vehicle'' unnecessary, the Alliance recommended restricting the definition to replacement equipment. However, we have not adopted the proposed criterion under which campaigns involving dissimilar vehicles with the same components would be reported, and the Alliance's comment is therefore moot.

Our proposed definition was almost identical to the one we adopted for substantially similar equipment in the early warning reporting final rule. Under that final rule, motor vehicle equipment is substantially similar:

> * * * if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system performs the same function in vehicles or equipment sold or offered for sale in the United States, regardless of whether the part numbers are identical.

Given our decision above to adopt the same definition for ''substantially similar'' motor vehicles for both the early warning reporting and foreign defect reporting rules, as discussed above, and for ''substantially similar'' tires, as discussed below, we have decided that we should adopt the same definition for ''substantially similar'' motor vehicle equipment. However, we have added a provision stating that a foreign campaign involving substantially similar equipment need not be reported under Subpart B if the component or system that gave rise to a safety recall or other safety campaign does not perform the same function in any vehicles or equipment sold or offered for sale in the United States. See

Section 579.11(d)(2). This addresses comments by Bendix and MEMA. In Bendix's view, a similar or identical product in other countries many have entirely different failure modes with different impacts on safety. MEMA asserted that any definition of substantially similar equipment should also include an application-specific reference.

Finally, we note that Delphi commented that ''suppliers of equipment should also be responsible for reporting recalls and campaigns of their equipment in a foreign country when the OEM does not sell the vehicle it is used on in the United States but where the same equipment or component that caused the foreign recall or campaign is used in another application that is sold in the US.'' We do not believe that the language suggested by Delphi needs to be added. To the extent that any equipment (original or replacement) covered by a recall in a foreign country is sold as replacement equipment in the United States, reporting is already required under our definition. The Delphi comment would require reports of foreign campaigns on equipment sold in the United States but used in a different application than in the foreign country. It is likely that in most cases any such original equipment would also be sold in the United States as replacement equipment, and thus covered by the rule. Requiring reporting in those rare circumstances where that is not the case would create extensive burdens without yielding much relevant information.

4. Substantially Similar Tires

In the NPRM, we proposed that tires would be substantially similar if they have ''the same model name and size designation, or if they are identical except for the model name.'' This was identical to the definition we proposed two months later in the early warning NPRM. However, the early warning final rule defines a substantially similar tire differently:

> A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same size, speed rating, load index, load range, number of plies and belts, and similar ply and belt construction and materials, placement of components, and component materials, irrespective of plant of manufacture or tire line.

The definition we adopted in the early warning final rule was based upon comments by RMA. In its comments on the NPRM, RMA asserted that there should be a common definition for both rules. For a discussion of these issues, see the preamble to the early warning rule (67 FR 45822 at 844–845). We find these reasons equally applicable to this final rule, and for this reason, we are adopting the same definition previously established at Section 579.4(d) for early warning reporting.

III. Section 579.11, Reporting Responsibilities

Proposed section 579.13 contained five paragraphs referring to reporting responsibilities relating to foreign campaigns. Paragraphs (a) and (b) proposed the time frames within which a manufacturer must submit a report to NHTSA. Paragraph (c) proposed to establish a due date for reports pertaining to foreign campaigns conducted before the effective date of the final rule. Paragraph (d) specified certain exclusions from reporting. Finally, paragraph (e) proposed to require manufacturers to provide a yearly list of substantially similar vehicles. These subjects are now addressed in Section 579.11.

A. Time Frames for Reporting: Paragraphs (a) and (b)

Proposed paragraph (a) would require a manufacturer to submit a report within 5 working days of its determination to conduct a foreign safety recall or other safety campaign covering vehicles or equipment substantially similar to a vehicle or equipment offered for sale or sold in the United States. Paragraph (b), as proposed, would require a manufacturer to submit a report, also within 5 working days, after it receives notification that a foreign government (or a political subdivision of that government) has determined that a safety recall or other safety campaign must be conducted on a substantially similar vehicles or equipment.

Comments were submitted regarding the sufficiency of a 5-working day period for submitting information, the character of the determination by the foreign government, and the appropriateness of including political subdivisions as a component of a foreign government. (We have addressed the last issue earlier in this notice.)

1. The Requirement To Report Within 5 Working Days

The principal concern of commenters was whether 5 working days afforded sufficient time to file reports with NHTSA.

Our proposal was based upon the specific language of Section 30166(l), which requires that manufacturers notify NHTSA ''not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country'' on substantially similar vehicles and equipment, or after receiving notification from a foreign government that such a campaign must be conducted. Congress did not provide direction on the meaning or implementation of the 5 working days period for submission of these reports. In the NPRM, we assumed that this 5-day period was based upon the time period in regulations NHTSA had adopted to implement the defect and noncompliance notification provisions of the Vehicle Safety Act. Section 30119(c)(2) of the Vehicle Safety Act states in pertinent part that notification to the Secretary of such defects or noncompliances under Section 30118 ''shall be given within a reasonable time after the manufacturer first decides that a safety-related defect or noncompliance exists.'' After notice and comment, we adopted a regulation specifying that ''not more than 5 working days'' is a ''reasonable time'' for notifying NHTSA of decisions that will lead to domestic recall campaigns (49 CFR 573.6(b) (2002)).

Based on our tentative reading of the TREAD Act, we proposed that the time period for reporting foreign safety recalls or other safety campaigns be 5 working days from the date that the manufacturer, including one of its subsidiaries or affiliates, decides to conduct, or is notified by a foreign government (including a foreign governmental unit) that it must conduct, the recall or other campaign. As we noted in the NPRM, ''the 5-day period in Section 30166(l) is very achievable in those cases in which the decision to conduct the recall or other campaign is made by, or with the concurrence of, the manufacturer's headquarters and there is little doubt that the foreign vehicles or equipment in question are identical or substantially similar to vehicles offered for sale in the U.S.'' We thought it reasonable to assume that, in most cases, local subsidiaries or affiliates of multinational manufacturers are not authorized to decide to conduct safety recalls or other safety campaigns without the concurrence of the corporate headquarters, or at least without contemporaneously advising such headquarters of the action. Thus, the headquarters would have at least basic information on the recall or campaign.

As we further noted in the NPRM, as a practical matter, we would expect few difficulties when a foreign government provides notification of its determination that a recall or other campaign must be conducted (there have been very few recalls ordered by foreign governments). We would expect

that there would be communications between the foreign government and the manufacturer's headquarters or its local subsidiary or affiliate before a government-directed recall, so that any formal notification would not be a complete surprise to the manufacturer. In any event, in our view, the notification would be in the form of a written communication to the manufacturer or its local entity. The addressee would be deemed to ''receive'' the notification when it is delivered by mail, facsimile or other mechanism to the addressee. This document could readily be forwarded to a manufacturer's headquarters and then to NHTSA.

We recognized that it may be difficult for a local subsidiary or affiliate to know whether the vehicles or equipment covered by the recall or other campaign in its country are substantially similar to products offered for sale in the United States. However, we expected that the parent corporation could readily address this question. Manufacturers could assure that all recalls and campaigns in foreign countries be brought to the attention of appropriate persons at the company's headquarters, who would be able to decide promptly whether they must be reported to NHTSA. In addition, the annual list of similar vehicles to be submitted by the manufacturer to NHTSA pursuant to section 579.11(e) could be sent to all foreign subsidiaries and affiliates of a vehicle manufacturer, which would assist them to know whether a recall or other campaign needed to be reported.

There were a number of comments on the meaning of ''5 working days.'' VW, Delphi, and Bendix recommended that ''5 working days'' be defined as 5 business days in the foreign country involved in the report at issue. The Alliance would interpret the term to mean the days that a manufacturer conducts business, and would not include days in which the manufacturer might be closed for ''scheduled factory and headquarters shutdowns (which occur with regularity in foreign markets for a period of a week or more at a time).'' VW recommended that there should be a maximum number of U.S. days encompassed in the phrase. Comments by AIAM and TMA were much the same, and quantified the maximum number of days as 15 U.S. business days.

We do not believe that the reporting will involve a complex sequences of events, and our experience and the comments did not show otherwise. The statute addresses identical or substantially similar vehicles and equipment in at least one foreign country and the United States. To satisfy reporting obligations, ordinarily offices in no more than one or two foreign countries would be involved.

Reports of foreign recalls and campaigns that the agency has received to date pursuant to 49 U.S.C. 30166(l) reflect a variety of practices, as the following examples show. Where a multinational manufacturer has its world headquarters in the United States, reports have been submitted by the U.S.-based entity stating that the company and its various subsidiaries and affiliates were conducting field actions in markets other than the United States. In addition, a report has been submitted by the North American operations arm of a U.S.-based company informing the agency that a foreign subsidiary had notified a foreign government of a particular matter. Where a multinational manufacturer is based in a foreign country, ordinarily the U.S. subsidiary submits the report. On some, the U.S. subsidiary submitted a report on behalf of the foreign parent. On others, the U.S. subsidiary simply submitted a report. One foreign company reported on the U.S. subsidiary's letterhead. With regard to the lines of communications, in some cases, the foreign parent communicated directly to authorities in countries other than the United States. In others, the foreign subsidiary (*e.g.,* in Australia) provided information that there has been a campaign. In yet others, the report simply stated that the manufacturer was submitting information on a particular campaign, and identified the country and vehicles involved. In one, the manufacturer referred to the factory as having provided information. Some identified a manufacturer, which often is identified as the foreign parent, but other times is a subsidiary in a foreign country. One reported that its foreign licensee planned to recall vehicles assembled by the licensee. Although the examples above reflect a variety of practices, each of them is straightforward.

The decision to conduct a recall or other safety campaign ordinarily would be made by or at least approved by the corporate parent. For example, if a Ford or General Motors product were involved, the decision to conduct the recall or campaign ordinarily would be made or at least approved in the United States. If a Toyota, BMW, or Hyundai product were involved, the decision ordinarily would be made or approved in a foreign corporate headquarters.

We recognize that, in theory, recalls or campaigns ordered by a foreign government could raise additional concerns (*e.g.,* the possibility of delay in notifying the corporate headquarters and the possible need for translation of the recall order). However, such government-ordered recalls are very rare, and translation is not an issue since, as noted by RMA, only three countries other than the United States have statutes authorizing the government to recall vehicles or equipment, and all of these are English-speaking (Canada, the United Kingdom, and Australia). Also, the statutory obligation to report under 49 U.S.C. 30166(l) had been in place for over one year by the time that the comment period on the NPRM closed, and the comments did not demonstrate any insurmountable problems.

The statute establishes a deadline that counts working days. We believe that it is appropriate to base this period on the general business practice of the involved offices of each individual manufacturer, including its relevant subsidiaries or affiliates. As discussed above, this could include offices in the country where the recall or campaign is directed by the government, the multinational headquarters, and the U.S. subsidiary, if any. In some countries, general business practice may be a matter of law; in others, a matter of custom, but it is the framework within which all manufacturers conduct their business operations. By ''general business practice,'' we mean the days that the corporate offices of a company conduct business (in the United States, generally Monday through Friday) as contrasted with the days that its plants are in operation (in the United States, this often includes Saturday). For example, on a certain day, a factory may be closed for inventory but its corporate office remains open; that day would be a ''working'' day. We have not adopted a maximum reporting date of 15 U.S. working days because working days may be determined on the basis of the general business practices of countries other than the United States, and it is possible that ''5 working days'' in a foreign country, under some circumstances such as corporate shutdown for an annual summer vacation, could exceed 15 U.S. working days.

MEMA commented that the 5-day period should begin on the date that the manufacturer determines that the vehicle or equipment recalled is substantially similar to a U.S. product rather than the date the manufacturer or government determines that a recall is required. This comment is posited on the presumed difficulty of identifying substantially similar vehicles and equipment in the United States at the time a foreign campaign is determined to be conducted. However, the statute is

clear that 5 working days is counted from the day of a manufacturer's determination or its receipt of notice from a foreign government. We believe that MEMA's suggestion would introduce too much potential delay into the process.

Accordingly, the final rule states that, where a determination is made by a manufacturer, the 5-working day period ''is determined by reference to the general business practice of the office in which such determination is made, and to the office reporting to NHTSA (Section 579.11(a)). Where a determination is made by a foreign government, the 5-working day period ''is determined by reference to the business practice of the office where the manufacturer receives such notification, the manufacturer's international headquarters office (if involved), and the office reporting to NHTSA (Section 579.11(b)).

In determining the 5-working day period, the particular working days of the offices involved in individual reports would be considered in toto. The rule does not provide separate 5-working day periods to each office within the multinational manufacturer that is involved in the determination and reporting process. The following hypothetical illustrates how working days are computed. It assumes that a vehicle manufacturer's world headquarters is in Germany, with subsidiaries in Asia and the United States. The Asian subsidiary receives a governmental notice on Thursday, September 1, that it must conduct a safety recall of certain vehicles. That day does not count in the computation of the relevant period, particularly in view of the fact that the notice might not be received until late in the day. On Friday, September 2, the subsidiary reviews the notice, and perhaps translates it into German (Day 1). The subsidiary observes a Saturday and Sunday weekend, and Monday is a national and corporate holiday. On Tuesday, September 6, the subsidiary faxes the original and the translation to Germany (Day 2). On Wednesday, September 7, the German headquarters confirms that the vehicles are substantially similar to those sold in the United States, and that the recall must be reported to NHTSA (Day 3). The headquarters office is closed on Thursday and Friday, as well as the weekend. On Monday, September 12, the headquarters office prepares the report and an English-language translation of the notice (Day 4). Headquarters faxes the report, notice, and translation to its U.S. subsidiary on Tuesday, September 13, but the subsidiary is closed that day. On Wednesday, September 14, the U.S. subsidiary would be required to submit the materials to NHTSA (the 5th working day).

2. A Manufacturer Must Report to NHTSA Even if the Determination by a Foreign Government Is Not a Final Determination

We proposed that a manufacturer report to NHTSA whenever it has been notified that the government of a foreign country has determined that it should or must conduct a safety recall or other safety campaign involving covered vehicles or equipment, whether or not the subject of the campaign would be a safety-related defect or noncompliance under the laws of the United States. For example, if the foreign government moves to prohibit further sales of a vehicle for reasons relating to motor vehicle safety, we would consider that action to be the equivalent of a ''safety campaign.''

The Alliance and MEMA commented that the notification by a foreign government should be one that is ''written.'' In the NPRM, we had assumed, as noted above, that such notification would be in written form, but we did not specify it in the regulatory text. We are clarifying this in the final rule, and the text of the final rule clarifies that reporting is only required with respect to written notifications.

There may be occasions when the manufacturer will contest a foreign government's determination or order, be it proposed or final. In the United States, NHTSA may make an initial decision that a defect or noncompliance exists pursuant to 49 U.S.C. 30118(a), affording the manufacturer and public an opportunity to present data, views, and arguments. Then NHTSA may make a final decision that a defect or noncompliance exists and order a recall under 49 U.S.C. 30118(b). Such an order can be challenged in court.

We are not fully conversant with the administrative and judicial practices of countries other than the United States, and we asked for comments on the vehicle and equipment safety recall laws and practices of other countries as they might relate to implementation of reporting of foreign governmental defect determinations. RMA advised that ''only the United States, Canada, the United Kingdom, and Australia have statutes authorizing the federal (or national) government to recall motor vehicles or motor vehicle equipment in use in those countries).'' However, RMA did not discuss these statutes in detail, and there were no other comments on possibly relevant laws or regulations of other countries.

The Alliance did not provide any information on countries with statutes authorizing recalls or on particular difficulties that its members would likely encounter with respect to them. Instead, the Alliance asserted that NHTSA's lack of familiarity with the practices of other countries justified excluding any determination other than a final one. It commented that a term such as a ''conditional'' determination might be meaningful when used in the context of some of NHTSA's regulatory proceedings but much less clear in other unspecified countries. It asked ''is a foreign government's expression of interest in a potential defect a 'conditional' determination that a recall is required? At what point during a pending investigation does official curiosity become a 'conditional' determination?'' In our view, an ''expression of interest'' or ''curiosity'' is nothing more than that. However, a conditional determination reflects at least some belief on the part of the foreign government that a recall should be conducted, and thus is of interest to NHTSA, even if a further step is needed prior to a directive that a recall take place.

RMA would apply the criterion that ''the determination would be considered a safety-related defect under U.S. law,'' and that only final determinations should be reported. At the present time, we do not expect foreign law to mirror the Vehicle Safety Act with respect to such determinations, and we do not know whether elements of U.S. law would be met. The RMA formulation could result in non-reporting where a foreign recall was based on a somewhat different standard than governs under U.S. law. Also, this could result in extensive delays before a resolution of whether a condition was a defect under foreign law. Even in the United States, some cases have remained unresolved for an extended period of time following an initial decision under Section 30118(a). Further, RMA's criterion would not encompass determinations covering ''other safety campaigns,'' which could be ordered in the absence of a defect determination. Information about interim determinations or safety campaigns where a defect has not explicitly been found to exist will enhance NHTSA's ability to give earlier consideration to potential defects in vehicles operated abroad that might also exist in substantially similar vehicles in the United States. We therefore are adopting the proposal to require reporting of all determinations by foreign governmental entities, whether

proposed, interim, or final, that a recall or other safety campaign must be conducted and regardless of whether there has been a finding of a safety-related defect.

B. One-time Historical Reporting: Paragraph (c)

Manufacturers have been required to report determinations or notifications of applicable foreign recalls and other safety campaigns to us since November 1, 2000, the effective date of Section 30166(l). Some have done so. In order to be certain that we are aware of all such determinations and notifications, we proposed that manufacturers provide us with reports of all relevant determinations and notifications between November 1, 2000, and the effective date of the final rule, if they had not already been reported to us. This one-time historical reporting would assure that we receive information on recalls and campaigns that might not previously have been reported to us because of uncertainty whether such campaigns covered substantially similar vehicles and equipment within the meaning specified in the final rule. We proposed that reports would be due within 30 days of the effective date of the final rule.

We had no comments on this proposal, and we are adopting it as section 579.11(c). However, to avoid unnecessary burdens and duplicative reporting, we are including a provision stating that, if a foreign recall or campaign has already been reported to NHTSA, it need not be resubmitted under section 579.11(c) if the original report identified the model(s) and model year(s) of the products that were the subject of the foreign recall or campaign, identified the identical or substantially similar U.S. products, and identified the defect or other condition that led to the foreign recall or campaign.

C. Exemptions From Reporting: Paragraph (d)

In the NPRM, we recognized that manufacturers may conduct identical recalls in the U.S. and abroad. We proposed that a manufacturer would not be required to report foreign recalls or campaigns to us under this rule if it had filed a Part 573 report covering the same safety defect or noncompliance in substantially similar products offered for sale or in use in the United States, provided that the manufacturer's remedy in the foreign campaign is identical to that provided in the U.S. campaign, and the scope of the foreign campaign is not broader than that of the U.S. campaign.

The Alliance commented that it was ''inappropriate and unnecessary to condition the availability of this exemption on the motivations of the manufacturer to undertake the campaigns, which may well be different from country to country.'' For example, Section 30118 motivates a manufacturer files a Part 573 report but that would not be the motivation for a parallel campaign outside the United States. In its view, ''the objective fact that a foreign campaign is being undertaken'' should be sufficient. We believe the Alliance is reading this phrase in a manner different than we intended. In our view, the phrase ''for the same or substantially similar reasons'' means that a manufacturer is conducting a foreign campaign for the same or substantially reasons relating to motor vehicle safety that it filed a Part 573 report. We are therefore modifying the phrase in section 579.11(d)(1) of the final rule to read ''for the same or substantially similar reasons relating to motor vehicle safety.''

In addition, the Alliance expressed concern ''about the limitation of the exemption to campaigns in which the remedies are identical.'' For example:

> An illustration of a campaign in which remedies might differ is one in which the failure is likely to occur only in cold or cool temperatures, such that all consumers in the United States receive a replacement component to protect against the possibility of failure, but consumers in countries with hot climates year-round need only receive an inspection with a replacement as necessary.

On reflection, we have decided that the exemption should apply even if the remedies in foreign countries and the United States are not identical. Pursuant to 49 U.S.C. 30120(a)(1), a manufacturer may elect the remedy for a defect or noncompliance. In general, NHTSA does not question the appropriateness of a remedy selected by a manufacturer unless there is some reason to believe that it is not adequate. If we do open an investigation into the adequacy of a remedy in the United States, we can and will obtain any relevant information about foreign remedies.

The Alliance was also concerned about limiting the exemption to campaigns in which the ''scope'' of the foreign campaign ''is identical to the scope of the U.S. campaign.'' In its view, if ''scope'' means the population of potentially affected vehicles, then the exemption will become meaningless, as vehicle models abroad will differ from those in the United States. According to the Alliance, the ''scope'' of the campaign should not matter ''as long as NHTSA has received a Part 573 report about the same alleged defect on U.S. vehicles with a proposed scope that is suitable and appropriate for the U.S. market.''

The Alliance misquoted the regulatory text. The exemption applies not if the scope is ''identical,'' but if ''the scope of the foreign recall or campaign is not broader than the scope of the recall campaign in the United States.'' By ''scope,'' we meant the subject matter of the recall and the time frame in which the recalled vehicles were manufactured. For example, if both the U.S. and foreign campaigns related to the same defect in a hydraulic brake system, the scope may be identical. But if the foreign recall included a recall of hydraulic brake hoses used in vehicles with the brake system that was not included in the U.S. recall, the scope would not be identical and the campaign would have to be reported. Similarly, if the foreign recall covered three model years and the U.S. recall covered only one of those years, the foreign recall would have to be reported. Of course, the manufacturer would have the opportunity to provide an explanation of why the smaller scope of the U.S. recall was appropriate.

The Alliance recommended expanding the exemption to cover circumstances in which a foreign safety recall is properly and timely reported to NHTSA, and is later expanded by the manufacturer to other foreign countries. In its view, as long as NHTSA has been informed of the first foreign recall, ''and has the necessary information to make a judgment about whether a similar campaign is warranted in the United States, it should not need to receive redundant reports when that campaign is extended to other foreign countries.'' We disagree. The decision to broaden the scope of a foreign recall and extend it to other foreign countries may be based upon factors that differ from those which resulted in the initial foreign campaign reported to NHTSA, such as the climate or road conditions in which a vehicle is operated. Given the wide variety of vehicle operating environments in the United States, information on the extension of campaigns could prove of assistance in fulfilling the purpose of the TREAD Act of earlier detection of potential safety defects. We therefore have not adopted a new exemption.

As noted above, we are exempting from reporting any safety campaign involving substantially similar motor vehicle equipment that does not perform the same function in vehicles or equipment sold or offered for sale in the United States. See Section 579.11(d)(2).

In addition, we are not requiring manufacturers to report to us a foreign

safety recall (or other safety campaign) whose sole subject is a label affixed to a vehicle or equipment. See Section 579.11(d)(3). Some foreign recalls involve failure to follow requirements for labels in a foreign language that are not germane. Even if the label is in English, the governmental requirement in the foreign country is likely to be different from the applicable U.S. requirements. Moreover, the agency has often judged errors in labels to be inconsequential to safety when manufacturers reporting such noncompliances under Part 573 have petitioned for determinations under Part 556 that they be relieved of further notification and remedy obligations. For these reasons, we have concluded that reports of foreign recalls or campaigns involving only labels are not likely to lead to discovery of defects or noncompliances in identical or substantially similar U.S. vehicles and equipment that require remedial action.

TMA noted that differences in various regions worldwide could influence recalls that might not be necessary under the Vehicle Safety Act. TMA would report these foreign recalls, but commented that it would be appropriate for a manufacturer to provide its views of why such recalls should not be conducted in the United States. Nothing in today's final rule requires or prohibits such an addition to a report, but if a manufacturer chooses to amplify a report, its views should follow the information that the rule requires in the report.

Harley-Davidson pointed out that the European Union (EU) has mandated a uniform two-year warranty on new vehicles, and that manufacturers may conduct campaigns in order to honor the warranties. In its opinion, such campaigns ought to be excluded from reporting. We do not agree; if an EU warranty campaign meets the definition of ''safety recall'' or ''other safety campaign,'' it must be reported.

D. Annual Identification of Substantially Similar Vehicles: Paragraph (e)

In commenting on the early warning reporting ANPRM, the Alliance suggested that each vehicle manufacturer submit to NHTSA annually, at the beginning of each model year, a list of the vehicles that the manufacturer intends to sell abroad during that year that the manufacturer believes are ''substantially similar'' to vehicles sold or planned for sale in the United States. We thought that such a list could help both the manufacturers and NHTSA in determining whether foreign recalls and other campaigns need to be reported. Accordingly, we proposed that manufacturers identify, not later than November 1 of each year, any vehicles they plan to sell abroad in the next year that they believe to be substantially similar to vehicles sold or offered for sale in the United States, or planned for sale in the United States during the next year.

AIAM commented in the context of the component-based proposed criterion of the definition of ''substantially similar'' motor vehicle, and its comment is moot since we are adopting a platform-based criterion. Harley-Davidson asserted that it does not know as of each November 1 all the motorcycles that will be substantially similar to its U.S. models in the 12 months of the next calendar year, as its model year ends on June 30 of any given year, and decisions regarding models for the second half of that calendar year are not made until January of that year. The regulation does not require that a manufacturer provide a definitive and final list, only an identification of the vehicles it ''plans'' to sell in the coming year as of November 1. If its plans change thereafter, a manufacturer would not be required to amend the list.

Given the lack of comments by other manufacturers, there appears to be no problem in providing NHTSA with an annual list of vehicles as of November 1. Generally, manufacturers will have made advance announcements of their plans for the following calendar year by that date. If there are confidentiality concerns, manufacturers may request confidential treatment pursuant to 49 CFR part 512.

Accordingly, we are adopting our proposal. See Section 579.11(e). We are adding the requirement that the manufacturer also identify the vehicle sold in the United States that is identical or substantially similar to the identified vehicle being sold in a foreign country.

IV. Section 579.12, Contents of Reports

Under the NPRM, proposed Section 579.14 (adopted as Section 579.12) contained two subsections, the first specifying the contents of the report to NHTSA and the second dealing with the reporting of information that is not available at the time of the initial report.

A. Contents of the Report

When a manufacturer of motor vehicles or motor vehicle equipment decides to conduct a notification and remedy campaign in the United States to address a safety-related defect or a noncompliance with a FMVSS, or is ordered to do so by NHTSA, it must furnish information to the agency as specified in 49 CFR part 573, ''Defect and noncompliance reports.'' The contents of the required notification are set out in Section 573.6(c)(1–11) (formerly Section 573.5(c)(1–11)). These include the manufacturer's name (paragraph (c)(1)), identification of the vehicles or items of motor vehicle equipment potentially containing the defect or noncompliance, including a description of the manufacturer's basis for its determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the manufacturer has not included in the recall (paragraph (c)(2)), the supplier of the defective or noncomplying equipment where applicable (paragraph (c)(2)(iv)), the total number of vehicles or items of equipment potentially containing the defect or noncompliance (paragraph (c)(3)), the percentage of vehicles that actually contain the defect or noncompliance (paragraph (c)(4)), a description of the defect or noncompliance (paragraph (c)(5)), in the case of a defect, a chronology of principal events that were the basis for the determination including summaries of field or service reports, warranty claims, and the like (paragraph (c)(6)), in the case of a noncompliance, the test results or other basis upon which the manufacturer made its determination (paragraph (c)(7)).

We proposed that this same information be provided in the manufacturer's notification to NHTSA of a safety recall or other safety campaign in a foreign country. In addition, the manufacturer would have to identify the foreign country, state whether the determination was made by the manufacturer or by a foreign government, state the date of the determination, state whether the action in question was a safety recall or other safety campaign, and identify with specificity the motor vehicles or motor vehicle equipment sold or offered for sale in the United States that are identical or substantially similar to those covered by the foreign campaign. Manufacturers who are reporting campaigns ordered by a foreign government would also be required to furnish copies of the determination by the foreign government in the original language and translated into English (if necessary).

We recognized that this is more information than is currently required in connection with some campaigns in the United States that are not safety recalls under the Vehicle Safety Act. Under former 49 CFR 573.8 (now section 579.5(a)), manufacturers must

merely submit the documents that they send to more than one owner or dealer regarding vehicle and equipment malfunctions, and they need not provide all the information set out in 49 CFR 573.6(c). We proposed to require more complete information, in part, because of the difficulty in distinguishing between ''safety recalls'' and ''other safety campaigns'' in foreign countries. We asked for comments on whether and how the level of detail can be reduced for certain type of foreign safety campaigns.

The Alliance, Nissan, and MEMA each commented that it would be burdensome and unnecessary to provide all the information proposed to be submitted.

With respect to the seven items of information we proposed to require based on former section 573.5(c), Nissan, MEMA, and AIAM recommended limiting these to paragraphs (c)(1)(identification of manufacturer), (c)(2)(identification of vehicle or equipment), and (c)(5) (description of the defect). Each suggested that NHTSA could request further information if the agency desired it. These commenters contended that some of the seven items of information may not have been developed, and that their collection would be time-consuming. RMA would limit reports to only information covered by former section 573.8 (notices, bulletins, and other communications).

After reviewing these comments, we have decided that it is not necessary for purposes of foreign recall and campaign reporting to require information specified by 49 CFR 573.6 paragraphs (c)(4) (the percentage of vehicles or equipment items estimated to contain the defect), (c)(6)(in the case of a defect, a chronology of principal events that were the basis for the determination including summaries of field or service reports, warranty claims, and the like), and (c)(7) (in the case of a noncompliance, the test results or other basis upon which the manufacturer made its determination). By not requiring these three items of information, the burden upon manufacturers will be lessened. However, in addition to those that the manufacturers did not object to, we will adopt our proposal to require the information specified in paragraph (c)(3) (the total number of vehicles or items of equipment covered by the foreign campaign). This information has been provided in numerous reports of foreign recalls received to date, and its collection is unlikely to be burdensome. As for RMA's comment, as we stated above, we believe it is important to require more complete information than is required for domestic actions that are not safety recalls, in part because of the difficulty in distinguishing between ''safety recalls'' and ''other safety campaigns'' in foreign countries.

No commenter addressed the other information regarding foreign campaigns that we proposed to require, and we are adopting those requirements in the final rule. We are also adding the requirements that the report itself be dated, and that, in the case of a recall, it describe the manufacturer's program for remedying the defect or noncompliance, information presently required by section 573.6(c)(8) for U.S. recalls.

B. Information Not Available at the Time of the Initial Report

As discussed above, foreign recalls and other safety campaigns must be reported within 5 working days. We recognized that some of the required information might not be available within 5 working days. Consistent with redesignated section 573.6(b), we proposed that such information be submitted as it becomes available. There were no comments on this aspect of our proposal, and we are adopting it. See section 579.12(b).

V. Section 579.3(b), Who May Submit Reports

In its defect and noncompliance reporting regulations, the agency has addressed the question of who may file a defect or noncompliance report related to an imported item. Under 49 CFR 573.3(b), in the case of vehicles or equipment imported into the United States, a defect or noncompliance report may be filed by either the fabricating manufacturer or the importer of the vehicle or equipment. Defect and noncompliance reports covering vehicles manufactured outside of the United States have generally been submitted by the importer of the vehicles, which is usually a subsidiary of a foreign parent corporation (*e.g.*, defects in vehicles made in Japan by Honda Motor Co. Ltd. are reported by American Honda Motor Co., Inc., even if the vehicle was certified by Honda Motor Co. Ltd).

We proposed in section 579.15 to apply the reporting requirements for foreign campaigns in the same manner as we currently utilize for reporting noncompliance and defect determinations to NHTSA under part 573. That is to say, the report might be filed by either the fabricating manufacturer or by the importer of the vehicle that is identical or substantially similar to that covered by the foreign recall or other safety campaign. The Alliance recommended that the final rule ''contain a provision authorizing manufacturers engaged in joint ventures or other similar enterprises to allocate between or among themselves which entity will assume responsibility for reporting to NHTSA.'' The Alliance asserted that allocation of responsibility would be similar to that between component suppliers and OE manufacturers in part 573.

In the early warning NPRM, we also proposed that fabricating manufacturers or importers could file early warning reports. However, in the final rule, we expanded these entities and adopted section 579.3(b), which specifies that:

> In the case of any report required under subpart C of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or United States subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment, shall be considered compliance by all persons.

We are adopting largely the same reporting provision for manufacturers who report foreign campaigns. We believe that this is responsive to the Alliance's recommendation. In any event, we note that historically, Alliance members' U.S. headquarters (if the multinational headquarters is in the U.S.) or U.S. subsidiary (if the multinational headquarters is in a foreign country) have submitted reports under section 30166(l) and that this has sufficed. However, rather than adopting a separate provision in Subpart B, we are amending section 579.3 to redesignate paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and to adopt a new paragraph (b) which reads:

> In the case of any report required under subpart B of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment that is identical or substantially similar to that covered by the foreign recall or other safety campaign, shall be considered compliance by all persons.

It should be noted that this differs from the early warning reporting paragraph in that a report may be filed by a ''subsidiary,'' not just a ''United States subsidiary.'' This means that any of the named entities, including a foreign subsidiary who makes a determination or receives a notice from a foreign government, may file a report, whether it is located in the United States or in a foreign country. As we noted in the NPRM, a multinational corporation must ensure that all relevant campaign information

throughout the world is made available to whatever entity makes those reports so that its designated entity timely provides the information to NHTSA. Thus, it would be a violation of law for a foreign manufacturer to designate its U.S. importer as its reporting entity, and then fail to assure that it is provided with information about relevant foreign recalls and campaigns. All manufacturers will have to adopt and implement practices to assure the proper flow of information regarding relevant foreign recalls and campaigns.

There was one further reporting issue. Under proposed section 579.13(a), after a manufacturer determines to conduct a foreign safety campaign ''covering'' substantially similar motor vehicles and equipment, the manufacturer ''of the vehicle or equipment covered by the recall or other campaign'' would report the determination to NHTSA. Johnson found it unclear whether ''the manufacturer who makes [the recall] determination is the one who needs to make the report.'' Johnson noted that ''in the case of original equipment or replacement equipment, the equipment manufacturer can make the determination of defect. In those cases, the equipment manufacturer should be the person who makes the report required under section 579.13(a).'' It argued that ''imposing an obligation on the manufacturer 'covered by' the recall is ambiguous, particularly in a case where a recall by a vehicle manufacturer is undertaken as a result of a defect discovered by the vehicle manufacturer in an original component made by an equipment manufacturer.'' It would clarify that the manufacturer making the report is the manufacturer making the determination to recall.

The issue of alternative reporting responsibilities has been addressed with respect to notification of defects and noncompliances that lead to domestic recall campaigns in section 573.3(e). This paragraph permits either a vehicle manufacturer or an OE manufacturer to notify NHTSA if the OE manufacturer's defective equipment is used only in the vehicles of that manufacturer, and the reporting manufacturer to conduct the remedial campaign. This paragraph appears to be the basis of Johnson's comment.

We did not address the issue of alternative reporting responsibilities in the context of foreign campaigns in the NPRM. Under our proposed fifth criterion, substantially similar vehicles would be those sharing the component that led to the safety recall or campaign. Thus, it did not seem likely that the foreign manufacturer of the defective OE would be the person determining to conduct a safety recall of foreign motor vehicles equipped with its defective OE. However, in the final rule, as discussed above, we have moved to a platform-based criterion. This means that, even if the same defective OE is used in both U.S. and foreign vehicles and in the same application, the vehicle manufacturer is not required to report the campaign to NHTSA if the two vehicles do not share a common platform (or qualify as substantially similar vehicles under one of the other three criteria). We have concluded that Johnson's suggestion provides greater clarity, and we are including language in final section 579.11(a) to clarify that the manufacturer making the determination to conduct a safety recall or other safety campaign is the manufacturer required to report to NHTSA. We are making a corresponding clarification in section 579.11(b) that it is the manufacturer that receives the notification from a foreign government that must report to NHTSA.

VI. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures. This document was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures.

We estimate that fewer than 500 reports of foreign recalls and other safety campaigns will be submitted annually; some of these would involve parallel campaigns in multiple countries. The costs associated with this rule are minimal and are principally related to hours of burden. There would be costs in determining whether vehicles or equipment that are covered by a foreign recall or campaign are identical or substantially similar to vehicles and equipment sold in the United States, and there will be costs associated with preparing and submitting the annual list of substantially similar vehicles. The cost of determining which vehicles are substantially similar will be less under the final rule because the most relevant criterion will be commonality of the vehicle platform, rather than commonality of parts giving rise to the foreign campaign, as initially proposed. Moreover, the existence of the annual list will simplify this decision.

There will be costs to manufacturers to prepare and submit reports of these recalls and campaigns to the agency. If a determination has been made by a foreign government in a language other than English, a manufacturer would also have the cost of translating the determination before supplying it to us; however, currently such determinations are not made in any language other than English. Finally, there may be costs involved in searching out and filing reports with NHTSA that are related to foreign determinations made between November 1, 2000 and the effective date of the final rule. The costs would appear to be principally those of man-hours. We estimate that the costs will be less than $200,000 per year industry-wide. We sought comments from manufacturers on the estimated costs of meeting a final rule based on this proposal and received none.

Regulatory Flexibility Act. We have also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action does not have a significant economic impact upon a substantial number of small entities. The basis for this certification is that most manufacturers of motor vehicles and motor vehicle equipment that operate internationally are not small entities. Any small business that operates internationally is likely to have less than one report per year to send to NHTSA. Thus, the final rule is not economically significant, and no regulatory flexibility analysis has been prepared.

Executive Order 13132 (Federalism). Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The E.O. defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires a manufacturer of motor vehicles and motor vehicle equipment

to report information and data to NHTSA if it decides to conduct, or if it is informed by a foreign government that it must conduct, a safety recall or other safety campaign in a country outside the United States. These provisions are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1329. We published a Paperwork Reduction Act Notice on August 9, 2002 (67 FR 51925). Following receipt of comments, due by October 8, 2002, we will submit the required materials to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

2. Section 579.2 is revised to read as follows:

§ 579.2 Purpose.

The purpose of this part is to enhance motor vehicle safety by specifying information and documents that manufacturers of motor vehicles and motor vehicle equipment must provide to NHTSA with respect to possible safety-related defects and noncompliances in their products, including the reporting of safety recalls and other safety campaigns that the manufacturer conducts outside the United States.

3. Section 579.3 is amended by revising paragraph (a), by redesignating paragraphs (b) and (c) as (c) and (d) respectively, and by adding a new paragraph (b), to read as follows:

§ 579.3 Application.

(a) This part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in the United States by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in a foreign country by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and are identical or substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States.

(b) In the case of any report required under subpart B of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment that is identical or substantially similar to that covered by the foreign recall or other safety campaign, shall be considered compliance by all persons.

* * * * *

4. Section 579.4(c) is amended by adding in alphabetical order the terms ''foreign country,'' ''foreign government,'' ''other safety campaign,'' and ''safety recall,'' to read as follows:

§ 579.4 Terminology.

* * * * *

(c) *Other terms.* * * *

* * * * *

Foreign country means a country other than the United States.

Foreign government means the central government of a foreign country as well as any political subdivision of that country.

* * * * *

Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

* * * * *

Safety recall means an offer by a manufacturer to owners of motor vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or guideline, whether or not the manufacturer agrees to pay the full cost of the remedial action.

* * * * *

5. Section 579.4(d) is amended by removing the title and introductory phrase ''*Terms related to foreign claims.* For purposes of subpart C of this part:'' and by adding in its place ''*Identical or substantially similar motor vehicle, item of motor vehicle equipment, or tire.*''

6–7. Subpart B is revised to read as follows:

Subpart B—Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries

Sec.

579.11 Reporting responsibilities.
579.12 Contents of reports.
579.13–579.20 [Reserved]

Subpart B—Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries

§ 579.11 Reporting responsibilities.

(a) *Determination by a manufacturer.* Not later than 5 working days after a manufacturer determines to conduct a safety recall or other safety campaign in a foreign country covering a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States, the manufacturer shall report the determination to NHTSA. For purposes of this paragraph, this period is determined by reference to the general business practices of the office in which such determination is made, and the office reporting to NHTSA.

(b) *Determination by a foreign government.* Not later than 5 working days after a manufacturer receives written notification that a foreign government has determined that a safety recall or other safety campaign must be conducted in its country with respect to a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States, the manufacturer shall report the determination to NHTSA. For purposes of this paragraph, this period is determined by reference to the general business practices of the office where the manufacturer receives such notification, the manufacturer's international headquarters office (if involved), and the office reporting to NHTSA.

(c) *One-time historical reporting.* Not later than 30 calendar days after November 12, 2002, a manufacturer that has made a determination to conduct a recall or other safety campaign in a foreign country, or that has received written notification that a foreign government has determined that a safety recall or other safety campaign must be conducted in its country in the period between November 1, 2000 and November 12, 2002, and that has not reported such determination or notification of determination to NHTSA in a report that identified the model(s) and model year(s) of the vehicles, equipment, or tires that were the subject of the foreign recall or other safety campaign, the model(s) and model year(s) of the vehicles, equipment, or tires that were identical or substantially similar to the subject of the recall or campaign, and the defect or other condition that led to the foreign recall or campaign, as of November 12, 2002, shall report such determination or notification of determination to NHTSA if the safety recall or other safety campaign covers a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States. However, a report need not be resubmitted under this paragraph if the original report identified the model(s) and model year(s) of the vehicles, equipment, or tires that were the subject of the foreign recall or other safety campaign, identified the model(s) and model year(s) of the identical or substantially similar products in the United States, and identified the defect or other condition that led to the foreign recall or other safety campaign.

(d) *Exemptions from reporting.* Notwithstanding paragraphs (a), (b), and (c) of this section a manufacturer need not report a foreign safety recall or other safety campaign to NHTSA if:

(1) The manufacturer has determined that for the same or substantially similar reasons relating to motor vehicle safety that it is conducting a safety recall or other safety campaign in a foreign country, a safety-related defect or noncompliance with a Federal motor vehicle safety standard exists in identical or substantially similar motor vehicles, motor vehicle equipment, or tires sold or offered for sale in the United States, and has filed a defect or noncompliance information report pursuant to part 573 of this chapter, provided that the scope of the foreign recall or campaign is not broader than the scope of the recall campaign in the United States;

(2) The component or system that gave rise to the foreign recall or other campaign does not perform the same function in any vehicles or equipment sold or offered for sale in the United States; or

(3) The sole subject of the foreign recall or other campaign is a label affixed to a vehicle, item of equipment, or a tire.

(e) *Annual list of substantially similar vehicles.* Not later than November 1 of each year, each manufacturer of motor vehicles that sells or offers a motor vehicle for sale in the United States shall submit to NHTSA a document that identifies both each model of motor vehicle that the manufacturer sells or plans to sell during the following year in a foreign country that the manufacturer believes is identical or substantially similar to a motor vehicle sold or offered for sale in the United States (or to a motor vehicle that is planned for sale in the United States in the following year), and each such identical or substantially similar motor vehicle sold or offered for sale in the United States.

§ 579.12 Contents of reports.

(a) Each report made pursuant to § 579.11 of this part must be dated and must include the information specified in § 573.6(c)(1), (c)(2), (c)(3), and (c)(5) of this chapter. Each such report must also identify each foreign country in which the safety recall or other safety campaign is being conducted, state whether the foreign action is a safety recall or other safety campaign, state whether the determination to conduct the recall or campaign was made by the manufacturer or by a foreign government, describe the manufacturer's program for remedying the defect or noncompliance (if the action is a safety recall), specify the date of the determination and the date the recall or other campaign was commenced or will commence in each foreign country, and identify all motor vehicles, equipment, or tires that the manufacturer sold or offered for sale in the United States that are identical or substantially similar to the motor vehicles, equipment, or tires covered by the foreign recall or campaign. If a determination has been made by a foreign government, the report must also include a copy of the determination in the original language and, if the determination is in a language other than English, a copy translated into English.

(b) Information required by paragraph (a) of this section that is not available within the 5-working day period specified in § 579.11 of this part shall be submitted as it becomes available.

Issued on: October 7, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–25849 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020215032–2127 02; I.D. 100102E]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Transfers

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

ACTION: Commercial quota transfers.

SUMMARY: NMFS announces that the Commonwealth of Virginia and the States of Florida and Rhode Island have transferred 100,000 lb (45,372 kg), 200,000 lb (90,744 kg), and 125,000 lb (56,689 kg), respectively, of their 2002 adjusted commercial quotas to New York. The revised quotas for the calendar year 2002 following the transfer are: Virginia, 1,095,283 lb (496,952 kg), Florida, 856,269 lb (388,507 kg), Rhode Island 589,851 lb (267,506 kg), and New York, 1,299,372 lb (589,284 kg).

NMFS has adjusted the quotas and announces the revised commercial quotas for Virginia, Florida, Rhode Island, and New York. This action is permitted under the regulations implementing the Fishery Management Plan for the Bluefish Fishery (FMP) and is intended to reduce discards and prevent negative economic impacts to the New York commercial bluefish fishery.

DATES: Effective October 10, 2002 through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, fax (978) 281–9135, e-mail *Myles.A.Raizin@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial

quota and the percent allocated to each state is described in § 648.160.

The total commercial quota for bluefish for the 2002 calendar year was set equal to 10,500,000 lb (4,762,720 kg) (66 FR 23625, May 9, 2002). The resulting quotas for New York, Virginia, Florida, and Rhode Island were 1,090,436 lb (494,753 kg), 1,247,348 lb (565,787 kg), 1,056,269 lb (479,115 kg), and 714,851 lb (324,251 kg), respectively. Effective, September 12, 2002, (67 FR 57758) New York's quota was reduced by 216,064 lb (98,033 kg) to 874,372 lb (396,721 kg) and, effective October 8, 2002, (FR) Virginia's quota was reduced by 52,065 lb (23,623 kg) to 1,195,283 lb (541,833 kg).

The FMP allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), to transfer or combine part or all of their annual commercial bluefish quotas. The Regional Administrator must consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Virginia, Florida, and Rhode Island have agreed to transfer 100,000 lb (45,372 kg), 200,000 lb (90,744 kg), and 125,000 lb (56,689 kg), respectively, of their 2002 adjusted commercial quotas to New York. The revised quotas for the calendar year 2002 following the transfer are: Virginia, 1,095,283 lb (496,952 kg), Florida, 856,269 lb (388,507 kg), Rhode Island 589,851 lb (267,506 kg), and New York, 1,299,372 lb (589,284 kg).

The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 2, 2002.

Virginia M. Fay,

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

[FR Doc. 02–26014 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 100802B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 8, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or Mary.Furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council 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 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area is 2,479 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,979 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, 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 TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 8, 2002.

Virginia M. Fay,

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

[FR Doc. 02–26013 Filed 10–8–02; 3:09 pm]

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Proposed Rules

Federal Register
Vol. 67, No. 198
Friday, October 11, 2002

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, 245, 248 and 299

[INS 2080–00]

RIN 1115–AE73

Certificates for Certain Health Care Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule specifies the organizations already authorized to issue health care workers certificates, and sets up procedures for authorizing additional organizations, including an appeals process in the event that requests for authorization are denied. In addition, this rule proposes to add the requirement that all nonimmigrants coming to the United States for the primary purpose of labor as health care workers, including those seeking a change of status, be required to submit a health care worker certification. Previously, the Service had implemented health care worker certification requirements through three interim regulations. This proposed rule expands on those three interim rules and allows for a comment period. Finally, the Immigration and Naturalization Service (Service) proposes amendments to a previously created form that will allow organizations to formally seek authorization to issue certificates to health care workers in a uniform manner. Publication of this proposed rule will ensure more uniformity in the adjudication of petitions and admissibility determinations for aliens seeking to enter the United States to engage in labor as health care workers.

DATES: Written comments must be submitted on or before December 10, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2080–00 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov.* When submitting comments electronically, please include INS No. 2080–00 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Mari F. Johnson, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

What Are the Provisions of Sections 212(a)(5)(C) and (r) of the Immigration and Nationality Act (Act)?

Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104–208, 110 Stat. 3009, 636–37 (1996), created a new ground of inadmissibility now codified at section 212(a)(5)(C) of the Act, 8 U.S.C. 1182(a)(5)(C). It provides that, subject to section 212(r) of the Act, an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of the Department of Health and Human Services (HHS) verifying that:

(1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application; are comparable with that required for an American health care worker of the same type; are authentic; and, in the case of a license, unencumbered;

(2) The alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write English; and

(3) If a majority of States licensing the profession in which the alien intends to work recognize a test predicting an applicant's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 4(a) of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95, now codified at section 212(r) of the Act, 8 U.S.C. 1182(r), created an alternative certification process for aliens who seek to enter the United States for the purpose of performing labor as a nurse. In lieu of a certification under the standards of section 212(a)(5)(C) of the Act, an alien nurse can present to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from CGFNS (or an equivalent independent credentialing organization approved for the certification of nurses) that:

(1) The alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and that such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) The alien has passed the National Council Licensure Examination (NCLEX); and

(3) The alien is a graduate of a nursing program that meets the following requirements:

(i) The language of instruction was English; and

(ii) The nursing program was located in a country which:

(A) was designated by CGFNS no later than 30 days after the enactment of the NRDAA, based on CGFNS'' assessment that designation of such country is justified by the quality of nursing education in that country, and the English language proficiency of those who complete such programs in that country; or

(B) was designated on the basis of such an assessment by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses; and

(iii) The nursing program:

(A) was in operation on or before November 12, 1999; or

(B) has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses.

CGFNS designated the following countries for purposes of this alternate certification: Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom, and the United States.

How Has the Service Implemented These Requirements?

Section 212(a)(5)(C) of the Act became effective upon enactment on September 30, 1996. Shortly thereafter, the Service met and conferred with HHS, the Department of Labor (DOL), the Department of Education (DoED), the Department of Commerce (DOC), the Office of the United States Trade Representative (USTR), and DOS to reach consensus on the best approach for implementation of the new provision. In addition, the Service met with interested private organizations including CGFNS, the American Occupational Therapists Association, the National Board for Certification in Occupational Therapy (NBCOT), the Federated State Board of Physical Therapy, and the American Physical Therapy Association.

The Service has implemented section 343 of IIRIRA and NRDAA, via three interim rules published in the **Federal Register** as follows:

(1) Interim Procedures for Certain Health Care Workers, 63 FR 55007 (Oct. 14, 1998) (codified at 8 CFR 212.15 and 245.14)(the first Interim Rule);

(2) Additional Authorization to Issue Certificates for Foreign Health Care Workers, 64 FR 23174 (April 30, 1999) (amending § 212.15)(the second Interim Rule); and

(3) Additional Authorization to Issue Certificates for Foreign Health Care Workers; Speech Language Pathologists and Audiologists, Medical Technologists and Technicians, and Physician Assistants, 66 FR 3440 (Jan. 16, 2001) (amending § 212.15)(the third Interim Rule).

These current regulatory provisions shall remain in effect until this proposed rule is adopted as a final rule.

What Were the Provisions of the First Interim Rule?

The Service in consultation with HHS initially identified, on the basis of the legislative history, seven categories of health care workers subject to the provisions of section 212(a)(5)(C) of the Act. *See* H.R. CONF. REP. NO. 104–828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. *See* 63 FR at 55008.

In the first Interim Rule, the Service authorized CGFNS and the NBCOT to issue certificates to immigrant nurses and occupational therapists respectively, established the appropriate English language competency levels for foreign nurses and occupational therapists, and specified exemptions from English language proficiency testing. The first Interim Rule was adopted without the notice and comment period ordinarily required by 5 U.S.C. 553, the Administrative Procedure Act, because the Service found that delay in the establishment of a certification process could adversely affect the provision of health care, particularly in medically underserved areas for nursing and occupational therapy. The Service identified two criteria to support the temporary authorization of CGFNS and the NBCOT to issue certificates to immigrant nurses and occupational therapists: (1) The existence of a sustained level of demand for foreign workers for the particular occupation exists; and (2) the fact that these are both organizations with an established track record in providing credentialing services.

The first Interim rule applied only to immigrants. The Service and DOS exercised their discretion under section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), to waive the foreign health care worker certification requirement for nonimmigrant health care workers until promulgation of final implementing regulations. The Service and DOS exercised their waiver discretion after carefully considering the complexity of the implementation issues, including how the health care certificate requirements affect United States obligations under international agreements, and the need for health care facilities across the country to remain fully staffed and provide a high quality of service to the public. The waiver of inadmissibility applies to nonimmigrant health care workers already in possession of nonimmigrant visas and visa exempt aliens, including Canadians applying for classification under section 214(e) of the Act, 8 U.S.C. 1184(e)(TN classification). Under current procedures, a formal application or fee is not required for a nonimmigrant health care worker to obtain the waiver. Nonimmigrant health care workers are admitted on a multiple entry Form I–94, Arrival—Departure Record, for one year. In addition, otherwise admissible dependents are also authorized admission into the United States for the specific dates of stay authorized for the principal alien. A new waiver is not required if the nonimmigrant health care worker makes an application for admission to the United States during the validity period of the previously issued Form I–94. Nonimmigrants applying for TN classification are not required to pay the admission fee described at 8 CFR 214.6(f) when applying for admission during the validity period of the previously issued Form I–94. Finally, nonimmigrant health care workers are eligible for extensions of the waiver and corresponding extensions of stay in increments of one year.

What Were the Provisions of the Second Interim Rule?

In the second Interim Rule, the Service temporarily authorized CGFNS to issue certificates to immigrant occupational therapists and physical therapists, temporarily authorized the Foreign Credentialing Commission on Physical Therapy (FCCPT) to issue certificates to immigrant physical therapists, and established the appropriate English language competency levels for physical therapists.

The Service, in consultation with HHS, evaluated CGFNS' and FCCPT's applications for authorization to issue certificates under the criteria in the first Interim Rule. The Service found that both CGFNS and FCCPT met the ''established track record'' criterion, and concluded that there was a sustained level of demand for occupational therapists and for physical therapists.

What Were the Provisions of the Third Interim Rule?

In the third Interim Rule, the Service temporarily authorized CGFNS to issue certificates to immigrant speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), physician assistants, and medical technicians (also known as clinical laboratory technicians), listed the passing scores for the English language tests for those health care occupations, and amended the regulations concerning which organizations may administer the English language tests. The Service also modified the criteria it had used in the first and second Interim Rules to temporarily authorize organizations to issue certificates to immigrant health care workers.

By the time the third Interim Rule was adopted, the Service had experienced tremendous administrative difficulty in promulgating permanent regulations implementing 8 U.S.C. 1182(a)(5)(C) due to the complexity of the issues to be addressed, particularly the issues concerning the impact on United States obligations under various international agreements. While the Service and DOS had exercised their discretion under section 212(d)(3) of the Act to temporarily waive the inadmissibility of nonimmigrant health care workers, thereby permitting nonimmigrant health care workers to be admitted to the United States without a certification, they lacked the statutory authority to waive the inadmissibility of immigrant health care workers. Accordingly, the Service and DOS were unable to adjudicate the petitions of those immigrant health care workers not covered by the first or second Interim Rules. The immigrant petitions and adjustment applications for speech-language pathologists and audiologists, medical technologists/clinical laboratory scientists, physician assistants, and medical technicians/clinical laboratory technicians had been held in abeyance for several years. Recognizing that it was unable to execute its adjudicative functions with respect to this growing backlog, the Service did not rely on the criterion of a ''sustained level of demand'' for the immigrant workers in question. The Service found that CGFNS had an established track record in issuing certificates for the additional occupations.

What Were the Provisions of the H–1C Rule?

The Service also published a related rule in response to the passage of the NRDAA, Petitioning Requirements for the H–1C Nonimmigrant Classification under Public Law 106–95, 66 FR 31107 (June 11, 2001) (amending 8 CFR 214.2(h)). Among other things, the NRDAA created an alternative certification process for foreign nurses only, as provided in section 212(r) of the Act. In the H–1C rule, the Service announced that it would continue to waive the certification requirements for nonimmigrant nurses, pending the promulgation of new regulations implementing both certification processes. That is the purpose of this proposed rule.

It should be noted that in the H–1C Rule, the Service incorrectly stated that *two* interim rules had been promulgated, which authorized credentialing organizations to issue certifications to immigrant health care workers in *three* occupations. In fact, as previously described, with the publication of the third Interim Rule, the Service had authorized credentialing organizations to issue certifications in all *seven* of the health care occupations initially identified as subject to the certification requirements.

What Does This Rule Propose?

This rule proposes to implement a comprehensive process for the certification of foreign health care workers under sections 212(a)(5)(C) and (r) of the Act. It addresses foreign health care workers coming to the United States on a temporary basis (nonimmigrant aliens) as well as on a permanent basis (immigrants).

This rule proposes to amend 8 CFR 212.15 by:

(1) Specifying which organizations are authorized to issue certificates (§ 212.15(e));

(2) Describing the required content of the certificate itself (§ 212.15(f));

(3) Specifying the English language requirements for certification (§ 212.15(g));

(4) Implementing the alternative certification process for foreign nurses and the required content of the certified statement (§ 212.15(h));

(5) Describing the procedure to qualify as a certifying organization (§ 212.15(j));

(6) Listing the standards that an organization must meet in order to obtain and retain authorization to issue foreign health care worker certifications (§ 212.15(k)); and

(7) Providing for periodic review of the performance of certifying organizations (§ 212.15(l)) and the termination of their authority (§ 212.15(m)).

This rule proposes to amend 8 CFR 103.1 by specifying at new paragraphs (f)(3)(iii)(QQ) and (RR) that the Associate Commissioner for Examinations exercises appellate jurisdiction over applications for authorization to issue foreign health care worker certifications, and the termination of authorization to issue foreign health care worker certifications.

This rule proposes to amend 8 CFR 103.7(b)(1) by adding a fee for filing Form I–905, Application for Authorization to Issue Certification for Health Care Workers. This form was previously approved for use in order to ensure that organizations formally seeking authorization to issue health care worker certificates or certified statements will be able to submit complete and uniform applications. This form has not yet been implemented by the Service.

This rule proposes to amend 8 CFR 214.1(h) by adding a requirement that an alien who seeks to enter the United States for the purpose of performing labor in a health care occupation must present a foreign health care worker certification to the Service in accordance with 8 CFR 212.15(d).

This rule proposes to remove text at 8 CFR 245.14 relating to the adjustment of status of certain health care workers. This provision is duplicated by the provisions of 8 CFR 212.15(d).

This rule proposes to amend 8 CFR 248.3 by adding paragraph (i) to mandate that a nonimmigrant seeking a change of status to perform labor in a health care occupation must submit a foreign health care worker certification.

Who Is Subject to the Health Care Certification Requirements?

After the Service's consideration of the relevant statutory provisions, legislative history, judicial precedent, international agreements, and other proposed rulemakings, and after extensive consultations that the Service has had with other agencies, this proposed rule takes the position that the requirements of section 212(a)(5)(C) apply to both immigrants and nonimmigrants who seek to enter the United States for the purpose of performing labor as a health care worker. Physicians, however, are explicitly exempted from the certification requirement by the statute and, therefore, are not covered by this rule.

With respect to immigrants, the certification requirement applies to both aliens overseas who are seeking an immigrant visa before traveling to the United States, and aliens in the United States who are applying for adjustment of status to that of a permanent resident. The Service interprets the statutory language, ''any alien who seeks to enter the United States for the purpose of performing labor as a health care worker * * *'' with respect to immigrants, to limit the scope of this provision to aliens with an approved employment-based (EB) preference petition under section 203(b) of the Act, 8 U.S.C. 1153(b), to perform labor in a covered health care occupation. Therefore, an alien who has applied for an immigrant visa or adjustment of status, pursuant to a family sponsored petition under section 203(a) of the Act, 8 U.S.C. 1153(a), or pursuant to an EB preference petition for a non-health care occupation, or pursuant to section 209 of the Act, 8 U.S.C. 1159 (adjustment of status of refugees), or pursuant to section 210 of the Act, 8 U.S.C. 1160 (special agricultural workers), or

pursuant to section 240A of the Act, 8 U.S.C. 1229(b) (cancellation of removal), or pursuant to section 249 of the Act, 8 U.S.C. 1259 (record of admission for permanent residence), or pursuant to any other statutory provision relating to admission as an immigrant, is not subject to the requirements of section 212(a)(5)(C) of the Act.

With respect to nonimmigrants, the proposed rule applies the certification requirement to all aliens who have obtained nonimmigrant status for the purpose of performing labor as a health care worker, including, but not limited to, those aliens described in sections 101(a)(15)(H), (J), and (O) of the Act, 8 U.S.C. 1101(a)(15), and aliens entering pursuant to section 214(e) of the Act, 8 U.S.C. 1184(e), as TN professionals.

The Service is proposing that a nonimmigrant entering the United States to receive training in an occupation listed at 8 CFR 212.15(c) will not be required to obtain a health care certification. This includes F–1 nonimmigrants receiving practical training and J–1 nonimmigrants coming to the United States to undertake a training program in a medical field. In the Service's view, nonimmigrants entering the United States to receive training in a health care occupation fall outside the ambit of section 212(a)(5)(C) of the Act because they are not independently performing the full range of duties of their occupation, and therefore are not entering for the purpose of performing labor as a health care worker.

Finally, the Service has concluded that the health care certification requirement should not be applied to the spouse and dependent children of an immigrant or nonimmigrant alien. Dependent aliens enter the United States for the primary purpose of accompanying the principal alien, not to perform labor as a health care worker, or in any other field. A dependent alien derives his or her nonimmigrant status from his or her familial relationship with the principal alien. Therefore, while he or she may be permitted to work in some circumstances, he or she is not required to work in a particular occupational field or for a specific employer to maintain his or her status. Accordingly, regardless of whether or not a dependent alien may intend to work in a health care occupation listed at 8 CFR 212.15(c), while accompanying the principal alien to the United States, he or she would not be subject to the health care worker certification requirement.

The Service is very interested in and invites public comment on the appropriate scope of the certification requirement.

Are Foreign Health Care Workers Who Have Been Trained in the United States, or Who Are In Possession of a Valid State License, Subject to the Health Care Certification Requirement?

After passage of IIRIRA, the Service received a number of inquiries and comments regarding whether a foreign health care worker in possession of a full and unrestricted license issued by the State of intended employment would be required to obtain a certificate under section 212(a)(5)(C) of the Act. After carefully considering the plain language of the statute, and upon consultation with HHS, the Service has concluded that possession of a State license does not exempt a foreign health care worker from compliance with the certification requirement. First, section 212(a)(5)(C) of the Act applies to all aliens coming to perform labor as health care workers, except for physicians and for registered nurses who can meet the alternative requirements in section 212(r) of the Act. Nothing in the text of section 212(a)(5)(C) of the Act relieves alien health care workers of this requirement, on the ground that they were trained in the United States or are already licensed here. Moreover, one aspect of the required certification is the certification that any State license the alien may already have is unencumbered. Indeed, had Congress intended to exempt such aliens from the certification requirement, it would not have explicitly provided that the certification must document the fact of an alien's successful passage of any test or examination that is accepted as evidence of an applicant's likely success on a State licensing examination, if a majority of States recognize such a pre-licensing test or examination. In addition, in NRDAA, Congress explicitly addressed whether a foreign nurse, in possession of a full and unrestricted license issued by the State of intended employment, should be subject to the certification requirement. NRDAA created a less onerous, alternative method of certification for foreign nurses who have unrestricted State licenses and meet certain other conditions, as provided in section 212(r) of the Act. The fact that Congress has chosen not to provide a less rigorous alternative certification option to State-licensed foreign health care workers other than nurses supports the inference that Congress intended State-licensed foreign health care workers to comply with the certification process.

In addition to the statutory scheme, there are policy considerations that mitigate in favor of applying the certification requirement to State-licensed foreign health care workers. The State screening process alone would not demonstrate that the other two prongs of the certification requirement, English language competency, and comparable training and unencumbered licensing, had been met. First, the State screening process does not always measure English proficiency. Secondly, HHS has advised the Service that the State screening process may not always discover encumbrances and restrictions on a license.

The statute and legislative history are silent with respect to whether foreign health care workers, who received their training in the United States, are subject to the certification process. While such aliens would satisfy the comparable training certification requirements, their licensure would not be verified, as required by the statute. Given the lack of evidence of congressional intent that such aliens be exempt from the reach of section 212(a)(5)(C) of the Act, the Service has concluded that foreign health care workers who received their training in the United States must comply with the certification requirement.

The Service, however, would not be opposed to permitting credentialing organizations to develop a modified or streamlined certification process for foreign health care workers who hold an unrestricted State license, or who have been trained in the United States. The Service invites comments regarding the feasibility of having a more streamlined certification process for those who train in the United States or who are already licensed here, and regarding specific proposals on how to adopt such a policy. The critical issue would be whether, as a matter of its own professional judgment, the appropriating credentialing organization considers its appropriate to certify an alien's satisfaction of the substantive requirements of section 212(a)(5)(C) of the Act on the basis of the alien's having been trained or licensed in the United States.

Which Health Care Occupations Are Subject to 8 U.S.C. 1182(a)(5)(C)?

As previously noted, after passage of IIRIRA the Service identified, on the basis of the legislative history, seven categories of health care workers subject to the health care certification requirements. *See* H.R. CONF. REP. NO. 104–828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical

technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. *See* the first Interim Rule. The conference report also provided that the Service could designate additional health care occupations subject to certification by regulation. Since the Service has limited agency expertise with health care occupations and issues, it has consulted extensively with HHS, the agency generally responsible for overseeing health care occupations and other related health care issues in the United States, with respect to the question of whether aliens in additional health care occupations should be required to comply with 8 U.S.C. 1182(a)(5)(C).

The Service and HHS have identified two factors relevant to the consideration of which health care occupations fall under the ambit of section 212(a)(5)(C) of the Act. The first factor is whether the health care occupation generally requires a license in a majority of the States. This factor reflects the States' historical and practical experience in distinguishing between those health care occupations requiring extensive regulation and those occupations that do not. The second factor is whether the health care worker has a direct effect on patient care, or in other words whether a health care worker in that occupation could reasonably pose a risk to patient health.

Under this rule, health care workers such as, but not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry would not be required to comply with the certification requirement. In contrast, health care workers, such as supervisory physical therapists, who may not typically be involved in hands-on patient care but do have a direct effect on patient care, would be subject to the certification requirements. The Service invites comments on whether the list of health care occupations should be expanded, addressing its use of these two factors to determine which health care workers are subject to certification, and whether particular occupations should be added to the list.

The Service acknowledges that the job description of certain occupations that could be added to the list, such as a ''clinical social worker,'' may differ in other countries from the U.S. definition of a ''clinical social worker.'' These differences may create confusion about who exactly is subject to certification. A solution may lie in explicitly defining each health care occupation, subject to certification, in the final rule. Accordingly, the Service invites comments regarding the need to define a health care occupation that is subject to certification.

How Will an Alien Submit the Foreign Health Care Worker Certification to the Service?

The statutory language at section 212(a)(5)(C) of the Act requires certain aliens seeking to enter the United States for the purpose of performing labor as a health-care worker to present a certificate from CGFNS or an equivalent credentialing organization to the consular officer or, in the case of an adjustment of status, the Attorney General. Accordingly, the requirement that the certificate be presented to a consular officer at the time of visa issuance and to the Service at the time of admission or adjustment of status will continue.

When an alien seeking entry to the United States to perform labor in a particular health care occupation has already presented the certification and been admitted as a nonimmigrant, an immigrant, or has adjusted to permanent resident status, he or she will not be required to present the certificate again when he or she makes future applications for admission to the United States to perform labor in that particular health care occupation. The presentation of a Form I–94 issued to the alien at the initial admission to the United States, or a fee receipt showing that the alien was processed for admission under the North American Free Trade Agreement after this rule is adopted in final form, can be used, if required, as evidence that the alien has previously presented a foreign health care worker certificate for a particular health care occupation. Similarly, such an alien will not be required to again present the foreign health care worker certificate to the Service, with an application for extension of status to perform labor in that particular health care occupation. It should be noted that these proposed regulations do not affect or diminish the authority of State regulatory bodies with respect to whether an alien is permitted to continue employment as a health care worker in that particular State.

This rule proposes to add a new § 248.3(i) to outline the procedure for submitting the certificate to the Service when an application is made to change nonimmigrant status within the United States.

Upon the effective date when this rule is published as a final rule, nonimmigrants who have already entered the United States under a waiver of inadmissibility under section 212(d)(3) of the Act and are working as health care workers will be required to present a certificate to the Service only if, at any point in the future, they file an application for an extension of stay, or apply for admission to the United States, whichever event occurs first.

The Service welcomes comments and suggestions on how this procedure can be modified or altered to better accommodate the aliens affected by this provision.

How Will an Organization Obtain Authorization To Issue Health Care Certificates?

The statute provides that a foreign health care worker must present a certificate from CGFNS or an equivalent credentialing organization or, in the case of certain foreign nurses, a certified statement from CGFNS or an equivalent credentialing organization. In the legislative history to IIRIRA, the conferees identified seven health care occupations (which are currently reflected in § 212.15(c)). It is reasonable to infer from the statutory designation of CGFNS as a credentialing organization that Congress considered CGFNS to possess the resources and expertise to issue certificates in at least those seven designated health care occupations. Accordingly, the Service will not require CGFNS to apply for credentialing status with respect to those seven health care occupations. However, CGFNS will be required to submit information regarding its certification processes via filing of Form I–905, Application for Authorization to Issue Certification for Health Care Workers, without fee with the Director, Nebraska Service Center, in order to enable the Service to review the content of certificates for the seven health care occupations, and content of certified statements for nurses, and ensure compliance with the universal standards set forth in this rule. Like other credentialing organizations, CGFNS will also be subject to ongoing review by the Service, and termination of credentialing status for noncompliance with this rule.

It is less clear, however, that Congress considered whether CGFNS possessed the expertise to issue certificates for health care occupations other than the seven identified in the legislative history. Therefore, although CGFNS' statutory designation creates a strong presumption of expertise with respect to all health care occupations, the Service will require CGFNS to file an application on Form I–905 with fee under the procedures outlined at proposed § 212.15(j), for credentialing status with respect to any health care

occupation other than the seven identified in the legislative history.

Organizations, other than CGFNS, may be approved to issue certificates or certified statements by submission of Form I–905 to the Director, Nebraska Service Center, with fee. The fee for Form I–905 will be $230. The Service will submit Form I–905 to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act of 1995.

For purposes of administrative ease and efficiency, the Service will centralize all requests for designation as a credentialing organization at the Nebraska Service Center, regardless of the geographical location of the requesting organization. Centralization of these requests will enable personnel at the Nebraska Service Center to establish and maintain the appropriate contacts with HHS and DoED to assist in the adjudication of applications for credentialing status. The Service will accord significant weight to the opinion of HHS in the adjudication of applications for credentialing status because of that agency's expertise with credentialing requirements for health care occupations and health care issues. It should be noted, however, that the Service may deny a request for authorization on grounds unrelated to credentialing requirements for health care occupations or health care issues, despite a favorable HHS opinion.

The Form I–905 will require the organization seeking credentialing status to:

(1) Provide a point of contact and a written, detailed description of the organization and how the organization meets the standards described in 8 CFR 212.15(k);

(2) List the health care occupations for which the organization is seeking approval to issue certificates, and describe the organization's expertise in each health care occupation for which approval to issue certificates is sought;

(3) Describe how it will process applications and issue certificates on a timely basis; and

(4) Describe the procedure it has designed in order for the Service to verify the validity of a certificate.

The Service will provide the organization with a written decision on its application. An organization granted authorization to issue certificates must agree to provide the Service with all requested documentation and to allow the Service access to its records relating to the certification process. If the application is denied, the Service will explain the reason(s) for the denial. Applications that are denied by the Service may be appealed to the Administrative Appeals Office pursuant to 8 CFR 103.3.

The Service is planning to add new organizations that are approved to issue certificates and certified statements to § 212.15(e) via publication of an interim rule in the **Federal Register**. In the alternative, the Service is considering designating, by a separate and comprehensive public notice in the **Federal Register**, the list of organizations approved to issue certification. The Service would also maintain this list on its website at *http://www.ins.usdoj.gov.* This method would allow the Service to update the list of authorized organizations more quickly than through publication of interim rules. The Service seeks comment on whether this alternative method of maintaining a list of authorized organizations would better serve the public.

More than one organization may be approved by the Service to issue certificates for the same health care occupation. An alien may obtain a certificate from any organization authorized to issue certificates for that occupation. This rule also provides that the Service's approval will be for a 5-year period of time subject to the review process described in 8 CFR 215.15(l).

The Service proposes to extend the temporary authorization of CGFNS, NBCOT, and FCCPT to issue health care certificates and/or certified statements until adjudication of their credentialing status under this final rule.

How Did the Service Decide That the Form I–905 Application Fee Should Be $230?

The Service believes that it is reasonable to identify a current application whose process is similar to the requirements outlined under § 212.15(k) in order to select an appropriate fee to charge organizations who wish to be authorized to issue health care worker certifications. Organizations filing health care worker certification applications are requesting that the Service review their resources, including staffing and financial and material resources, their ability to evaluate foreign credentials, and their ability to conduct examinations outside the United States. The current Service petition whose process is most similar to the application process for authorization to issue health care worker certification is the Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, which is currently used by other organizations that seek approval to admit nonimmigrant students. In developing fees, the Service must comply with guidance provided in the Office of Management and Budget (OMB) Circular A–25. This guidance directs Federal agencies to charge the ''full cost'' of providing benefits when calculating fees that provide a special benefit to recipients. Section 6(d) of OMB Circular A–25 defined ''full cost'' as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' In its most recent review of immigration and naturalization benefits, the Service identified the current full cost of the Form I–17 to be $230. The Service determined that a $230 fee for the Form I–17 would underwrite the Service's processing and administrative costs incurred in the Form I–17 adjudication process, such as staffing, training of Service personnel, and adjudication of the petitions. The Service will thus use $230 for the fee for the Form I–905 until the next biennial fee review, as required by the Chief Financial Officers Act of 1990, Public Law 101–576, 104 Stat. 2838.

What Are the Standards an Organization Must Meet in Order To Obtain Authorization To Issue Certificates?

This proposed rule lists the standards an organization must substantially meet in order to be authorized to issue certificates at § 212.15(k). An organization seeking approval to issue certificates or certified statements should submit evidence addressing each of the standards. These standards were developed by HHS in order to ensure that an organization meets the requirements contemplated by Congress. In drafting these standards, HHS drew upon the legislative history to IIRIRA, and drew extensively from the standards of the National Commission for Certifying Agencies, a nationally recognized body that accredits certifying organizations. There are four guiding principles to the standards:

(1) The Attorney General should not approve a credentialing organization, unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa;

(2) The organization should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession, and the results of examinations for proficiency in the English language appropriate for the health care field in which the alien will be engaged;

(3) The organization should also maintain comprehensive and current information on foreign educational

institutions, ministries of health, and foreign health care licensing jurisdictions; and

(4) If the health care field is one for which a majority of the States require a predictor examination (currently, this is done only for nursing), the organization should demonstrate an ability to conduct the examination outside the United States.

Since the statute and the report language intend to ensure that aliens entering the United States for purposes of performing labor as a health care worker are of the same quality as United States trained workers, the HHS has determined that this can be assured by requiring that organizations issuing certificates be held to a select group of standards. The Service is concerned that in the absence of strict standards, unqualified organizations may obtain authorization from the Service to issue certificates that could ultimately have adverse consequences for health care in the United States. Since the provisions of section 212(r) of the Act appear to share with section 212(a)(5)(C) the goal of ensuring a high quality of health care service in the United States, the Service will use the same standards to adjudicate applications from credentialing organizations under either provision.

The Service welcomes comments from the public and from interested organizations regarding the proposed standards. Specifically, the Service is concerned that an organization seeking authorization to issue certificates may meet most, but not all of the proposed standards. The Service seeks comment on the question of whether a prospective credentialing organization's inability to meet all of the proposed standards should preclude the Service from authorizing the organization to issue certificates. Also, the Service seeks public comment on the question of whether the proposed standards should be considered as guidelines, or as strict criteria that would preclude an organization from qualifying. Finally, the Service invites public comment on the question of how a prospective credentialing organization can meet the requirement that it demonstrate that it is independent and free of material conflicts of interest regarding whether an alien receives a visa.

How Will the Service Monitor Organizations Authorized To Issue Certificates or Certified Statements?

The Service intends to develop a regulatory process to monitor credentialing organizations, including CGFNS. This process will ensure that a credentialing organization continues to follow the standards described in this rule. The Service proposes to review and reauthorize the credentialing organizations every 5 years. This rule proposes that the Service will notify the credentialing organization in writing of the results of the review and reauthorization. If the Service develops adverse information with respect to the performance of the organization, the Service may institute termination proceedings. Comments from the public regarding the frequency of review, *e.g.*, review as part of the 5-year reauthorization, or an annual or biannual review, the nature of the review, and whether reviews, if conducted separately from reauthorization, should be targeted versus random, would be of great assistance in the development of a review process.

In particular, as part of the review process, the Service proposes to assess whether an authorized credentialing organization has issued certificates in a timely manner so as to minimize any delays that may affect an alien's ability to proceed with his or her application for an immigration benefit, and to assess whether the fee charged for a certificate unduly impairs an alien's ability to seek an immigration benefit. Accordingly, the Service seeks comments on what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates, and regarding what methodology the Service should use in assessing whether a fee constitutes an obstacle to obtaining an immigration benefit.

How will the Service terminate an Organization's Authorization?

Upon notification that an authorized credentialing organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of a violation of state or federal laws, such that the fitness of the organization to continue to issue certificates is called into question, the Service shall automatically terminate authorization to issue certificates via notice to the credentialing organization.

Upon receipt of information that the credentialing organization is no longer complying with the standards contained in § 212.15(k), or upon receipt of information that termination of the organization's approval is otherwise warranted, the Service will issue a Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to the credentialing organization. The credentialing organization will be given 30 days from the date of the Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to rebut or cure the allegations made in the Service's notice.

Thirty days after the date of the Notice of Intent to Terminate, the Service will request an opinion from HHS regarding whether the organization's authorization should be terminated. The Service shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the organization's response, if any, to the Notice of Intent to Terminate, and of HHS' opinion, the Service will provide the organization with a written decision.

The Service's decision terminating an organization's authorization may be appealed to the Administrative Appeals Office pursuant to 8 CFR 103.3. Termination of credentialing status will occur on the date of the decision and remain in effect until and unless the terminated organization reapplies, with fee, for credentialing status and is approved, or its appeal of the termination decision is sustained by the Administrative Appeals Office. There is no waiting period for an organization to re-apply for credentialing status.

What Actions Will the Service Take When It Finds That an Alien Certificate Holder Was Not Eligible To Receive the Certificate at the Time That It Was Issued?

A credentialing organization must develop policies and procedures for revocation of certificates at any time if it finds that the certificate holder was not eligible to receive the certificate at the time it was issued. These policies and procedures include notification to the Service that a certificate has been revoked. The Service may then take any appropriate action, including revocation of the petition, and initiation of removal proceedings against the individual alien under section 240 of the Act.

What Will the Foreign Health Care Worker Certificate or Foreign Nurses Certified Statement Look Like?

The proposed regulation at § 212.15(f) describes the content of the certificate. The proposed regulation at § 212.15(h) describes the content of the certified statement. They will generally contain the following information:

(1) the name, designated point of contact to verify the validity of the certificate, address, and telephone number of the certifying organization;

(2) the date the certificate was issued;

(3) the health care occupation for which the certificate was issued; and

(4) the alien's name, and date and place of birth.

It should be noted that the certificate or certified statement does not constitute professional authorization to practice in that health care occupation.

What Are the Requisite English Language Scores for Certification?

HHS, in consultation with DoED, is required to establish a level of competence in oral and written English appropriate for the health care field in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write. The statute vests the Secretary of HHS with the ''sole discretion'' to determine the standardized tests and appropriate minimum scores. In developing the English language test scores, HHS consulted with DoED and appropriate health care professional organizations. HHS also examined a study sponsored in part by NBCOT entitled ''Standards for Examinations Assessing English as a Second Language.'' The scores reflect the current industry requirements for particular health care occupations.

HHS has identified four testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The four testing services are the Educational Testing Service (ETS), the Michigan English Language Assessment Battery (MELAB), the Test of English in International Communication (TOEIC) Service International, and the International English Language Testing System (IELTS). The proposed regulation at § 212.15(g) lists the tests and appropriate scores as determined by HHS for each occupation.

As an alternative to listing the tests and appropriate scores by regulation or interim rule, the Service is considering designating, by a separate and comprehensive public notice in the **Federal Register**, the list of tests and appropriate scores. The Service would also maintain this list on its website at *http://www.ins.gov.* This method would allow the Service to update the list of tests and scores more quickly than through publication of interim rules. The Service seeks comment on whether this alternative method of providing the public with the lists of tests and appropriate scores would better serve the public.

Other testing services are encouraged to submit information concerning their testing services to the Service, for HHS and DoED review, and credentialing organizations are encouraged to develop a test specifically designed to measure English language skills and to seek HHS approval of the test. This rule provides that the Service will notify the public of new approved testing services in the future by publishing an interim rule in the **Federal Register**.

HHS has advised the Service that graduates of health profession programs in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are deemed to have met the English language requirements. HHS has determined that aliens who have graduated from these programs have the requisite competency in oral and written English. The level of English that the graduates of these health profession programs would need to graduate is deemed equivalent to the level that would be demonstrated by achieving the minimum passing score on the tests previously described. Nurses who are eligible to present an alternate certified statement under section 212(r) of the Act also by definition have satisfied the English language requirements.

Finally, HHS has advised the Service that the MELAB will no longer offer the English-speaking portion of its test outside the United States and Canada. As a result, individuals who seek to meet the English language requirements will be required to do one of the following:

(1) Take the three tests offered by ETS; or

(2) Take the TOEIC offered by TOEIC Service International, in addition to the test of spoken English and the test of written English offered by ETS; or

(3) Take Parts 1, 2, and 3 of MELAB overseas and then take the test of spoken English offered by ETS; or

(4) Take Parts 1, 2, and 3 of MELAB overseas and then take the test of spoken English in the United States or Canada; or

(5) Take the IELTS examination.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. It is projected that there will be, at most, 21 small businesses that apply to the Service to issue certificates for health care workers. Although these small entities are required to pay a fee when submitting their applications, these small entities may recoup this expense if they charge aliens who must obtain a foreign health care worker certificate. The Service invites comment on whether and how this rule may have a significant impact on small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

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

Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act of 1995

The information collection requirements contained in this rule (Form I–905 (OMB Control Number 1115–0238) and the information required on the health care certificate or certified statement (OMB Control Number 1115–0226)) are being revised. Accordingly, these revisions will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government Agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

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

PART 103—POWERS AND DUTIES OF SERVICE OFFICER; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.1 is amended by:

a. Removing the word ''and'' at the end of paragraph (f)(3)(iii)(NN);

b. Removing the period at the end of paragraph (b)(3)(iii)(oo) and adding a semicolon and the word ''and'' in it's place, and adding and reserving paragraph (f)(3)(iii)(PP); and by

c. Adding paragraphs (f)(3)(iii)(QQ) and (RR).

The additions read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(PP) Reserved.

(QQ) Application for authorization to issue certificates to foreign health care workers under 8 CFR part 215; and

(RR) Termination of authorization to issue certificates to foreign health care workers under 8 CFR part 215.

* * * * *

3. Section 103.7(b)(1) is amended by adding a new entry for the ''Form I–905'' to the list in alpha/numeric sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–905, Application for Authorization to Issue Certification for Health Care Workers—$230.00.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

4. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

5. Section 212.15 is revised to read as follows:

§ 212.15 Certificates for foreign health care workers.

(a) *General.*

(1) Any alien who seeks to enter the United States for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible unless the alien presents a certificate from a credentialing organization, listed in paragraph (e) of this section.

(2) In the alternative, an eligible alien who seeks to enter the United States for the primary purpose of performing labor as a nurse may present a certified statement as provided in paragraph (h) of this section.

(3) A certificate or certified statement described in this section does not constitute professional authorization to practice in that health care occupation.

(b) *Inapplicability of the ground of inadmissibility.* This section does not apply to:

(1) Physicians;

(2) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical care occupation is one in which the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, and managers of health care facilities;

(3) The spouse and dependent children of any immigrant or nonimmigrant alien;

(4) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than under section 245 of the Act, or any alien who is seeking adjustment of status under section 245 of the Act on the basis of a relative visa petition approved under section 203(a) of the Act, or any alien seeking adjustment of status under section 245 of the Act on the basis of an employment-based petition approved pursuant to section 203(b) of the Act for employment that does not fall under one of the covered health care occupations listed in paragraph (c) of this section.

(c) *Covered health care occupations.* With the exception of the aliens described in paragraph (b) of this section, this section applies to any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.

(2) Occupational Therapists.

(3) Physical Therapists.

(4) Speech Language Pathologists and Audiologists.

(5) Medical Technologists (Clinical Laboratory Scientists).

(6) Physician Assistants.

(7) Medical Technicians (Clinical Laboratory Technicians)

(d) *Presentation of certificate or certified statements.*—(1) *Aliens requiring a nonimmigrant visa.* An alien described in paragraph (a) of this section who is applying for admission as a nonimmigrant seeking to perform labor in a health care occupation as described in this section must present a certificate or certified statement to a consular officer at the time of visa issuance and to the Service at the time of admission. The certificate or certified statement must be valid at the time of visa issuance and admission at a port-of-entry. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will

not be required to present it again at the time of visa issuance or admission to the United States.

(2) *Aliens not requiring a nonimmigrant visa.* An alien described in paragraph (a) of this section who, pursuant to § 212.1, is not required to obtain a nonimmigrant visa to apply for admission to the United States must present a certificate or certified statement as provided in this section to an immigration officer at the time of initial application for admission to the United States to perform labor in a particular health care occupation. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will not be required to present it again at the time of a subsequent application for admission.

(3) *Immigrant aliens.* An alien described in paragraph (a) of this section, who is coming to the United States as an immigrant or is applying for adjustment of status pursuant to 8 U.S.C. 1255, section 245 of the Act, to perform labor in a health care occupation described in paragraph (c) of this section, must submit the certificate or certified statement as provided in this section to the Service at the time of adjustment of status. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will not be required to present it again at the time of an adjustment of status.

(4) *Expiration of certificate or certified statement.* The individual's certification or certified statement must be used for an initial admission into the United States, change of status within the United States, or adjustment of status within 5 years of the date that it is issued.

(5) *Revocation of certificate or certified statement.* When a credentialing organization notifies the Service that an individual's certification or certified statement has been revoked, the Service will take appropriate action, including revocation of approval of any related petitions, consistent with the Act and Service regulations at 8 CFR 205.2, 8 CFR 214.2(h)(11)(iii), and 8 CFR 214.6(d)(5)(iii).

(e) *Approved credentialing organizations for health care workers.* An alien may present a certificate from any credentialing organization listed in this paragraph (e) with respect to a particular health care field.

(1) The Commission on Graduates of Foreign Nursing Schools (CGFNS) is authorized to issue certificates under section 212(a)(5)(C) of the Act for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants.

(2) The National Board for Certification in Occupational Therapy (NBCOT) is authorized to issue certificates in the field of occupational therapy pending final adjudication of its credentialing status under this part.

(3) The Foreign Credentialing Commission on Physical Therapy (FCCPT) is authorized to issue certificates in the field of physical therapy pending final adjudication of its credentialing status under this part.

(4) The Service will notify the public of additional credentialing organizations through interim rules published in the **Federal Register**.

(f) *Contents of the health care certificate.* A certificate issued under section 212(a)(5)(C) of the Act must contain the following:

(1) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate;

(2) The date the certificate was issued;

(3) The health care occupation for which the certificate was issued; and

(4) The alien's name, and date and place of birth.

(g) *English language requirements.* (1) With the exception of those aliens described in paragraph (g)(2) of this section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of HHS has determined that an alien must have a passing score on one of five combinations of the four tests listed in paragraph (j)(3) of this section before he or she can be granted a certificate.

(2) The following aliens are exempt from the English language requirements:

(i) Alien nurses who are presenting a certified statement under section 212(r) of the Act.

(ii) Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States.

(3) The following English testing services have been approved by the Secretary of HHS:

(i) Michigan English Language Assessment Battery (MELAB).

(ii) Educational Testing Service (ETS).

(iii) Test of English in International Communication (TOEIC) Service International.

(iv) International English Language Testing System (IELTS).

(4) Passing English test scores for various occupations.

(i) *Occupational and physical therapists.* An alien seeking to perform labor in the United States as an occupational or physical therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL): Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. The certifying organizations shall not accept the results of the MELAB, the TOEIC, or the IELTS for the occupation of occupational therapy or physical therapy.

(ii) *Registered nurses and other health care workers requiring the attainment of a baccalaureate degree.* An alien coming to the United States to perform labor as a registered nurse (other than a nurse presenting a certified statement under section 212(r) of the Act) or to perform labor in another health care occupation requiring a baccalaureate degree (other than occupational or physical therapy) must obtain one of the following five combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50;

(B) MELAB: Final Score 79; Oral Interview: 3+;

(C) MELAB: Final Score 79; plus TSE: 50;

(D) TOEIC Service International: TOEIC: 725; plus TWE: 4.0 and TSE: 50; or

(E) IELTS: 6.5 overall with a spoken band score of 7.0.

(iii) *Occupations requiring less than a baccalaureate degree.* An alien coming to the United States to perform labor in a health care occupation that does not require a baccalaureate degree must obtain one of the following five combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50;

(B) MELAB: Final Score 77; Oral Interview: 3+;

(C) MELAB: Final Score 77; plus TSE: 50;

(D) TOEIC Service International: TOEIC: 700; plus TWE 4.0 and TSE: 50; or

(E) IELTS: 6.0 overall with a spoken band score of 7.0.

(h) *Alternative certified statement for certain nurses.*—(1) CGFNS is authorized to issue certified statements under section 212(r) of the Act for aliens seeking to enter the United States to perform labor as nurses. The Service will notify the public of new

organizations that are approved to issue certified statements through interim rules published in the **Federal Register**.

(2) An approved credentialing organization may issue a certified statement to an alien if:

(i) The alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(ii) The alien has passed the National Council Licensure Examination (NCLEX);

(iii) The alien is a graduate of a nursing program in which the language of instruction was English;

(iv) The nursing program was located in:

(A) Australia, Canada (except Quebec), Ireland, New Zealand, South Africa, the United Kingdom, or the United States; or

(B) Another country designated by unanimous agreement of CGFNS and any equivalent credentialing organizations which have been approved for the certification of nurses and which are listed at paragraph (e) of this section; and

(v) The nursing program was in operation on or before November 12, 1999, or has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations that have been approved for the certification of nurses.

(3) An individual who obtains a certified statement need not comply with the certificate requirements of paragraph (f) or the English language requirements of paragraph (g) of this section.

(4) A certified statement issued to a nurse under section 212(r) of the Act must contain the following information:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certified statement;

(ii) The date the certified statement was issued; and

(iii) The alien's name, and date and place of birth.

(i) [Reserved]

(j) *Application process for credentialing organizations.*—(1) *Organizations other than CGFNS.* An organization, other than CGFNS, seeking to obtain approval to issue certificates to health care workers, or certified statements to nurses shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers, and all accompanying required evidence, to the Director, Nebraska Service Center, in duplicate with the appropriate fee contained in 8 CFR 103.7(b)(1). An organization seeking authorization to issue certificates or certified statements must agree to submit all evidence required by the Service and, upon request, allow the Service to review the organization's records related to the certification process. As required on Form I–905, the application must:

(i) Clearly describe and identify the organization seeking authorization to issue certificates;

(ii) List the occupations for which the organization desires to provide certificates;

(iii) Describe how the organization substantially meets the standards described at 8 CFR 212.15(k);

(iv) Describe the organization's expertise, knowledge, and experience in the health care occupation(s) for which it desires to issue certificates;

(v) Provide a point of contact;

(vi) Describe the verification procedure the organization has designed in order for the Service to verify the validity of a certificate; and

(vii) Describe how the organization will process and issue in a timely manner the certificates.

(2) *Applications filed by CGFNS.* (i) Prior to issuing certificates to nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants under section 212(a)(5)(C) of the Act, or issuing certified statements to nurses under section 212(r) of the Act, CGFNS shall submit Form I–905 to the Director, Nebraska Service Center, to ensure that it will be in compliance with the regulations governing the issuance and content of certificates and certified statements.

(ii) Prior to issuing certificates for any other health care occupation listed in paragraph (c) of this section, CGFNS shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers, to the Director, Nebraska Service Center with the appropriate fee contained in 8 CFR 103.7(b)(1) for authorization to issue such certificates. The Service will evaluate CGFNS' expertise with respect to the particular health care occupation for which authorization to issue certificates is sought, in light of CGFNS' statutory designation as a credentialing organization.

(3) *Procedure for review of applications by credentialing organizations.* (i) After receipt of Form I–905, the Director, Nebraska Service Center shall, in all cases, forward a copy of the application and supporting documents to the Secretary of HHS in order to obtain an opinion on the merits of the application. The Service will not render a decision on the request until the Secretary of HHS provides an opinion. The Service shall accord the Secretary of HHS' opinion great weight in reaching its decision. The Service may deny the organization's request notwithstanding the favorable recommendation from the Secretary of HHS, on grounds unrelated to the credentialing of health care occupations or health care services.

(ii) The Service will notify the organization of the decision on its application in writing and, if the request is denied, of the reasons for the denial. Approval of authorization to issue certificates to foreign health care workers or certified statements to nurses will be made in 5 year increments, subject to the review process described at paragraph (l) of this section.

(iii) If the application is denied, the decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations.

(k) *Standards for credentialing organizations.* The Service will evaluate organizations, including CGFNS, seeking to obtain approval from the Service to issue certificates for health care workers, or certified statements for nurses, under the following standards.

(1) *Structure of the organization.* (i) The organization shall be incorporated as a legal entity.

(ii) (A) The organization shall be independent of any organization that functions as a representative of the occupation or profession in question or serves as or is related to a recruitment/placement organization.

(B) The Service shall not approve an organization that is unable to render impartial advice regarding an individual's qualifications regarding training, experience, and licensure.

(C) The organization must also be independent in all decision making matters pertaining to evaluations and/or examinations that it develops including, but not limited to: policies and procedures; eligibility requirements and application processing; standards for granting certificates and their renewal; examination content, development, and administration; examination cut-off scores, excluding those pertaining to English language requirements; grievance and disciplinary processes; governing body and committee meeting rules; publications about qualifying for a certificate and its renewal; setting fees for application and all other services provided as part of the screening

process; funding, spending, and budget authority related to the operation of the certification organization; ability to enter into contracts and grant arrangements; ability to demonstrate adequate staffing and management resources to conduct the program(s) including the authority to approve selection of, evaluate, and initiate dismissal of the chief staff member.

(D) An organization whose fees are based on whether an applicant receives a visa may not be approved.

(iii) The organization shall include the following representation in the portion of its organization responsible for overseeing certification and, where applicable, examinations:

(A) Individuals from the same health care discipline as the alien health care worker being evaluated who are eligible to practice in the United States; and

(B) At least one voting public member to represent the interests of consumers and protect the interests of the public at large. The public member shall not be a member of the discipline or derive significant income from the discipline, its related organizations, or the organization issuing the certificate.

(iv) The organization must have a balanced representation such that the individuals from the same health care discipline, the voting public members, and any other appointed individuals have an equal say in matters relating to credentialing and/or examinations.

(v) The organization must select representatives of the discipline using one of the following recommended methods, or demonstrate that it has a selection process that meets the intent of these methods:

(A) Be selected directly by members of the discipline eligible to practice in the United States;

(B) Be selected by members of a membership organization representing the discipline or by duly elected representatives of a membership organization; or

(C) Be selected by a membership organization representing the discipline from a list of acceptable candidates supplied by the credentialing body.

(vi) The organization shall use formal procedures for the selection of members of the governing body which prohibit the governing body from selecting a majority of its successors.

(vii) The organization shall be separate from the accreditation and educational functions of the discipline, except for those entities recognized by the Department of Education as having satisfied the requirement of independence.

(viii) The organization shall publish and make available a document which clearly defines the responsibilities of the organization and outlines any other activities, arrangements, or agreements of the organization that are not directly related to the certification of health care workers.

(2) *Resources of the organization.* (i) The organization shall demonstrate that its staff possess the knowledge and skills necessary to accurately assess the education, work experience, licensure of health care workers, and the equivalence of foreign educational institutions, comparable to those of United States-trained health care workers and institutions.

(ii) The organization shall demonstrate the availability of financial and material resources to effectively and thoroughly conduct regular and ongoing evaluations on an international basis.

(iii) If the health care field is one for which a majority of the States require a predictor test, the organization shall demonstrate the ability to conduct examinations in those countries with educational and evaluation systems comparable to the majority of States.

(iv) The organization shall have the resources to publish and make available general descriptive materials on the procedures used to evaluate and validate credentials, including eligibility requirements, determination procedures, examination schedules, locations, fees, reporting of results, and disciplinary and grievance procedures.

(3) *Candidate evaluation and testing mechanisms.* (i) The organization shall publish and make available a comprehensive outline of the information, knowledge, or functions covered by the evaluation/examination process, including information regarding testing for English language competency.

(ii) The organization shall use reliable evaluation/examination mechanisms to evaluate individual credentials and competence that is objective, fair to all candidates, job related, and based on knowledge and skills needed in the discipline.

(iii) The organization shall conduct ongoing studies to substantiate the reliability and validity of the evaluation/examination mechanisms.

(iv) The organization shall implement a formal policy of periodic review of the evaluation/examination mechanism to ensure ongoing relevance of the mechanism with respect to knowledge and skills needed in the discipline.

(v) The organization shall use policies and procedures to ensure that all aspects of the evaluation/examination procedures, as well as the development and administration of any tests, are secure.

(vi) The organization shall institute procedures to protect against falsification of documents and misrepresentation.

(vii) The organization shall establish policies and procedures that govern the length of time the applicant's records must be kept in their original format.

(viii) The organization shall publish and make available, at least annually, a summary of all screening activities for each discipline including, at least, the number of applications received, the number of applicants evaluated, the number receiving certificates, the number who failed, and the number receiving renewals.

(4) *Responsibilities to applicants applying for an initial certificate or renewal.* (i) The organization shall not discriminate among applicants as to age, sex, race, religion, national origin, disability, or marital status and shall include a statement of nondiscrimination in announcements of the evaluation/examination procedures and renewal certification process.

(ii) The organization shall provide all applicants with copies of formalized application procedures for evaluation/examination and shall uniformly follow and enforce such procedures for all applicants. Instructions shall include standards regarding English language requirements.

(iii) The organization shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.

(iv) Where examinations are used, the organization shall provide competently proctored examination sites at least once annually.

(v) The organization shall report examination results to applicants in a uniform and timely fashion.

(vi) The organization shall provide applicants who failed either the evaluation or examination with information on general areas of deficiency.

(vii) The organization shall implement policies and procedures to ensure that each applicant's examination results are held confidential and delineate the circumstances under which the applicant's certification status may be made public.

(viii) The organization shall have a formal policy for renewing the certification if an individual's original certification has expired before the individual first seeks admission to the United States or applies for adjustment of status. Such procedures shall be restricted to updating information on licensure to determine the existence of

any adverse actions and the need to re-establish English competency.

(ix) The organization shall publish due process policies and procedures for applicants to question eligibility determinations, examination or evaluation results, and eligibility status.

(x) The organization shall provide all qualified applicants with a certificate in a timely manner.

(5) *Maintenance of comprehensive and current information.* (i) The organization shall maintain comprehensive and current information of the type necessary to evaluate foreign educational institutions and accrediting bodies for purposes of ensuring that the quality of foreign educational programs is equivalent to those training the same occupation in the United States. The organization shall examine, evaluate, and validate the academic and clinical requirements applied to each country's accrediting body or bodies, or in countries not having such bodies, of the educational institution itself.

(ii) The organization shall also evaluate the licensing and credentialing system(s) of each country or licensing jurisdiction to determine which systems are equivalent to that of the majority of the licensing jurisdictions in the United States.

(6) *Ability to conduct examinations outside of the United States.* An organization undertaking the administration of a predictor examination, or a licensing or certification examination shall demonstrate the ability to conduct such examination fairly and impartially.

(7) *Criteria for awarding and governing certificate holders.* (i) The organization shall issue a certificate after the education, experience, license, and English language competency have been evaluated and determined to be equivalent to their United States counterparts. In situations where a United States nationally recognized licensure or certification exam is offered overseas, the applicant must pass such an examination prior to receiving a certification. In situations where both a licensure and certification examination are offered overseas, the licensure examination, or its equivalent, shall be the standard for receiving a certification, provided a license is required in at least a majority of the licensing jurisdictions in the United States. If a majority of the licensing jurisdictions do not require licensure, then the certification examination shall be the standard.

(ii) The organization shall have policies and procedures for the revocation of certificates at any time if it is determined that the certificate holder was not eligible to receive the certificate at the time that it was issued. If the organization revokes an individual's certificate, it must notify the Service and the appropriate State regulatory authority with jurisdiction over the individual's health care profession.

(8) *Criteria for maintaining accreditation.* (i) The organization shall advise the Service of any changes in purpose, structure, or activities of the organization or its program(s).

(ii) The organization shall advise the Service of any major changes in the evaluation of credentials and examination techniques, if any, or in the scope or objectives of such examinations.

(iii) The organization shall, upon the request of the Service, submit to the Service, or any organization designated by the Service, information requested of the organization and its programs for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization.

(iv) The organization shall establish performance outcome measures that track the ability of the certificate holders to pass United States licensure or certification examinations. The purpose of the process is to ensure that certificate holders pass United States licensure or certification examinations at the same pass rate as graduates of United States programs. Failure to establish such measures, or having a record showing an inability of persons granted certificates to pass United States licensure examinations at the same rate as graduates of United States programs, may result in a ground for termination of approval. Information regarding the passage rates of certificate holders shall be maintained by the organization and provided to HHS on an annual basis, to the Service as part of the 5 year reauthorization application, and at any other time upon request by HHS or the Service.

(v) The organization shall be in ongoing compliance with other policies specified by the Service.

(l) *Service review of the performance of certifying organizations.* The Service will review credentialing organizations every 5 years to ensure continued compliance with the standards described in this section. Such review will occur concurrent with the adjudication of the request for reauthorization to issue health care worker certificates. The Service will notify the credentialing organization of the results of the review and request for reauthorization in writing. If the Service determines that an organization is not complying with the terms of its authorization or if other adverse information is developed, the Service may initiate termination proceedings.

(m) *Termination of certifying organizations.* (1) If the Service determines that an organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of the violation of state or federal laws, such that the fitness of the organization to continue to issue certificates or certified statements is called into question, the Service shall automatically terminate authorization for that organization to issue certificates or certified statements by issuing to the organization a notice of termination of authorization to issue certificates to foreign health care workers. The notice shall reference the specific conviction that is the basis of the automatic termination.

(2) If the Service determines that an organization is not complying with the terms of its authorization or other adverse information is brought to the Service's attention, the Service will issue a notice of intent to terminate authorization to issue certificates to the credentialing organization. The Notice shall set forth reasons for the proposed termination.

(i) The credentialing organization shall have 30 days from the date of the Notice of Intent to Terminate Authorization to rebut the allegations, or to cure the noncompliance identified in the Service's notice of intent to terminate.

(ii) Thirty days after the date of the Notice of Intent to Terminate, the Service shall request an opinion from HHS regarding whether the organization's authorization should be terminated. The Service shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the rebuttal evidence, if any, and consideration of HHS' opinion, the Service will promptly provide the organization with a written decision. If termination of credentialing status is made, the written decision shall set forth the reasons for the termination.

(3) An adverse decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations. Termination of credentialing status shall remain in effect until and unless the terminated organization reapplies for credentialing status and is approved, or its appeal of the termination decision is sustained by the Administrative Appeals Office. There is no waiting period for an

organization to re-apply for credentialing status.

PART 214—NONIMMIGRANT CLASSES

6. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1282; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

7. Section 214.1 is amended by adding a new paragraph (h) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Employment in a health care occupation.* Any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a heath care occupation described in 8 CFR 212.15(c) must obtain a certificate from a credentialing organization described in 8 CFR 212.15(e). The certificate or certified statement must be presented to the Service in accordance with 8 CFR 212.15(d). In the alternative, an eligible alien seeking admission as a nurse may obtain a certified statement as provided in 8 CFR 212.15(h).

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

8. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681, 8 CFR part 2.

§ 245.14 [Removed and reserved]

9. Section 245.14 is removed and reserved.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

10. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

11. Section 248.3 is amended by adding a new paragraph (i) to read as follows:

§ 248.3 Application.

* * * * *

(i) *Change of nonimmigrant status to perform labor in a health care occupation.* A request for a change of nonimmigrant status filed by, or on behalf of, an alien seeking to perform labor in a health care occupation as provided in 8 CFR 212.15(c), must be accompanied by a certificate as described in 8 CFR 212.15(f), or if the alien is eligible, a certified statement as described in 8 CFR 212.15(h).

PART 299—IMMIGRATION FORMS

12. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

13. Section 299.1 is amended in the table by adding ''Form I–905'' to the list of prescribed forms in proper alpha/numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–905	.....	Application for Authorization to Issue Certification for Health Care Workers.
*	*	*

14. Section 299.5 is amended in the table by:

a. Adding the Form ''I–905'' in proper alpha/numeric sequence; and by

b. Adding the entry ''Certificates for Health Care Benefits'' at the end of the table.

The additions read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS Form No.	INS form title	Current assigned OMB control no.
*	*	*
I–905	Application for Authorization to Issue Certification for Health Care Workers	1115–0238
*	*	*
.....	Certificates for Health Care Benefits	1115–0226

Dated: October 7, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–25974 Filed 10–10–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

October 2, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of conferences and revisions to public comment schedule for proposed rule.

SUMMARY: On July 31, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR) in the above-captioned docket, proposing to amend its regulations to remedy undue discrimination through open access transmission service and standard electricity market design. The Commission is scheduling a series of public conferences to discuss areas of concern about the proposed rule and extending the deadline for filing comments that address the following issues: Market design for the Western Interconnection; transmission planning and pricing, including participant funding; Regional State Advisory Committees and state participation; resource adequacy; and Congestion Revenue Rights and transition issues.

DATES: Initial comments on specified issues are due on or before January 10, 2003. Initial comments on all other issues are due on or before November 15, 2002. Reply comments are due on or before February 17, 2003. All initial and reply comments should include an executive summary that should not exceed ten pages.

Conferences will be held on: November 4, 2002, November 6, 2002, November 10–13, 2002, November 19, 2002 and December 3, 2002.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. See **SUPPLEMENTARY INFORMATION** for conference locations.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

Notice of Conferences and Revisions to Public Comment Schedule

1. In the nine weeks since the Commission issued its Notice of Proposed Rulemaking (NOPR) in the above-captioned docket (67 FR 55452, August 29, 2002), Commission members and staff have participated in numerous meetings and conferences throughout the country to discuss the proposed rule. These meetings have been a valuable source of information about the response of the general public, and specifically the electric utility industry, to the proposed Standard Market Design rule and the issues that the Commission must address going forward.

2. Commission staff has identified areas of public concern about the proposed rule and recommended that the Commission hold meetings that will address and attempt to resolve these issues. A copy of the staff memorandum that makes these recommendations is attached to this notice.

3. Standard Market Design is an important initiative that will bring the public significant benefits, but the rule must be formulated properly in order to work as the Commission envisions. We understand the public concerns, and we want to work through them individually and in detail. As a first step, the Commission will hold a series of public meetings to discuss specific items of concern.

4. The public meetings will be held as follows. Unless otherwise noted, these meetings are open to the public, and registration is not required; however, in-person attendees are asked to notify the Commission of their intent to attend by sending an e-mail message to *customer@ferc.gov.* Members of the Commission may attend and participate in the discussions. Further details about each Commission conference will be provided in supplemental documents.

- *November 4, 2002:* (Portland, Oregon) This conference will address the unique operating characteristics of Western bulk power markets. It will also attempt to identify aspects of the proposed Standard Market Design for which regional flexibility may be appropriate for the West, and corresponding degrees of flexibility.
- *November 6, 2002:* (Washington, DC) This conference will focus on pricing proposals for network upgrades and expansions. In particular, the discussions will attempt to clarify the definition of ''participant funding'' and seek consensus on the types of facilities that should be eligible for participant funding.
- *November 10–13, 2002:* (Chicago, Illinois) Commissioners and staff propose to participate in the National Association of Regulatory Utilities Commissioners Annual Convention. The Commission will make a presentation on the morning of Wednesday, November 13, and the Chairman will deliver a keynote address.

Registration is required for this conference. You may obtain a copy of the registration form and information about fees at *http://www.naruc.org/Meetings/annualconv/2002/index.html,* under the ''Registration'' link.

- *November 19, 2002:* (Washington, DC) This conference will focus on aspects of the resource adequacy requirement proposed in the NOPR, specifically: (1) The sufficiency of proposed penalties; (2) the function of the resource adequacy requirement in areas that have retail access; and (3) how to accommodate regional variations in proposals to satisfy the resource adequacy requirement without interfering with state jurisdiction.
- *December 3, 2002:* (Washington, DC) This conference will discuss specific issues related to the transition to congestion revenue rights (CRRs), such as: (1) Ensuring that native load and load serving entities receive sufficient CRRs; (2) guarding against the use of CRRs to exercise market power; and (3) the possibility of regional variation on how rights are allocated to load.

5. Each Washington, DC conference will be held from approximately 9:30 a.m. to 5:00 p.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. Transcripts of the conferences will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

6. The Commission will extend to January 10, 2003, the deadline for submission of comments that address the following issues: (1) Market design for the Western Interconnection; (2) transmission planning and pricing, including participant funding; (3) Regional State Advisory Committees and state participation; (4) resource adequacy; and (5) CRRs and transition issues. The deadline for submission of all other comments remains November 15, 2002.

7. The Commission will extend the deadline for all reply comments to February 17, 2003. All initial and reply comments should include an executive summary that should not exceed ten pages.

By direction of the Commission.

Magalie R. Salas,

Secretary.

Memo to Members of the Federal Energy Regulatory Commission Regarding Industry Outreach on Standard Market Design

September 30, 2002.

To: Pat Wood, III, Chairman, William L. Massey, Commissioner, Linda K. Breathitt, Commissioner, Nora M. Brownell, Commissioner

From: FERC SMD Outreach Team

Re: Report on SMD Outreach activities, summary of issues raised, and staff recommendations

On July 31, 2002 the Federal Energy Regulatory Commission issued its Notice of Proposed Rulemaking on Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design (SMD NOPR). Since that date, the staff of the Commission (Staff) has engaged in extensive outreach, both to state regulatory commissions, industry trade groups and the industry at large. Specifically, we have held six SMD briefings exclusively for state commissions and staff, three SMD briefings for state commissions and the industry at large, and ten meetings with groups representing different sectors of the industry. In addition, Staff has attended dozens of industry meetings, both in Washington, DC, and across the country. Our contacts have now included several thousand industry representatives, covering a wide spectrum of interests.

Identified Areas of Concern

Several broad areas of concern have been identified as a result of this outreach effort. Most of these areas are ones that were not addressed in great detail in the NOPR because the details were to be worked out on a regional basis. However, because of the lack of detail, parties are interpreting the proposals in different ways and sometimes interpreting them based on their worst fears. Clarifying that the Commission intends to permit additional regional flexibility would satisfy many of the concerns. Staff recommends that the Commission obtain further input from states and the industry before comments are due, so that it can provide greater clarification on these issues and identify areas where regional flexibility would be allowed. Discussed below are brief summaries of these areas and a proposed process for addressing these concerns.

1. The Unique Operational Characteristics of the Western Interchange

State regulators and industry representatives have pointed out that the Western North American market has unique characteristics that may not readily lend itself to the Standard Market Design proposed by the Commission. Specifically, they are concerned that a market design that has evolved over a long period of time in the Eastern U.S. cannot be readily adapted to the West. Many participants believe that the Commission does not have a grasp of the inherent differences, which include:

- The complexities of hydroelectric production, based on agreements and international treaties negotiated over several decades, and which include the accommodation of many regional concerns, including agricultural uses, fishing and recreational requirements, and environmental constraints.
- The major role of public power in the West, and the difficulties that might be encountered if public power chooses not to join an ITP/RTO.
- Changes in transmission prices for long-distance purchases, which would create hardship for some customers, as well as operational anomalies brought about by distance-related issues, including large loop flow patterns.

Some Western regulators have requested that the Commission consider a separate market design for the West. They are also concerned about the amount of flexibility that the Commission would consider to accommodate their concerns, including flexibility in designing and allocating Congestion Revenue Rights (CRRs), and operational issues related to hydro and other intermittent generator resources.[1]

To resolve these issues, there needs to be a process to identify the specific issues where there are concerns and start developing solutions in these areas. Staff recommends doing this through a two stage process. First, we recommend that the Commission schedule a staff-level technical meeting to discuss specific technical concerns and potential solutions. Second, the commissioners should also hold a conference to discuss the specific concerns that have been raised by the West. At this conference the Commission could explore the level and areas where flexibility would be appropriate. Staff recommends that both of these meetings be held in the West.

2. Planning and Pricing Transmission Expansions, Including Participant Funding

In the SMD NOPR the Commission expressed a preference for participant funding and noted that it would consider participant funding for proposed transmission facilities that are included in a regional planning process conducted by an independent entity. The Commission also indicated that it would look favorably on a pricing proposal, whether it is roll-in, an assignment to beneficiaries, or some combination of the two, by a Regional State Advisory Committee (RSAC) if it is consistent with the FPA. However, it did not attempt to clearly define the types of network upgrades that would be priced through ''participant funding'' and those that would be priced through rolled-in pricing.

There has been considerable reaction to this proposal in the outreach sessions. Southern state commissioners and southern utilities have been supportive of the use of participant funding. One rationale used is that participant funding would protect native load customers from paying for network upgrades constructed to export power to other regions. However, transmission owners in other areas, public power, and industrial customers are concerned that if participant funding is the main vehicle for pricing network upgrades, there will be inadequate investment to relieve transmission congestion and thus limit wholesale competition. While their positions differ in some areas, they all argue for the ability to roll-in at least some upgrades that relieve constraints and thus increase competition. This will be an important issue in the Commission's approval of SeTrans, which is expected to be considered in the near future.

Staff believes that the Commission's proposal needs to be clarified. During the outreach, it has become clear that

[1] The Commission has already expressed its willingness to offer regional flexibility in its order on RTO West, Docket Nos. RT01–35–005 and RT01–35–007, issued September 18, 2002.

there is not a consistent definition of participant funding. It could be defined to include only upgrades that a market participant volunteers to pay for, or it could be defined as upgrades that the beneficiaries would pay for, either on a voluntary or cost-allocation basis. If load benefits from the upgrades, the costs could be rolled-in to the access charge paid by the load that benefits. That load would receive CRRs. If a generator benefits, then the generator would pay for the upgrades, and receive CRRs. Many observers assume that construction to relieve transmission constraints could not be rolled-in to the access charge under a participant funding scenario. In that case, there would be little construction to relieve transmission congestion. Staff believes that this issue could be clarified through a technical conference that discusses this pricing issue.

A related issue is the requirement for regional planning. Transmission owners in particular are concerned that the process is reminiscent of central planning and that it could be used to slow construction of necessary upgrades, including construction to relieve congestion. Additionally, state commissioners and others are concerned that the use of four large regions will unnecessarily delay the planning process. This concern is especially strong in the Midwest and the Mid-Atlantic, which was identified as one of the four regions. There is support for having the planning process done within the territory covered by each RTO or ISO. RTOs could then coordinate the regional plans in each Interconnection.

Staff believes the Commission needs to further define how the regional planning process will work. Also, the Commission may want to explore the size of the regions used in the planning process. Staff believes these topics could be addressed at the same technical conference as participant funding.

3. State Concerns and Regulatory Participation in Regional State Advisory Committees

State commissions were particularly concerned about their ability to protect native load from cost shifting, particularly in those states that have not chosen electric restructuring. They were concerned that the rule might have an impact on their ability to continue regulating vertically integrated utilities under traditional cost-of-service ratemaking and bundled rates that these states continue to favor.

Commissioners from low-cost states were also concerned that the new market envisioned by the Commission might result in low-cost power being exported from their states, to the detriment of local ratepayers. They also want assurances that their native load will be protected from paying the cost of new transmission that would serve customers in other states or regions. They also seek clarification that CRRs will fully protect ratepayers as well as they are protected today.

States are also concerned about their role in establishing resource adequacy, whether the Commission's plan conflicts with ongoing state efforts to set reserve margins, and the extent to which states will be able to ensure future supplies.

Commissioners in all regions of the country expressed concern about the organization of ''Regional State Advisory Committees'' and what that would represent. They want to know who will become members of such an organization, how it would be funded, what its duties would encompass, how large a region it would serve and whether commissioners would be required to belong to more than one RSAC. Most importantly, state commissioners want to know the exact nature of the organization and what its responsibilities would include, and whether that conflicts with existing state law or with existing regional cooperative efforts. Finally, many state commissioners also would like to create a new name for these committees that does not use the word ''advisory''.

Staff recommends that the Commission use the NARUC meeting scheduled for November to develop a process for resolving these types of concerns and coming to a common understanding of the role of state commissions in the RSACs and how SMD might affect retail rates. Staff and state commission staff in the various regions could also hold a series of meetings to work on a common understanding and potential solutions.

4. Resource Adequacy

While there has been general support for load to meet some form of resource adequacy requirement, there has been a good deal of criticism of the proposal in the NOPR. Generators are concerned that the types of penalties proposed are insufficient and unworkable. Specifically, they are concerned that penalties may not be sufficient to keep load from ''leaning on the system'' in real time. State commissioners, ISOs and many market participants in the Northeast and Mid-Atlantic states also believe it is unworkable in areas that have retail access. They want to have a form of capacity obligation for load to ensure resource adequacy. State commissions in areas where there has been little or no divestiture see the requirement for a 12% reserve margin as intruding on their authority to review the purchasing decisions of utilities.

Staff believes this issue would benefit from a full discussion at a public conference. At the conference, the commissioners could explore how much regional flexibility there should be for satisfying the resource adequacy requirement. For example, could regions with retail access use a capacity obligation? In regions without retail access, could state commissions require vertically integrated utilities to satisfy a minimum reserve requirement? If so, would there be any additional requirements needed to satisfy the requirements of SMD?

5. Transition Issues and Congestion Revenue Rights

Many industry participants are concerned that they will not have adequate protection from congestion costs when they move from the current system to SMD. Transmission dependent utilities and industrial customers are concerned that they will not receive sufficient CRRs through the initial allocation process and will be vulnerable to the exercise of market power by vertically integrated utilities. They also raised market power concerns, particularly if generators held CRRs in load pocket areas. They also are concerned that they will not be adequately protected if the CRRs are auctioned and they receive the auction revenues. They believe they have better protection if CRRs are allocated to load. They also believe it is necessary to retain the allocated CRRs on a long-term basis.

State commissions have raised similar issues regarding protecting native load. There also is concern about load growth and how load serving entities would be able to get CRRs for increased needs, or how the use of CRRs would impact construction of new transmission capacity. Finally, there is a concern that CRRs need to be available for resources used to satisfy the resource adequacy requirement. The SMD NOPR left the regions a great deal of discretion in designing the transition process. There seems to be a desire among load in some industry segments for additional guidance on how the transition process will work.

Staff believes a public conference would be a good forum for airing and developing these issues and perhaps additional principles to be used in the transition process. Staff will prepare a paper providing more details on how

CRR allocation would work. Additionally, the Commission could explore whether there should be eventual auction of CRRs or if a region could decide that an allocation process should be used for the foreseeable future.

6. Timing of Industry Responses

There are two areas of concern on timing. First, SMD contains a multiplicity of details and getting the details right is very important to ensure customer protection. Load and state commissions in areas that have not previously used an LMP system have expressed concern that they do not have sufficient time to fully work through and understand all of the details of the proposal and how they work together. They are unwilling to support concepts in SMD unless they fully understand how they can protect themselves. Second, many have expressed concern that the implementation timeline (SMD in place by 2004) is too ambitious. They believe it will take more time to make the changes.

Based on the concerns we have heard, Staff believes that the timetable for issuing a Final Rule and for full implementation of SMD should be revised. Staff anticipates that a Final Rule could be issued in summer 2003. We also anticipate that the Commission may not see full implementation of SMD in all regions of the country at the same time. Certain aspects of the Final Rule should move forward at a faster pace than others. Formation of RSACs, for example, could begin soon after the Final Rule is issued. Staff recommends that the Commission communicate these revised expectations on timelines to the industry in the near future.

Staff Recommendations

Based on the feedback gathered by Staff, we are recommending additional meetings and public conferences with state commissions and the industry at large. The following is a proposed schedule of activities that would help address and resolve the major issues identified to date.

Staff-to-Staff Meeting With Southern Commissions

Suggested Date: Week of October 13, 2002.

Suggested Site: Atlanta, Georgia.

Note: FERC staff would confer with Southern Commissions to determine the exact date and location.

This non-public meeting would consist of staff members of the Commission and state regulatory agencies. It would focus on identifying specific issues for southern states, including the ability to protect native load customers from cost shifts, assigning costs for transmission expansions, how public power would operate under SMD, the allocation of CRRs and other issues of concern.

Staff-to-Staff Meeting on Western Operations

Suggested Date: October 22, 2002.

Suggested Site: Denver, Colorado.

This non-public meeting, attended by senior FERC staff with technical staff from the industry, would identify major operational concerns by Western operators, including the unique characteristics of the Western hydro and public power systems.

Policy Meeting on Western Issues

Suggested Date: November 4, 2002.

Suggested Site: Portland, Oregon.

This meeting would be open to the public and attended by FERC commissioners and staff. It would address policy issues related to the West, proposals for flexibility in certain areas of the NOPR, and differences in market design within the Western Interconnection.

Working Group Meeting on Participant Funding

Suggested Date: November 6, 2002.

Suggested Site: FERC Headquarters, Washington, DC.

This meeting would be open to the public and would address the concerns outlined above in the memo.

Discussion of RSACs and State Issues

Suggested Dates: November 10–13, 2002.

Suggested Site: NARUC Annual Conference in Chicago, Illinois.

This event would include participation in the NARUC Annual Conference by FERC commissioners and members of the FERC staff, a major presentation by FERC on Wednesday morning, November 13, and a keynote address by FERC Chairman Pat Wood.

Working Group Meeting on Resource Adequacy

Suggested Date: November 19, 2002.

Suggested Site: FERC Headquarters, Washington, DC.

This meeting would be open to the public and would address the concerns outlined above in the memo.

Working Group Meeting on CRRs and Transition Issues

Suggested Date: December 3, 2002.

Suggested Site: FERC Headquarters, Washington, DC.

This meeting would be open to the public and would address the concerns outlined above in the memo.

Recommendations on Extension of Time for Comments

Because of the extensive outreach and discussion that FERC staff is recommending, we believe the Commission should consider extending the deadline for comments on this proposed rulemaking.

1. The Commission would retain the November 15 deadline for comments covering most issues raised in the proposed rulemaking, but would establish a January 10, 2003 deadline for initial comments on the following topics:

- Market Design for the Western Interconnection
- Transmission Planning and Pricing, including Participant Funding
- RSACs and State Participation
- Resource Adequacy
- CRRs and Transition Issues

2. Staff recommends retaining a single deadline for reply comments, but rescheduling it for February 17, 2003 for the entire series of comments.

[FR Doc. 02–25736 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[REG–115781–01]

RIN 1545–A031

Definition of Guaranteed Annuity and Lead Unitrust Interests; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations under sections 1701, 2522, and 2055 relating to proposed regulations conforming the income, gift, and estate tax regulations to the Tax Court's decision in *Estate of Boeshore* v. *Commissioner*, 78 T.C. 523 (1982), *acq. in result,* 1987–2 C.B. 1, holding portions of § 20.2055–2(e)(2)(vi)(e) of the Estate Tax Regulations invalid.

DATES: The public hearing originally scheduled for October 16, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit

at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice or public hearing that appeared in the **Federal Register** on Tuesday, July 23, 2002, (67 FR 48070), announced that a public hearing was scheduled for October 16, 2002 at 10 a.m., in room 4718. The subject of the public hearing is proposed regulations under sections 170, 2522, and 2055 of the Internal Revenue Code. The public comment period for these proposed regulations expired on September 25, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, October 9, 2002, no one has requested to speak. Therefore, the public hearing scheduled for October 16, 2002 is cancelled.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, Income Tax and Accounting.

[FR Doc. 02–26190 Filed 10–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[USCG–2001–8661]

RIN 2115–AG05

Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changes to its requirements for oil-spill removal equipment under vessel response plans and marine transportation-related facility response plans. These changes would increase the minimum available spill removal equipment required for tank vessels and facilities, add requirements for new response technologies, and clarify methods and procedures for responding to oil spills in coastal waters.

DATES: Comments and related material must reach the Docket Management Facility on or before January 9, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before January 9, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–8661), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

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

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

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* In choosing among these means, please give due regard to the recent difficulties with delivery of mail by the U.S. Postal Service to Federal facilities.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

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

You may inspect the material proposed for incorporation by reference at room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–0448. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rulemaking, call or e-mail Mr. Robert Pond, G–MOR, Coast Guard, at telephone 202–267–6603, or *rpond@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–8661), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We would consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we would hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Under the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) and Executive Order 12777, the Coast Guard is authorized to issue regulations requiring the owners and operators of tank vessels and marine transportation-related (MTR) facilities to prepare and submit response plans. The Oil Pollution Act of 1990 amended the Federal Water Pollution Control Act to require the preparation and submission of oil spill response plans by the owners or operators of certain facilities and vessels. It also requires that these vessels and facilities be operated in compliance with their submitted response plans. Failure to have submitted a response plan, and to have received approval of that plan or authorization from the Coast Guard to operate according to the submitted plan, results in the prohibition of that vessel or facility from the handling, storing or transporting of oil. In 1996, the Coast Guard published final tank vessel response plan regulations (61 FR 1052)

and final MTR facilities response plan regulations (61 FR 7890). These regulations contain minimum on-water oil removal equipment requirements that planholders transporting or transferring petroleum oil are required to meet in planning for an oil discharge. These regulations also state that the Coast Guard would periodically review the existing oil removal equipment requirements to determine if increases in mechanical recovery systems and additional requirements for new response technologies are practicable.

On January 27, 1998, the Coast Guard published a Notice of Request for Comments (63 FR 3861) regarding our intent to conduct a review of response plan removal equipment requirements. In the notice we stated that the 1993 removal equipment requirements would remain in effect pending the results of that review, and that the removal equipment requirements increases as originally scheduled would not be implemented until the review was complete. On June 24, 1998, the Coast Guard published a Notice of Meetings (63 FR 34500) that announced three public workshops. They were set up to solicit comments on potential changes to removal equipment requirements within the response plan regulations (33 CFR parts 153, 154 and 155) for mechanical recovery, dispersants, and other spill removal technologies. Based on comments to the **Federal Register** Notice and the three Workshops, the Coast Guard commissioned an in-depth assessment of advances in oil spill response equipment since 1993. The Coast Guard completed the assessment in May 1999.

Based on the recommendations contained in the assessment (Summary Report of Public Workshop for Response Plan Equipment CAPs), the Coast Guard published a Notice of Decision (65 FR 710, January 6, 2000) that provided for a 25% increase for on-water mechanical recovery equipment for response plans of MTR facilities and tank vessels, effective April 6, 2000. The Coast Guard also initiated a regulatory project to evaluate the potential for additional increases in mechanical on-water recovery and new requirements for other response technologies, which would, if practicable, become effective in 2003.

To ensure that a broad range of environmental issues are adequately considered in the rulemaking, the Coast Guard is preparing a Programmatic Environmental Impact Statement (PEIS) for revising the oil removal equipment requirements for tank vessels and MTR facilities response plans. On September 1, 2000, the Coast Guard published a Notice of Intent to prepare and circulate a draft PEIS (65 FR 53335). The Coast Guard requested input on environmental concerns of the public related to the alternatives for increasing spill removal equipment requirements for an oil discharge, and suggested analyses or methodologies for inclusion in the PEIS.

Discussion of Comments From Public Workshops

We received 70 letters commenting on this proposed rulemaking from the three public workshops. In the following paragraphs, the Coast Guard discusses the comments received and explains any changes made to the proposed rulemaking. The Coast Guard first discusses general comments, and secondly discusses comments regarding specific sections of the rulemaking. The respondents offering comments included MTR facilities, Oil Spill Removal Organizations, the oil industry, tanker associations, Federal and State agencies, environmental and marine safety non-profit organizations, and private citizens.

General Comments

Several respondents supported adoption of requirements (or credits against existing mechanical recovery equipment requirements) for establishment of dispersant and in-situ burning capabilities for a number of reasons including

- These methods have been demonstrated to have higher effectiveness ratings, under certain conditions, than mechanical recovery;
- Regional Response Teams (RRTs) around the country have pre-authorized their use under certain conditions;
- Adding dispersant and in-situ burning equipment requirements is more cost-effective because those response methods would result in greater mitigation of spill impacts than the addition of more mechanical recovery equipment; and
- Having three response options provides greater opportunity for effective response regardless of environmental conditions at the time of a spill.

Several respondents expressed concern regarding the use of dispersants and in-situ burning because, in their view-

- The effectiveness and effects of these technologies have not been proven; and
- These technologies do not remove the oil from the environment but only transfer it to the water column or the atmosphere.

These options pose a greater potential for adverse environmental impacts than mechanical recovery methods. These technologies have been studied extensively. The conclusions and recommendations of the Summary Report of Public Workshop for Response Plan Equipment CAPs, as well as the requirements proposed in this rulemaking, address the concerns expressed in these comments.

The Coast Guard believes that potential effectiveness and effects of dispersants and in-situ burning have been sufficiently documented, and that use of either or both of those options in certain circumstances would produce a net environmental benefit compared to reliance on mechanical methods alone. The Coast Guard also agrees with the conclusions of the 1989 National Academy of Sciences report ''Using Oil Spill Dispersant on the Sea'' which concludes that * * * ''Sensitive inshore habitats, such as salt marshes, coral reefs, sea grasses and mangroves, are best protected by preventing oil from reaching them. Dispersion of oil at sea, before a slick reaches a sensitive habitat, generally will reduce overall and particularly the chronic impact of oil on many habitats.'' This study stimulated the adoption of dispersant and in-situ burning preauthorization agreements around the country, as well as a series of government-industry workshops dealing with comparative effects and effectiveness of various response countermeasures in the mid to late 1990's, the 1999 Summary Report of Public Workshop for Response Plan Equipment CAPs, and successful dispersant use in response to several spill incidents in the U.S. More detailed discussion of the comparative environmental impacts of response options (mechanical recovery, dispersant use and in-situ burning) will be included in the PEIS we are preparing for this rulemaking. Current dispersant and in situ burning pre-authorization/expedited approval zones around the country generally extend seaward from .5 to 3 miles offshore in coastal waters. There are no pre-authorizations/pre-approvals in estuarine or fresh water areas at this time, although, as required by the National Oil and Hazardous Substances Pollution Contingency Plan in 40 CFR 300.900, Regional Response Teams and Area Committees continue to give consideration to pre-approvals in those waters.

Several respondents stated that they were in favor of the use of dispersants as a primary oil spill response tool.

The Coast Guard agrees with this comment. Dispersants have been used

effectively in numerous oil spill responses both in the U.S., and abroad within the last several years. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) states that all technologies that may minimize impact to the environment are potential primary response options. The use of all response technologies would be used in accordance with those strategies contained within the Area Contingency Plans (ACPs). The effects of dispersants on an ecosystem are discussed in the PEIS.

Several respondents stated that both the dispersant and in-situ burning equipment requirements should offset mechanical recovery requirements, that is, reduce the amount of mechanical recovery equipment a planholder is required to have available.

The Coast Guard disagrees with this comment regarding dispersants. The weather and sea state conditions for the two options are opposite. The calmer the seas and winds the more effective mechanical recovery would be and the less effective dispersants would be and vice versa. If mechanical recovery equipment requirements were reduced by 10,000 barrels (bbls), there would be many spills that would not be compensated by the newly added dispersant equipment requirement because dispersant use would not fit the scenario. Thus, if mechanical recovery equipment requirements were reduced because dispersant equipment requirements are added, there could be an overall reduction in the nation's ability to mitigate effects of an oil spill. On the other hand, mechanical recovery and in-situ burning equipment work in nearly identical circumstances. Thus in pre-authorization areas, for most spills the two technologies are interchangeable so that a reduction of 10,000 bbls of mechanical recovery capability is directly offset by the 10,000 barrel increase in in-situ burning capability. Therefore, a limited offset is practicable for in-situ burning.

Several respondents stated that the United States must develop a consistent national policy on the use of dispersants before adopting a mandatory requirement for a dispersant capability.

National policy does exist and has been in place since the NCP (40 CFR part 300) was first published in 1972. The NCP contains the national policy regarding decisions on the use of dispersants and in-situ burning. The NCP details the procedures for establishing use criteria and deciding whether or not to use either dispersants or in-situ burning in a specific incident. It requires that all pre-approval and incident specific approval decisions related to these response options be made with the consent of the Environmental Protection Agency and the affected state(s)—including State Representative(s) to the RRT—and in consultation with all affected Federal natural resource trustees. At the same time, certain baseline guidance, such as the Special Monitoring of Applied Response Technologies (SMART) protocol for monitoring dispersant effectiveness are being adopted on the national level where appropriate.

It should also be emphasized that this proposed rulemaking does not require dispersants or in-situ burning to be used in any circumstance. It does not set national, regional, or local policy. This rulemaking is only intended to facilitate execution of those policies established in accordance with the NCP by requiring that the personnel and materials to accomplish those policies be ensured available if the local response community's criteria for use are met in a specific incident.

Several respondents recommended that dispersant equipment requirements should be broad-based, that is, applied to all potential end-users including offshore oil production facilities. The respondents suggested that the Coast Guard work with the Minerals Management Service (MMS) to harmonize any dispersant requirements.

The Coast Guard is currently working with MMS, EPA, and the Office of Pipeline Safety to keep them apprised of this effort and to ensure cooperation in developing and applying consistent requirements to all segments of the oil industry.

Several respondents stated that a complete dispersant response system should include mobilization procedures, a dispersant stockpile, handling, transportation and staging plans, pre-identified staging areas with refueling and loading capabilities, a spotter aircraft, tracking capabilities, communication systems, application platforms, ground crews for loading, monitoring equipment, stockpiles, ground crews for maintenance, training and exercise programs, trained observers, and communications procedures.

The Coast Guard believes that it is in the best interest of the response community to avoid regulations that are over-prescriptive. Therefore, this proposed rulemaking establishes a minimum quantity of oil to be treated with dispersant within certain time periods. It emphasizes the responsibility of the planholder to identify type and location of dispersant stockpiles, dispersant delivery platforms, maintenance, and loading responsibilities and procedures, communications, etc.

Several respondents recommended that responders be capable of starting either dispersant application or in-situ burning operations at times ranging from 6 to 12 hours after the time a decision is made to use. Based on our evaluation of risk and capabilities and the development of mobilization factors, the Coast Guard is proposing that dispersant operations be planned to start within 7 hours and in-situ burning operations within 12 hours of the decision to use.

Several respondents stated that dispersant capabilities should be available to treat a quantity of oil over time. The Coast Guard has opted to structure the proposed rulemaking slightly differently, specifying a minimum dispersant spraying capacity over time. Equipment requirements calculators in the proposed rulemaking are based on existing platform types and capabilities as documented in the Summary Report of Public Workshop for Response Plan Equipment CAPs. The requirements are based on a planning assumption of 5 gallons/acre (1:20 dispersant to oil application ratio).

The aforementioned planning assumption relies on the generally agreed upon estimate of the effectiveness of current dispersant formulations. If significant advances are made in dispersant effectiveness, through improvements in dispersant technology, the Coast Guard will consider a greater oil: dispersant ratio. Such consideration will be based on submission of credible peer review evidence that a higher ratio can be achieved over a range of oils and environmental conditions.

Appendices B and C of the proposed rulemaking incorporate this methodology as Tables 7 and 8 and contain further procedures for calculating overall capability based on the locations and numbers of dispersant stock piles and delivery platforms. Proposed requirements represent flexible, operationally viable, and economically feasible tier 1 response amounts. These amounts are intended to allow use of a variety of regionally based assets in response to 99% of all spills for which dispersants are a viable option. Tiers 2 and 3 are designed to accommodate a cascade of assets from a central location.

Several respondents said that oil spill response equipment requirements should not mandate a specific type of application platform, but allow planholders to choose one. We agree and are not requiring a specific type of application platform in this rulemaking.

Several respondents believe that dispersant exercise requirements should be handled through the Preparedness for Response Exercise Program (PREP). We agree and have proposed changes to the PREP Guidelines to include both a dispersant and where appropriate an in-situ burning equipment exercise requirement.

Several respondents stated that the ability to track oil has improved tremendously with the development of tracking buoys, Global Positioning Systems, and satellite and aerial imaging systems. This allows for much better employment of resources than was possible in 1993.

The Coast Guard agrees that continuous improvement has occurred in these areas of oil tracking. However, these technologies need further development and are not practical at this time.

At least one respondent suggested that the Coast Guard should consider requiring industry to stockpile equipment and materials for use of bioremediation in addition to dispersants and in-situ burning.

Bioremediation agents are intended to enhance the natural biodegradation of oil. One bioremediation product is essentially a fertilizer, providing nutrients that act to stimulate rapid growth of naturally occurring, oil-eating bacteria. A second type of bioremediant is a microbiological culture (an actual oil-eating bacteria) that can be introduced into the spilled oil. Both types act over weeks or months in removing oil from the environment.

This alternative has received widespread consideration for use at the national, regional, and local area levels in many parts of the country, similar to the attention paid to chemical dispersants and in-situ burning. To date, response decision-makers have concluded that bioremediants are most useful as a ''polishing tool,'' that is, being applied to oil remaining on shoreline beaches and marsh areas after all visible and accessible oil has been removed. Thus, decisions whether, when, and how to use a bioremediant are typically made once the oil has been stabilized in place on shore. No pre-approvals have been developed in part because there is time and opportunity to locate and acquire suitable bioremediants as the response moves from the emergency to the remediation phase.

On the other hand on-water mechanical recovery, dispersant use, and in-situ burning use decisions must be made quickly during a spill because a primary objective with each of these options is to intercept and remove or divert the spilled oil from the water before it affects highly sensitive nearshore and onshore environments. This short window of opportunity for use makes it imperative that necessary materials and equipment be readily available at the start of an incident. Therefore, it is appropriate to require industry to arrange for their use in advance.

There were several comments made regarding the effects dispersants have on the environment. These comments will be addressed in the PEIS.

Discussion of Comments From the Federal Government-Oil Spill Response Industry Partnership Action Team

The Federal Government-Oil Spill Response Industry Partnership Action Team recommended that the Coast Guard consider regulations to target tier response based on historical spill data. Historically, the Gulf of Mexico region is the area of most intense activity including tank vessel transits, offshore oil production, and underwater oil pipelines. As a consequence of the high volume of these activities, the area also has the highest incidence of large volume oil spills as well. Therefore, the Gulf of Mexico region should have a larger Tier 1 dispersant equipment requirement than other regions of the country.

The Coast Guard agrees and the proposed dispersant tiers reflect the historical differences in incidence and volume between the Gulf and other areas of the country.

The Federal Government-Oil Spill Response Industry Partnership Action Team recommended that industry be required to maintain all dispersant stockpiles and equipment as well as the tier 1 delivery capability. According to the team, Tier 2 and 3 equipment requirements would have to be provided by large aircraft and, therefore, the Federal government should provide delivery capability for those two tiers.

The Coast Guard acknowledges that high-volume oil spills are extremely rare events, that there are currently few commercially available large dispersant-capable aircraft, and that the cost of acquiring and maintaining such aircraft in every region of the country could be substantial. The Coast Guard does not agree that the solution to these problems is to assign responsibility for providing such aircraft to the Federal government for the following reasons:

- The Federal Water Pollution Control Act, Clean Water Act, and Oil Pollution Act of 1990 have consistently assigned responsibility for maintaining large incident response capabilities to the private sector regardless of the cost of establishing and maintaining those capabilities to within practicable limits. The industry is currently required to maintain extensive mechanical recovery capabilities in all offshore areas of the U.S., including large skimmers, temporary storage vessels, offshore containment booms, and other oil spill response vessels, for the sake of preparedness for response to an extremely rare event.
- The Coast Guard has made every effort in this regulation not to be overly prescriptive in terms of types and quantities of equipment that would be required to meet the proposed response tiers. No particular platform is specifically required, not even large aircraft for any response tier.
- The use of government aircraft is not specifically prohibited by the regulation and would be evaluated similarly to the way any other proposed commercial resource would be evaluated. That is, the resource would have to be guaranteed available by the providing source (through some form of written agreement with the planholder) to meet the response delivery capabilities within the prescribed timeframes. In general however, because government aircraft are multi-mission assets with other higher priority operational missions, it is unlikely that government resources will be able to satisfy the guaranteed availability criteria.

The Action Team stated that the Federal government is tasked in the OPA 90 to direct response to spills that present an imminent and substantial threat to the public health and welfare. They suggested that tasking implies a requirement for the government to have government-owned spill response assets capable of large volume incident response and available in the event industry fails to respond adequately. They point to the Coast Guard owned, pre-positioned response equipment around the country, Navy response assets, and the long-standing specialized expertise of the National Strike Force (NSF) as evidence to support this contention.

The Coast Guard believes the responsibility to direct all public and private response to certain spills in no way implies or suggests that the government establish and maintain its own large incident response capability.

Further, OPA 90 clearly requires planholders to identify and ensure by contract the availability of private resources sufficient to remove a worst-case discharge. If private-sector resources are required to be available everywhere around the country, it is not reasonable or practicable for the

government to duplicate those private-sector capabilities using public resources. Thus, in the absence of an identified or cooperative responsible party, the government typically relies on basic ordering agreements with private-sector oil spill response organizations to ensure availability of adequate response resources, rather than maintaining its own suite of government response assets.

The Coast Guard's pre-positioned response resources are intended as a ''first response'' capability to assist in initial containment and recovery until the full complement of private-sector response resources can be brought to bear. The Navy-owned resources are intended primarily for use in responding to incidents on or near Navy facilities or vessels. The NSF primarily provides operational advice and tactical and logistics management support. The NSF does have a limited amount of specialized lightering and containment equipment that is typically only employed until suitable private sector equipment can be brought to bear.

Discussion of Proposed Rule

The proposed rulemaking would revise 33 CFR 154.1020, 154.1045, 155.1020, and 155.1050; part 154, appendix C; and part 155, appendix B. The following is a summary of the proposed revisions:

1. On-Water Mechanical Recovery

Based on the conclusions in the Caps Report and the Regulatory Analysis for this rule, the Coast Guard is not proposing an increase in the mechanical response equipment requirements levels. Specifically, given the rate at which oil spreads on the water, and the current technological limitations in the ability to contain oil for recovery in an open water environment, it would not be practicable to require such an increase at this time.

2. Dispersants

This proposed rulemaking would require planholders to have pre-spill planning arrangements to use dispersants. This capability would not result in an offset in the mechanical recovery capability. As such, the mandatory requirements for dispersants would replace the existing credit provisions for dispersants. Therefore, the credit provisions would be removed from the existing regulations. The regulatory assessment would include the costs and benefits of this requirement. Planholders carrying Groups II, III, and IV cargoes, operating in inland, nearshore, offshore and open ocean areas, in waters where a dispersant pre-approval or expedited approval agreement exists, would be required to maintain a dispersant stockpile.

For the purpose of analysis, we propose that planholders should be able to supply two levels of dispersants, one level for the Gulf of Mexico (Gulf Coast) and one level for the rest of the United States. See proposed Table 155.1050(l) for an illustration of the required daily capability. The proposed rulemaking would allow planholders to employ a mix of vessels, rotary and fixed-wing aircraft in meeting this requirement, however, fixed-wing aircraft should provide at least 50 percent of every planholder's dispersant delivery capability. For implementation, planholders would be required to have dispersant delivery equipment sufficient to commence application within 7 hours of incident-specific dispersant approval.

Planholders would have 8 months after the final rule is published to come into compliance.

3. In-Situ Burning

There would be no proposed requirements for in-situ burning; however, planholders would receive credit for establishing and maintaining in-situ burn equipment if they are—

- Carrying Groups II, III, and IV cargoes; and
- Operating in inland, nearshore, offshore and open ocean areas in waters where an in-situ burn pre-approval or expedited approval agreement exists.

Adding and maintaining an in-situ burn capability will be encouraged by allowing an offset to mechanical recovery requirements of up to 10,000 bbls for planholders who establish and maintain an in-situ burn capability as follows:

- 5,000 BPD at tier 1.
- 10,000 BPD at tier 2.
- 10,000 BPD at tier 3 (The credit is held at 10,000 bpd for tier 3 because of the limited window of opportunity for use after 72 hours).

Tier timeframes would correspond with the tier response times for mechanical recovery requirements, including the shorter response times established for high-volume ports.

With the current state of technology for in-situ burn-boom, an individual boom package would be expected to survive for one 8 to 10-hour day. To meet the three tier requirements, a planholder would have to arrange by contract or other approved means for five fire-resistant burn-boom packages. If stainless steel and water-cooled technologies are perfected, burn-boom service life could be extended, thereby reducing the planholder's contracting requirements.

Tying a credit to existing pre-authorization agreements targets those areas where the technique is most likely to be used, and areas of most probable use are automatically targeted. These credits would provide incentive for RRTs to finalize policies for pre-authorization and expedited approval. They would also provide an incentive to vessel and facility planholders to further develop in-situ burn capabilities while maintaining a balanced response capability consisting of mechanical recovery, dispersants, and in-situ burn resources as applicable. Proposed Table 154.1050(k) illustrates the maximum allowable tiers for effective daily burn capability.

Planholders would have 8 months after the final rule is published to come into compliance.

4. Oil Spill Aerial Tracking

Currently there are no requirements for planholders to visually monitor oil spills from aircraft. Visual monitoring has been proven both practicable and effective in directing on-water mechanical recovery systems, dispersant operations, and in-situ burning to the thickest portions of an oil slick. Therefore, this proposed rulemaking would require planholders to have the ability to conduct visual monitoring from aircraft. The regulatory assessment will contain the costs and benefits of this proposed measure.

All planholders would be required to have available by contract or other approved means sufficient suitable aircraft and trained personnel to maintain visual observation of spill response operations up to 50 nautical miles from shore and in remote inland, Great Lakes, and river areas. Required aircraft should be capable of sustained operations during daylight hours up to 50 nautical miles from shore. Aerial oil tracking resources must be capable of supporting oil spill removal operations for three, 10-hour operational periods during the initial 72 hours of the discharge. The aircraft providing the initial surveillance and observation of a discharge would be required to arrive at the discharge site within 3 hours from the time of discovery of the discharge (based on 2 hours of recall/preparation time and 1 hour of flight time). Observation personnel should be separate from aircraft operations personnel. Observation personnel should be able to maintain continuous communications with command and control personnel on the ground and with on-water response resources. Observation personnel must be trained

in the protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity. Observation personnel should be fully trained in the use of assessment techniques as outlined in the American Society of Testing Materials (ASTM) standard [ASTM F 1779–97], ''Standard Practice for Reporting Visual Observations of Oil on Water.'' Observation personnel should also be familiar with the use of other guides such as the National Oceanic and Atmospheric Administration's (NOAA's) ''Open Water Oil Identification Job Aid for Aerial Observation'' and NOAA's ''Characteristic Coastal Habitats'' Guide.

Incorporation by Reference

Material proposed for incorporation by reference appears in §§ 154.106 and 155.140. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in §§ 154.106 and 155.140.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Assessment

This proposed rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). A draft Assessment is available in the docket as indicated under **ADDRESSES.** A summary of the Assessment follows:

The Assessment addresses the economic impacts of changes that the Coast Guard is proposing to the regulations for Vessel Response Plans (VRPs) and Facility Response Plans (FRPs) (Title 33 of the Code of Federal Regulations (CFR) parts 154 and 155). Spill response requirements were originally established in a 1993 rulemaking as part of the OPA 90 and, at that time, were scheduled to increase by 25 percent twice—once in 1998 and again in 2003. The increases were contingent on Coast Guard review of the industry and assessment of new requirements for other oil-removal technologies. A Notice of Decision (64 FR 710, January 6, 2000) implemented the 1998 increase. The purpose of the Assessment (in the public docket for this rule) is to assess the cost and benefit of the Coast Guard's proposed rulemaking for the 2003 increase in response equipment requirements. The rulemaking would apply to vessels carrying oil in bulk and MTR oil facilities that are required to have an oil response plan under the current VRP and FRP rules. These planholders contract with Oil Spill Removal Organizations (OSROs) to ensure that response resources required by regulation are available in the case of a Worst Case Discharge (WCD) oil spill. Response resources include—

- Mechanical recovery—physical removal of spilled oil from the water using equipment such as boom and skimmers;
- Dispersants—diffusion of spilled oil into the water column through the application of chemicals;
- In-situ burning—controlled ignition of the spilled oil; and
- Aerial tracking of the oil spill—operations from aircraft that enhance on-water response operations.

The Assessment analyzes the cost and benefit of five regulatory alternatives, including a ''no action'' alternative, that emphasize either mechanical or non-mechanical response assets. This spectrum of regulatory alternatives is illustrated in Figure 1. In addition to addressing different modes of oil-spill response, the alternatives have differing capabilities within each response mode. The five regulatory alternatives are as follows:

Alternative 1

No Action: 2000 response requirements remain effective without further modification.

Alternative 2

Mechanical recovery: Increase of 25 percent (over 2000 response-requirement levels) for inland, nearshore, offshore, open ocean, Great Lakes, and river and canal operating areas of water.

Dispersants: No response requirements established.

In-situ burning credit: No response requirements established.

Aerial tracking: Required to enhance on-water response capabilities.

Alternative 3

Mechanical recovery: Increase of 25 percent (over 2000 response-requirement levels) for inland, nearshore, offshore, open ocean, Great Lakes, and river and canal operating areas of water.

Dispersants: New application capabilities for a given response time.

In-situ burning: No response requirements, but credit offered (can offset the requirements for mechanical recovery).

Aerial tracking: Required to enhance on-water response capabilities.

Alternative 4

Mechanical recovery: Increase of 25 percent (over 2000 response-requirement levels) for inland, Great Lakes, and river and canal operating areas of water.

Dispersants: New application capabilities for a given response time that are more stringent than capabilities under Alternative 3.

In-situ burning: No response requirements, but credit offered (can offset the requirements for mechanical recovery).

Aerial tracking: Required to enhance on-water response capabilities.

Alternative 5

Mechanical recovery: No increase of 2000 response-requirement levels.

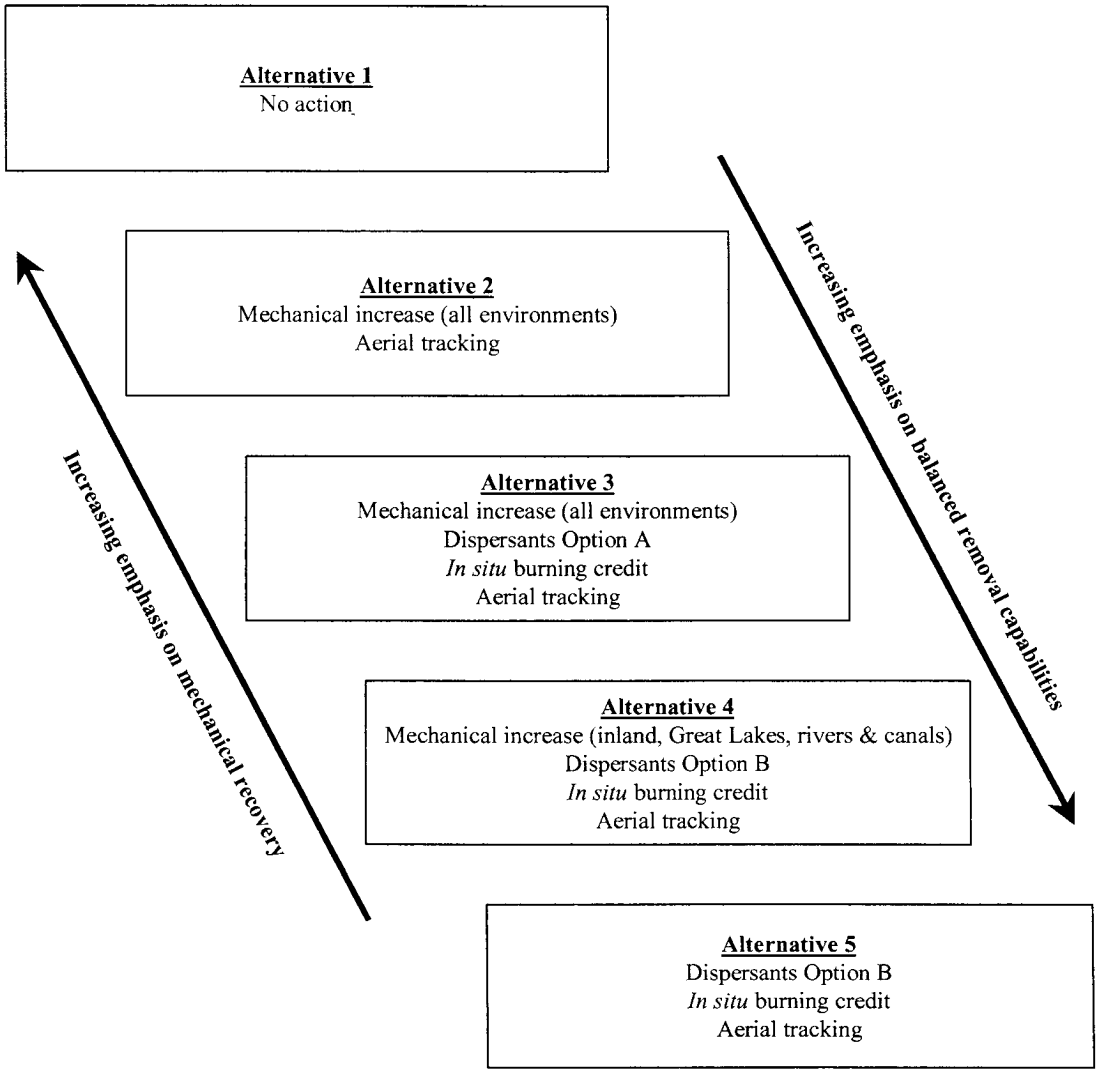
Dispersants: New application capabilities for a given response time that are more stringent than capabilities under Alternative 3 (same as Alternative 4).

In-situ burning: No response requirements, but credit offered (can offset the requirements for mechanical recovery).

Aerial tracking: Required to enhance on-water response capabilities

Figure –1

Regulatory Alternatives



The Coast Guard supports Alternative 5 as the preferred regulatory option. This alternative meets the objectives of the Coast Guard to protect the marine environment and promote maritime safety at reasonable cost, substantial benefit.

The RA for this rule estimates the cost and benefit of the regulatory alternatives from 2001–2030. Cost and benefit are discounted at 7 percent to estimate the net present value (NPV) of the proposed rule. Cost of the proposed rule is expressed in 2001 constant dollars. Equipment and personnel costs were developed using information from OSRO representatives and the Coast Guard. Paperwork costs were based on previous regulatory analysis of paperwork requirements for the original vessel response plan rulemaking. We believe that the capital and annual costs incurred by OSROs will be, to the extent possible, passed on to vessel planholders through retainer fees or increased costs for services provided.

Benefit is expressed in barrels of oil recovered from the marine environment (or treated in the marine environment if considering dispersants or *in situ* burning). We assessed the benefit of the proposed rule using a modeling tool developed for the Oil Pollution Act of 1990 Programmatic Regulatory Assessment (OPA 90 PRA). The PRA assessed the costs and benefits of 11 ''core group'' rules enacted under OPA 90. These included such rules as double hulls, financial responsibility, and the original vessel response plan rulemakings. The PRA assessed the overlapping effects (and therefore benefits) of these 11 major rulemakings and avoided the double counting of barrels of oil not spilled. A copy of the OPA 90 PRA can be found in the Docket for this proposed rulemaking.

The benefit analysis for the proposed rulemaking used the PRA modeling tool and adjusted estimates of effectiveness specific to this proposed rulemaking. Effectiveness factors (*i.e.*, the quantified effect of the proposed rule) were developed through an expert panel.

A cost effectiveness ratio compares cost and benefit and represents the value to society to recover (treat) a barrel of oil from the marine environment. Cost, benefit, and cost

effectiveness of the regulatory alternatives are presented in Table 1:

TABLE 1.—NPV COST, BENEFIT, AND COST EFFECTIVENESS BY REGULATORY ALTERNATIVE (7 PERCENT DISCOUNT RATE, ASSESSMENT PERIOD 2001–2030)

	NPV total national cost ($Millions)	NPV total national benefit (Barrels)	NPV total national cost effectiveness ($/Barrel)
Alternative 1	$0	$0	NA
Alternative 2	141.65	8,000	$17,700.
Alternative 3	254.53	22,100	11,500.
Alternative 4	240.57	22,300	10,800.
Alternative 5	223.46	22,300	10,000.

For Alternative 5, the total NPV cost for the period 2001–2030 is $223.46 million (7 percent discount rate, 2001 dollars). Of this, $17.88 million ($15.62 million NPV) is for the initial acquisition of response equipment in 2003, when the proposed rule will become effective. An estimated $15.12 million ($13.21 million NPV) is for initial paperwork requirements in 2003 for response providers and planholders. This rule is estimated to cost $18.05 million annually (undiscounted) for operations, maintenance, and paperwork costs. This cost will first be incurred in 2004 and will be incurred through the assessment period (until 2030). Capital equipment initially acquired in 2003 will be replaced at various times throughout the assessment period.

Paperwork costs for planholders and equipment costs for OSROs drive the national cost of the proposed rule. While planholder paperwork costs are constant across all regulatory alternatives, OSROs must invest in different response equipment depending on the provisions of a specific alternative. Alternative 3 is the most expensive option because OSROs must purchase mechanical recovery equipment for all operating areas, ensure some dispersants capabilities, and provide aerial tracking capabilities. Alternative 2 is the least expensive of the change alternatives because it includes requirements for mechanical recovery and aerial tracking only.

National benefit is driven by the effectiveness of dispersants application and aerial tracking. Our analysis found there is essentially no benefit from increasing response requirements for mechanical recovery over 2000 levels. It also found that planholders would not take advantage of the in-situ burning credit to reduce the need for mechanical recovery assets. Alternatives 4 and 5 are the most beneficial because they include rigorous requirements for dispersants application capability. Alternative 2 is the least beneficial because it includes increased mechanical recovery requirements, which yield no benefit, and aerial tracking requirements, which yield modest benefit.

When cost is compared to benefit, Alternative 5 is the most cost-effective regulatory alternative—$10,000/barrel. Alternative 2 is the least cost-effective—$17,700/barrel.

Small Entities

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

We do not believe this rulemaking will have a significant impact on a substantial number of small entities. Nevertheless, we prepared an Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under **ADDRESSES**. Our analysis indicates that the proposed rulemaking would have a less-than-5-percent impact on annual revenues for small businesses in the first year. Annual costs would have a lesser impact on small businesses because costs following the first year decrease significantly.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Robert Pond, G-MOR, Coast Guard, telephone 202–267–6603 or email *RPond@comdt.uscg.mil.*

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 proposed rule would call for an increase in an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden are detailed in the chapter 8 of the Assessment in the docket. We found that the proposed rule would require 158,770 labor hours in the first year after implementation and 90,496 labor hours in subsequent years. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule and the Assessment to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for the collection of information become effective, we would publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. For example, a rule has federalism implications under EO 13132, if it is intended to preempt a state from regulating the entities covered by the federal regulation. This proposed regulation is not intended to preempt state regulations on the same subject, unless the state's regulation actually conflicts with the requirements of this proposed regulation or would frustrate its purpose.

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed 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, though it is a ''significant regulatory action'' under Executive Order 12866, and that it 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.

Environment

We have considered the environmental impact of this proposed rule and concluded that preparation of a Programmatic Environmental Impact Statement (PEIS) is necessary. A PEIS will be prepared as announced September 1, 2000 (65 FR 53335, Draft Programmatic Environmental Impact Statement for Vessel and Facility Response Plans for Oil; On-Water Mechanical Recovery Capacity Increase for 2003 and Alternative Removal Technologies). The PEIS is considered necessary because the proposed rulemaking would require planholders to establish and maintain chemical dispersant stockpiles—and encourage establishing an in-situ burning capability—around the country. While dispersant and in-situ burning use are currently pre-authorized under certain conditions in most port areas, their use has been limited in the past, in part due to the lack of availability of those capabilities in the vicinity of the spill. Therefore, this regulation is likely to result in an increase in the number of dispersant and in-situ burning uses in spill response. A PEIS is necessary to ensure that any such effects are adequately considered because of public concern over the potential environmental effects of these technologies.

List of Subjects

33 CFR Part 154

Facilities, Hazardous substances, Oil pollution.

33 CFR Part 155

Hazardous substances, Oil pollution, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 154 and 155 as follows:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(c), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. In § 154.106(b), under ''American Society for Testing and Materials (ASTM)'', add, in numerical order, entries for ASTM F 1413–92, ASTM F 1737–96, and ASTM F 1779–97 to read as follows:

§ 154.106 Incorporation by reference.

* * * * *

(b) * * *

* * * * *

American Society for Testing and Materials (ASTM)

* * * * *

ASTM F 1413–92, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems—154.1045

ASTM F 1737–96, Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems—154.1045

ASTM F 1779–97, Standard Practice for Reporting Visual Observations of Oil on Water—154.1045

* * * * *

3. In § 154.1020, add definitions in alphabetical order to read as follows:

§ 154.1020 Definitions.

* * * * *

Dispersant operations group supervisor means the person in charge of the dispersant operations under the operations section of the Incident Command System (ICS) organization.

Dispersant monitor means a person responsible for monitoring the effectiveness of the dispersant operation through measures and guidelines established by the National Response Team, Regional Response Teams, and Area Committees.

Dispersant spotter means the person who controls, guides, or lines up the dispersant-application platform over the spill target.

Dispersant-application platform means the vessel or aircraft outfitted with the dispersant-application equipment acting as the delivery system for the dispersant onto the oil spill.

* * * * *

Effective daily application capacity or EDAC means the estimated amount of dispersant that can be applied to a discharge by an application system given the availability of supporting dispersant stockpiles.

Effective daily burn capacity or EDBC means the estimated amount of oil that can be effectively removed from the surface of the water by burning in one day.

* * * * *

Fireproof boom means an oil containment boom constructed out of fireproof materials and designed to withstand prolonged periods of exposure to heat and flame during in-situ burning operations and have a demonstrated service life that extends through multiple days of burning operations. Stainless steel and water-cooled boom designs are examples of potential fireproof boom that may be credited with extended service lives if such durability can be properly demonstrated and documented.

Fire-resistant boom means an oil containment boom constructed out of fire-retardant fabrics and reinforced internal strength members and designed to withstand exposure to heat and flame during in-situ burning operations. Fire resistant booms typically undergo material degradation when subjected to intense heat and flame for extended periods as is associated with the in-situ burning of oil. Fire resistant booms have a planning service life of one operational day.

* * * * *

Gulf Coast means, for the purposes of dispersant-application requirements, the region encompassing the following Captain of the Port Zones:

(1) Corpus Christi, TX.
(2) Houston/Galveston, TX.
(3) Port Arthur, TX.
(4) Morgan City, LA.
(5) New Orleans, LA.
(6) Mobile, AL.
(7) Tampa, FL.

* * * * *

In-situ burn operations group supervisor means the person in charge of the in-situ burn operations functional group under the operations section of the ICS organization.

* * * * *

Operational effectiveness monitoring means monitoring concerned primarily with determining whether the dispersant was properly applied and how the dispersant is affecting the oil.

* * * * *

Pre-authorization for dispersant use means an agreement, adopted by a Regional Response Team or an Area Committee, that authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Pre-authorization for in-situ burning means an agreement, adopted by a Regional Response Team and an Area Committee, that authorizes the in-situ burning of oil at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Primary dispersant staging site means a site designated within a Captain of the Port zone that has been identified as a forward staging area for dispersant application platforms and the loading of dispersant stockpiles. Primary staging sites are typically the planned locations where platforms load or reload dispersants before departing for application at the site of the discharge and may not be the locations where dispersant stockpiles are stored or application platforms are home based.

* * * * *

Quick or expedited approval for dispersant use means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

Quick or expedited approval for in-situ burning means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

* * * * *

4. In § 154.1035, revise paragraphs (b)(3)(iv) and (b)(3)(v), and add paragraphs (b)(3)(vi) through (b)(3)(ix) to read as follows:

§ 154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.

* * * * *

(b) * * *

(3) * * *

(iv) This subsection must identify the oil spill removal organizations and the spill management team to be capable of providing the following resources:

(A) Equipment and supplies to meet the requirements of §§ 154.1045, 154.1047 or subparts H or I of this part, as appropriate.

(B) Trained personnel necessary to continue operation of the equipment and staff of the oil spill removal organization and spill management team for the first seven days of the response.

(v) This subsection must include job descriptions for each spill management team member within the organizational structure described in paragraph (b)(3)(iii) of this section. These job descriptions should include the responsibilities and duties of each spill management team member in a response action.

(vi) For facilities that handle, store, or transport Group II through Group IV petroleum oils (and that operate in waters where dispersant use pre-

authorization or expedited approval exists) this subsection must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means as described in § 154.1028(a). The dispersant resources to be listed within this section must include the following:

(A) The identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of this subpart.

(B) The identification of the platform type, providing-resource organization, location, dispersant payload, and readiness/mobilization category (as provided for in Table 6 of appendix C to this part) for each dispersant-application platform identified. Location data must identify the distance between the platform's home base and the identified primary dispersant staging site for this section.

(C) The identification of the dispersant product resource provider, location, and amount for each unit of dispersant stockpile required to support the required Effective Daily Application Capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation. Location data must include the stockpile's distance to the primary staging sites where the stockpile would be loaded onto the corresponding platforms.

(D) If an oil spill removal organization is approved by the Coast Guard and its capability is equal to or exceeds the response capability needed by the owner or operator, the section may identify the oil spill removal organization only and not the information required in paragraphs (b)(3)(vi)(A) through (C) of this section.

(vii) This subsection must also separately list the resource providers and specific resources necessary to provide, if appropriate, the in-situ burn capabilities as required in this subpart. The in-situ burn resources to be listed within this section must include the following:

(A) The identification of the amount, type, resource provider, and location of in-situ burn boom.

(B) The identification of the amount, type, resource providers, and location of support vessels to deploy, and if necessary, tow, the in-situ burn boom during burning operations.

(C) The identification of the amount, type, resource provider, and location for each ignition device required to support the required Effective Daily Burn Capacity (EDBC) of each in-situ burn package.

(D) The identification of the amount, location, resource provider of trained personnel necessary to support the required EDBC of each in-situ burn package.

(E) If an oil spill removal organization has been approved by the Coast Guard and its capability is equal to or exceeds the response capability needed by the owner or operator for the credit level requested, the section may identify the oil spill removal organization and the level of in-situ-burn removal capability being provided, and not the information required in paragraphs(b)(3)(vii)(A)–(D).

(viii) This subsection must also separately list the resource providers and specific resources necessary to provide oil tracking capabilities required in this subpart. The oil tracking resources to be listed within this section must include the following:

(A) The identification of a resource provider.

(B) Type and location of aerial surveillance aircraft that are ensured available, through contract or other approved means, to meet the oil tracking requirements of § 154.1045(k).

(ix) For mobile facilities that operate in more than one captain of the port zone, the plan must identify the oil spill removal organization and the spill management team in the applicable geographic-specific appendix. The oil spill removal organization(s) and the spill management team discussed in paragraph (b)(3)(iv) of this section must be included for each COTP zone in which the facility will handle, store, or transport oil in bulk.

* * * * *

5. In § 154.1045—

a. Revise paragraph (i) as set forth below;

b. Remove paragraph (n);

c. Redesignate paragraphs (j), (k), (l), and (m) as paragraphs (l), (m), (n), and (o) respectively; and

d. Add new paragraphs (j) and (k) to read as follows:

§ 154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.

* * * * *

(i) The owner or operator of a facility that handles, stores, or transports Groups II through IV petroleum oils within the inland, nearshore, or offshore area where pre-authorization or expedited approval for dispersant use exists must identify in their response plan, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas.

(1) Dispersant response resources must be capable of commencing dispersant-application operations at the site of a discharge within 7 hours of the decision by the Federal On-Scene Coordinator to use dispersants.

(2) Dispersant response resources must include the following:

(i) Sufficient volumes of dispersants for application as required by paragraph (i)(3) of this section. Any dispersants identified in a response plan must be of a type listed on the National Oil and Hazardous Substances Pollution Contingency Plan Product Schedule (40 CFR part 300), as maintained by the Environmental Protection Agency.

(ii) Dispersant-application platforms capable of delivering and applying the dispersant on a discharge in the amounts as required by paragraph (i)(3) of this section. At least 50 percent of each EDAC tier requirement must be achieved through the use of fixed-wing, aircraft-based application platforms.

(iii) Dispersant-application systems that are consistent in design with, and are capable of applying dispersant within the performance criteria in ASTM F 1413–92. For dispersant-application systems not fully covered by ASTM F 1413–92, such as fire monitor-type applicators, adequacy of performance criteria must be documented by presentation of independent evaluation materials (*e.g.*, laboratory tests, field tests, and reports of actual use) that document the design of performance specifications.

(iv) Dispersant-application personnel trained in and capable of applying dispersants according to the recommended procedures contained within ASTM F 1737–96.

(3) Dispersant stockpiles, application platforms, and other supporting resources must be available in a quantity and type sufficient to treat a facility's worst case discharge (as determined by using the criteria in appendix B, section 8) or in quantities sufficient to meet the requirements in Table 154.1045(i) of this section, whichever is the lesser amount.

TABLE 154.1045(i).—TIERS FOR EFFECTIVE DAILY APPLICATION CAPABILITY

Tier	Response time for completed application (hours)	Dispersant application—Dispersant: oil treated in gallons (Gulf Coast)	Dispersant application—Dispersant: oil treated in gallons (All other U.S.)
Tier 1	12	8,250:165,000	4,125:82,500
Tier 2	36	23,375:467,000	23,375:467,000
Tier 3	60	23,375:467,000	23,375:467,000
Total	60	55,000:1,100,000	50,875:1,017,500

Note: Gulf Coast Tier 1 is higher due to greater potential spill size and frequency in that area, and it is assumed that dispersant stockpiles would be centralized in the Gulf area. Also note the 1:20 dispersant-to-oil application ratio is a planning assumption which relies on the generally agreed upon estimate of the effectiveness of current dispersant formulations. Alternative application ratios may be considered based on submission to the Coast Guard (G-MOR) of peer-reviewed scientific evidence of improved capability.

(j) The owner or operator of a facility that handles, stores, or transports Groups II through IV petroleum oil within any inland, nearshore, or offshore area with pre-authorization or expedited approval for in-situ burning may request credit that will count toward the facility's on-water mechanical recovery capability for worst case discharge response Tiers 2 and 3 up to the amounts identified in Table 154.1045(j) of this section. No credit is available for Tier 1. To receive this credit, the vessel owner or operator must identify and ensure, through contract or other approved means, the availability of the necessary resources to sustain in-situ burning operations for the level of credit being requested.

(1) In-situ burn response resources must be capable of commencing ignition of oil at the site of a discharge within 12 hours of the initial authorization of the Federal On-Scene Coordinator to conduct in-situ burning to receive credit against Tier 2 requirements.

(2) In-situ burn response resources for all response tiers must include the following:

(i) Sufficient in-situ burn boom.

(ii) Vessel platforms capable of towing and tending in-situ burn boom in the operating environments where credit is requested.

(iii) Sufficient ignition devices to support burning operations.

(iv) Personnel trained in conducting in-situ burning operations.

(v) All equipment ensured available as required in paragraphs (j)(2)(i) through (iii) of this section must be capable of sustained use in the operating environments for which credit is requested.

TABLE 154.1045(j).—MAXIMUM ALLOWABLE TIERS FOR EFFECTIVE DAILY BURN CAPABILITY

Tier	Response time for completed burning[1] (in hrs.)	Daily burn capacity (EDBC)[2] (in bbls)	Cumulative equipment requirements				
			Fire proof boom (feet)[3]	Fire resistant boom (feet)[3]	Hand-held or igniter	Heli-torch igniter[4]	Support vessel
Tier 1	24	5,000	500	500	4 or	1	2
Tier 2	48	10,000	1,000	1,500	12 or	1	4
Tier 3	72	10,000	1,000	2,500	20 or	1	4

[1] Tiered response times represent the maximum allowable time from the instant when in-situ burning is authorized for use by the Federal On-scene coordinator to the completion of the operational burn period for that tier.

[2] EDBC amounts for Tiers 2 and 3 above may be applied against the corresponding tiers for on-water mechanical recovery (EDRC) as required to respond to an owner or operator's worst case discharge.

[3] Assumes fireproof boom is reusable in all three tiers. The fire will consume fire-resistant boom, therefore, it will require a replacement at the start of each new operational period.

[4] If a helitorch igniter system is identified and ensured available, one-time igniters are not required. Alternatives may be considered based on submission to the Coast Guard of peer-reviewed scientific evidence of improved capability.

(3) In areas that have ice-bound conditions throughout prolonged periods of the year, credit levels for Effective Daily Burn Capacity (EDBC) against on-water mechanical recovery requirements can be elevated, as deemed appropriate, by the respective Area Committee for the area where the extra credit is being considered. Extra EDBC levels are at the discretion of the Area Committee, however, it is not recommended that EDBC levels comprise more than 50 percent of the total on-water recovery capability for a planholder in any one particular Captain of the Port area.

(k) The owner or operator of a facility handling Groups I through IV petroleum oil as a primary cargo must identify in the response plan, and ensure the availability of through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities. Aerial oil tracking resources must—

(1) Be capable of arriving at the site of a discharge within 3 hours from the time of the initial notification of the discharge for a distance up to 50 nautical miles from shore;

(2) Be capable of supporting oil spill removal operations continuously for three 10-hour operational periods during the initial 72 hours of the discharge; and

(3) Include the following:

(i) Appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking from paragraph (k)(1) of this section.

(ii) Sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill operations, commencing upon initial assessment, and capable of coordinating on-scene cleanup operations, including dispersant, in-situ burn, and mechanical recovery operations. Observation personnel must be trained in—

(A) The protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity; and

(B) The use of assessment techniques in ASTM F 1779–97, and familiar with the use of other guides, such as NOAA's ''Open Water Oil Identification Job Aid for Aerial Observation,'' (available at *http://response.restoration.noaa.gov/order/jobaid.html*) and NOAA's ''Characteristic Coastal Habitats'' Guide (available at *http://response.restoration.noaa.gov/oilaids/coastal/coastal.html*).

* * * * *

6. In appendix C to Part 154, revise section 8, and following Table 5, add Tables 6, 7, and 8 to read as follows:

Appendix C to Part 154—Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

* * * * *

8. Determining the Capability of High-Rate Response Methods 8.1 Calculating Cumulative Dispersant-Application Capacity Requirements.

8.1.1 A facility owner or operator should plan either for a dispersant capacity to respond to a facility's worst case discharge (WCD) of oil or for the amount of the dispersant resource cap as required by § 154.1045(i)(3) of this part, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

8.1.2 Determine the WCD volume of oil in gallons and the appropriate cargo group for the type of petroleum oil (persistent Groups II, III, IV). For facilities with mixed petroleum oils, assume a total WCD volume using the group that constitutes the largest portion of the oil being handled or the group with the smallest natural dissipation factor.

8.1.3 Multiply the total WCD amount in gallons by the natural dissipation factor for the appropriate cargo group as follows: Group II factor is 0.50; Group III is 0.30 and Group IV is 0.10 associated with the nearshore area for the cargo type carried. This represents the amount of oil that can be expected to be lost to natural dissipation. Subtract the oil amount lost to natural dissipation from the total WCD amount to determine the remaining oil cargo available for treatment by dispersant-application.

8.1.4 Multiply the oil available for dispersant treatment by the dispersant to oil planning application ratio of 1 part dispersant to 20 parts oil (0.05). The resultant number represents the cumulative total dispersant-application capability that should be ensured available within the first 60 hours.

8.1.5 The following is an example of the procedure described above: A facility with a 1,000,000 gallon WCD of crude oil (specific gravity 0.87) is located in an area with pre-authorization for dispersant use in the nearshore environment on the U.S. East Coast.

WCD: 1,000,000 gallons, Group III oil.

Natural Dissipation Factor for Group III: 30%.

General formula to determine oil available for dispersant treatment: (WCD) − [(WCD) × (natural dissipation factor)] = available oil.

E.g., 1,000,000 gal − (1,000,000 gal × .30) = 700,000 gallons of available oil.

Cumulative application capacity = Available oil × planning application ratio (1 gal disp/20 gals oil = 0.05), 700,000 gal oil × (0.05) = 35,000 gallons cumulative dispersant-application capacity.

The requirements for cumulative dispersant-application capacity (35,000 gallons) for this facility's WCD is less than the overall dispersant capability for non-Gulf Coast waters as required by § 155.1045(i)(3) of this chapter. As such, this vessel would not need to meet the entire amount for Tier 3, but would be required to meet the following tier requirements (totaling 35,000 gallons application):

Tier 1 4,125 gallons—Completed in 12 hours

Tier 2 23,375 gallons—Completed in 36 hours

Tier 3 7,500 gallons—Completed in 60 hours

8.2 Determining Effective Daily Application Capacities ''EDAC'' for Dispersant Response Systems.

8.2.1 This section discusses methods to be used for the purposes of determining the EDAC of a dispersant response system. This methodology considers mobilization factors for dispersant platforms as well as dispersant stockpiles and platform application rates (as published in the 1999 Summary Report of Public Workshop for Response Plan Equipment CAPs. This report is available at *http://www.uscg.mil/vrp/reg/caps.shtml*).

8.2.2 For each Captain of the Port zone where a dispersant response capability is required, the response plan should identify:

• The type, number, and location of each dispersant-application platform intended for use in meeting dispersant delivery requirements specified in § 155.1050(j)(3) of this chapter.

• The amount and location of available dispersant stockpiles to support each platform.

• A primary staging site for each platform that will serve as its base of operations for the duration of the response.

8.2.3 Using the readiness factors from Table 6 of this appendix and platform capability factors in Table 7 of this appendix, calculate mobilization times and dispersant delivery capabilities for each platform. For each aircraft platform—

MP = R + T + L

MP = Mobilization of platform

R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant-application system for transport)

T = Transit time (time it takes for dispersant-application system to be transported to the staging area mobilization)

L = 1 hour to load dispersant at staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours Tier 2, and less than 48 hours Tier 3;

For each stockpile—

MS = R + T + L

MS = Mobilization of Stockpile

R = Recall of loading personnel/transportation assets and loading dispersant for transport if applicable

T = Transit time to staging site

L = 1 hour for loading on delivery platform. The transit time to the spill site is included in delivery capability calculations for aircraft but not for vessels. Total time for stockpile mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3.

Delivery capability for Tier 1 should be calculated as follows:

R/10 × 12—T

R = EDAC Rate (from Table 7)

10 = hours in operational period

12 = assumed hours of daylight for planning purposes

T = mobilization time (either for platform or stockpile time whichever is greater). Delivery capability for all Tier 1 platforms should at least equal amount specified for Tier 1 in § 155.1050(l)(3) of this chapter.

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 7 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this chapter.

For each vessel platform—

MP = R + T + S + L

MP = Mobilization of platform

R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant-application system for transport)

T = Transit time (time it takes for dispersant-application system to be transported to the staging area mobilization

S = Transit time from staging site or usual location of vessel to the spill site

L = 1 hour to load dispersant at staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3. Usual location of the vessel is the location where the vessel is typically employed when not engaged in dispersant-application operations. Spill site is the location in the Captain of the Port zone up to 50 miles offshore furthest from the dispersant platform staging site or the usual location of the vessel.

MS = R + T

MS = Mobilization of Stockpile

R = Recall of loading personnel/transportation assets and loading dispersant for transport if applicable

T = Transit time to staging site. Total time for stockpile mobilization should be less

than 6 hours for Tier 1, less than 23 hours for Tier 2, and less than 47 hours Tier 3 to allow time for loading dispersant on delivery platform.

Delivery capability for Tier 1 should be calculated as follows:

R/10 × 12 − T

R = EDAC Rate (from Table 7 of this appendix)
10 = 10 hours in operational period
12 = assumed hours of daylight for planning purposes
T = mobilization time (either for platform or stockpile time whichever is greater)]. Delivery capability for all Tier 1 platforms must at least equal the amount specified for tier 1 in § 155.1050(l)(3) of this chapter.

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 7 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this chapter.

8.2.3.1 EDAC must be calculated for each platform and supporting stockpile, and added together as appropriate to meet the dispersant-application tier requirements.

8.2.3.2 The following is an example of the procedure described above: A plan lists a stockpile of 5,000 gallons of dispersant located 35 miles from a central staging site (*e.g.*, a coastal airport) but not loaded for transport, and a DC–3 aircraft based at a facility approximately 75 miles from the staging site. The DC–3 is dedicated to dispersant spraying operations. The EDAC allowed toward tier 1 for this dispersant-application system can be calculated as follows:

Stockpile: Amount—5,000 gallons.
Stockpile Mobilization time: R = 4 hours, T = 35 miles/35 miles per hour or 1 hour, hours = 4 + 1 + 1 hour loading = 6 hours.
Platform Mobilization: R = 2 hours, T = 75 miles/150 miles per hour or 0.5 hours + 1 hour loading at staging site = 2 + 1.5 + 1 = 3.5 hours.
Operational period ''OP'' = 12 hours daylight—5 hours (use longer of stockpile or platform mobilization time) = 7 hours (commencing 6 hours after notification of approval and continuing until the end of the first 12 hour daylight period.)
Tier 1 delivery capability for this platform = (Table 7 of this appendix) EDAC rate = 5000 gallons/10 hours x 6 = 3000 gallons application capacity.

8.2.3.3 Other platform types do exist, and additional platform types are expected to develop with time. The Coast Guard will review requests to establish EDAC rates for other platform types at its discretion. EDAC calculations for additional platforms use the same methodology as used to establish the existing rates already in Table 7 of this appendix. Table 7 is based on average characteristics (for planning and review purposes) for most types of application platforms typically used for spraying dispersants.

8.3 Determining Effective Daily Burn Capacities ''EDBC'' for In-situ Burn Response Systems.

8.3.1 For the purposes of determining the effective daily burn capacity of in-situ burn resources, the information within this section applies.

8.3.2 For each Captain of the Port zone where an in-situ burn response capability is ensured available, the response plan should identify—

- The type, location, and amount of in-situ burn boom available;
- The amount and location of available ignition sources. If ignition system ensured available is a helitorch, a source of pilots trained in the use of the helitorch and suitable aircraft must be identified that can respond within the required response times; and
- The identification of supporting vessels and trained operators capable of towing, deploying, and tending the fire boom.

8.3.3 Using the readiness factors from Table 8 of this appendix, mobilization times are calculated for each in-situ burn system. The General Formula for calculating Tier 1 mobilization time is as follows:

T = (MB + MV) or (MH), whichever is greater (in hours).
T = Total Mobilization
MB = Mobilization of In-situ burn boom/hand held igniters
MB = R + L + T1
R = Recall of loading personnel/transportation assets
L = Loading to truck
T1 = Transit time to vessel staging site
MV = Mobilization of Support Vessels = L + T2
L = Boom loading to vessel
T2 = Transit time to spill site
MH = Mobilization of Helitorch = R + T1 + L + T2
R = Recall of personnel/platform
T1 = Transit time to staging site
L = Torch loading
T2 = Transit time to spill site

8.3.4 The mobilization times are used to ensure that a full 12-hour ''operational period'' or ''OP'' for in-situ burning is available for Tier 1. All operational period calculations assume approval for use is granted at zero hour, and that a maximum of 12 hours is available to support oil collection and burning within the initial 24-hour period. The available time allowed to support in-situ burning is slightly longer (12 hours) in comparison to dispersant operations (10 hours) as in-situ burning operations can continue for a limited period during darkness where dispersant spraying would be suspended due to decreased visibility. The 12-hour period is divided into four, 1-hour burning cycles, each preceded by a 2-hour oil containment and collection cycle.

8.3.4.1 The general formula for calculating the tier 1 operational period of a system is:

OP = Operational Period = 24 hours − (the mobilization time for the boom + platform or the mobilization time for the supporting helitorch igniter (if used, whichever is greater).

8.3.5 For planning purposes, an in-situ burning system is comprised of the following minimum components that must be ensured available: Minimum 500 ft. fire boom, two support vessels to tend and tow the boom, and four hand-held igniters or one helitorch system. 500 ft. sections of fire resistant boom are credited with a 5,000 bpd burning capacity and are also considered to have a service life of one operational period. For example, a second (Tier 2) and third (Tier 3) section of 500 ft. boom must be ensured available if the planholder desires to claim a 5,000 bpd credit for all three tiers.

8.3.6 Planholders may request extensions of boom service lives beyond one operational period for ''fire-proof'' type boom, such as stainless steel, or water-cooled boom designs, when such boom has been tested and can be adequately documented as providing extended service capabilities. Planholders may receive credit for multiple operational periods using the same 500 ft. section of boom dependant upon the documentation presented to the Coast Guard for review and approval.

* * * * *

TABLE 6.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall period ''R''	Transit to staging site ''T'' [1]	Transit to spill site ''S'' [2]
Aircraft dedicated to dispersant response operations	2	D/150+1	N/A
Aircraft dedicated to spraying operations	3	D/150+1	N/A
Aircraft nondedicated	4	D/150+1	N/A
Vessel dedicated (preloaded)	2	0	D/5
Vessel dedicated (not loaded)	2	D/5+1	D/5
Vessel non-dedicated (preloaded)	4	0	D/5
Vessel non-dedicated (not loaded)	[3] 4	D/5+1	D/5
Dispersant Stockpile (preloaded for transport to staging site)	2	D/35+1	D/5

TABLE 6.—READINESS/MOBILIZATION FACTORS—Continued

[All times listed in hours]

Resource/status	Recall period "R"	Transit to staging site "T"[1]	Transit to spill site "S"[2]
Dispersant Stockpile (not preloaded for transport to staging site)	[3]4	D/35+1	N/A

[1] Transit times to staging site for aircraft based on average speed of advance of 150 kts and "D" distance between aircraft home base and forward staging site for dispersant operations. Transit times for vessels from usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform. Transit times for stockpile based on average speed of advance of 35 mph by truck and "D" distance from stockpile location to dispersant staging site, such as a coastal airport.

[2] Transit times to spill site for aircraft is included in the calculations contained in Table 7 because of the relatively high speed of these platforms compared to vessels. Transit times for vessels to the spill site are calculated from the usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform.

[3] Assume 2 hours to load dispersant stockpiles on to trucks for transport to the staging site.

[4] For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

TABLE 7.—PLATFORM CAPABILITY FOR OIL DISPERSANT DELIVERY OVER A 10-HOUR PERIOD

Platform	Distance out (N. miles)	EDAC rate estimated dispersant applied in 10 hours††
Helicopter	50	1,500.00
Air tractor	50	8,000.00
DC–3	50	5,000.00
DC–4	50	17,495.38
DC–6	50	18,000.00
C–130	50	32,972.28
P–3	50	20,000.00
Fire Monitor-Equipped Vessel	50	6,000.00

TABLE 8.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall period "R" + "L" load time	Transit to staging site "T1"	Transit to spill site "T2"
In-situ Burn Boom/HH Igniters	2 + 2[1]	D/35[4]	N/A
Support Vessels	N/A + 2[2]	N/A	(10 or D/5)[3]
Aircraft/helitorch igniter	4 + 1	D/90	D/90

[1] Loading Time for boom onto a truck would be zero if the boom is co-located at the same waterfront facility as the vessels used to ferry the boom to the spill.

[2] Loading Time for in-situ boom onto a support vessel would be zero if the boom is already loaded onto a support vessel.

[3] Transit times for support vessels based on average speed of advance of 5 kts and maximum distance from shore to spill site of fifty miles. Speed waivers for transit speeds may be granted based on actual performance of platform.

[4] Transit times for in-situ boom from warehouse to vessel dock based on average speed of advance of 35 mph by truck and "D" distance from storage location to vessel staging site.

[5] Transit times for aircraft/helitorch based on average speed of advance of 90 kts and combined distance "D" between aircraft home base, forward staging site and spill location.

[6] For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

7. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec.2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p 351; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 36, 33 CFR parts 150, 151, 153, and 157.

8. In § 155.140(b), under "American Society for Testing and Materials (ASTM)", add, in numerical order, entries for ASTM 1413–92, ASTM 1737–96, and ASTM 1779–97 to read as follows:

* * * * *

(b) * * *

* * * * *

American Society for Testing and Materials (ASTM)

* * * * *

ASTM F 1413–92, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems	155.1050

ASTM F 1737–96, Standard Guide for Use of Oil Spill Dispersant-Application Equipment During Spill Response: Boom and Nozzle Systems	155.1050
ASTM F 1779–97, Standard Practice for Reporting Visual Observations of Oil on Water ..	155.1050

* * * * *

9. In § 155.1020, add definitions in alphabetical order to read as follows:

§ 155.1020 Definitions.

* * * * *

Dispersant operations group supervisor means the person in charge of the dispersant operations under the operations section of the ICS organization.

Dispersant monitor means a person who is responsible for monitoring the effectiveness of the dispersant operation through measures and guidelines established by the National Response Team, Regional Response Teams, and Area Committees.

Dispersant-application platform means the vessel or aircraft outfitted with the dispersant-application equipment acting as the delivery system for the dispersant onto the oil spill.

Dispersant spotter means the person who controls, guides, or lines up the dispersant-application platform over the spill target.

* * * * *

Effective daily application capacity or EDAC means the estimated amount of dispersant that can be applied to a discharge by an application system given the availability of supporting dispersant stockpiles.

Effective daily burn capacity or EDBC means the estimated amount of oil that can be effectively removed from the surface of the water by burning in one day.

* * * * *

Fireproof boom means an oil containment boom constructed out of fireproof materials and designed to withstand prolonged periods of exposure to heat and flame during in-situ burning operations and have a demonstrated service life that extends through multiple days of burning operations. Stainless steel and water-cooled boom designs are examples of potential fireproof boom that may be credited with extended service lives if such durability can be properly demonstrated and documented.

Fire-resistant boom means an oil containment boom constructed out of fire-retardant fabrics and reinforced internal strength members and designed to withstand exposure to heat and flame during in-situ burning operations. Fire resistant booms typically undergo material degradation when subjected to intense heat and flame for extended periods as is associated with the in-situ burning of oil. Fire resistant booms have a planning service life of one operational day.

* * * * *

Gulf Coast means for the purposes of dispersant-application requirements, the region encompassing the following Captain of the Port Zones:

(1) Corpus Christi, TX.

(2) Houston/Galveston, TX.

(3) Port Arthur, TX.

(4) Morgan City, LA.

(5) New Orleans, LA.

(6) Mobile, AL.

(7) Tampa, FL.

* * * * *

In-situ burn operations group supervisor means the person in charge of the in-situ burn operations functional group under the operations section of the ICS organization.

* * * * *

Operational effectiveness monitoring means monitoring concerned primarily with determining whether the dispersant was properly applied and how the dispersant is affecting the oil.

* * * * *

Pre-authorization for dispersant use means an agreement, adopted by a Regional Response Team or an Area Committee, that authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Pre-authorization for in-situ burning means an agreement, adopted by a Regional Response Team or an Area Committee, that authorizes the in-situ burning of oil at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Primary dispersant staging site means a site designated within a Captain of the Port zone where identified as a forward staging area for dispersant-application platforms and the loading of dispersant stockpiles. Primary staging sites would normally be the planned location where the platform would load or reload dispersants prior to departing for application at the site of the discharge and may not be the location where dispersant stockpiles are stored or application platforms are home based.

* * * * *

Quick or expedited approval for dispersant use means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

Quick or expedited approval for in-situ burning means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

* * * * *

10. In § 155.1035, revise paragraph (i)(9) and add paragraphs (i)(10), (i)(11), and (i)(12) to read as follows:

§ 155.1035 Response plan requirements for manned vessels carrying oil as a primary cargo.

* * * * *

(i) * * *

(9) For vessels that handle, store, or transport Group II through Group IV petroleum oils, the section must also separately list the resource providers identified to provide the salvage, vessel firefighting, and lightering capabilities required in this subpart.

(10) For vessels that handle, store, or transport Group II through Group IV petroleum oils (and that operate in waters where dispersant use pre-authorization or expedited approval exists) this section must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide, if appropriate, the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means. The dispersant resources to be listed within this section must include the following:

(i) The identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of § 155.1050(j).

(ii) The identification of the platform type, resource provider, location, dispersant payload, and readiness/mobilization category (as provided for in Table 7 of appendix B to this part) for each dispersant-application platform identified. Location data should identify the distance between the platform's home base and the identified primary dispersant staging site(s) for this section.

(iii) The identification of the dispersant product resource provider, location and amount for each unit of dispersant stockpile required to support the required Effective Daily Application Capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation. Location data should include the stockpile's distance to the primary staging sites where it would be loaded onto the corresponding platforms. If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (i)(10)(i) through (10)(iii) of this section.

(11) This section must also separately list the resource providers and specific resources necessary to provide, if appropriate, the in-situ burn capabilities as required in this subpart. The in-situ burn resources to be listed within this section must include the following:

(i) The identification of the amount, type, providing-resource organization, and location of in-situ burn boom identified and ensured available.

(ii) The identification of the amount, type, resource provider, and location of support vessels, identified and ensured available, to deploy, and if necessary, tow the in-situ burn boom during burning operations.

(iii) The identification of the amount, type, resource provider, and location for each ignition device required to support the required Effective Daily Burn Capacity (EDBC) of each in-situ burn package.

(iv) The identification of the amount, location, and resource provider of trained personnel necessary to support the required EDBC of each in-situ burn package.

(v) If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator for the credit level requested, the section may identify the oil spill removal organization and the level of in-situ burn removal capability being provided, and not the information required in paragraphs (i)(11)(i) through (11)(iv) of this section.

(12) The section must also separately list the resource providers and specific resources necessary to provide oil-tracking capabilities required in this subpart. The oil tracking resources to be listed within this appendix must include the following:

(i) The identification of a resource provider.

(ii) Type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil tracking requirements of § 155.1050(k).

* * * * *

11. In § 155.1040, revise paragraph (j)(9) and add paragraphs (j)(10), (j)(11), and (j)(12) to read as follows:

§ 155.1040 Response plan requirements for unmanned tank barges carrying oil as a primary cargo.

* * * * *

(j) * * *

(9) The section must also separately list the resource providers identified to provide the salvage, vessel firefighting, and lightering capabilities required in this subpart.

(10) The section must also separately list the resource providers and specific resources necessary to provide, if appropriate, the dispersant capabilities required in this subpart. The dispersant resources to be listed within this section must include the following:

(i) The identification of a primary dispersant staging site or sites to be used by each dispersant-application platform that is ensured available, through contract or other approved means, to meet the requirements of § 155.1050(j).

(ii) The identification of the type, resource provider, location, dispersant payload, and readiness/mobilization category (as provided for in Table 7 of appendix B to this part) for each dispersant-application platform identified and ensured available. Location data should identify the distance between the platform's home base and the identified primary dispersant staging sites for this section.

(iii) The identification of the resource provider, location and amount for each unit of stockpile required to support the required Effective Daily Application Capacity of each dispersant-application platform, as necessary to sustain each intended response tier of operation. Location data should include the stockpile's distance to the primary staging sites where it will be loaded onto the corresponding platforms. If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (j)(10)(i) through (10)(iii) of this section.

(11) This section must also separately list the resource providers and specific resources necessary to provide, if appropriate, the in-situ burn capabilities as required in this subpart. The in-situ burn resources to be listed within this section must include the following:

(i) The identification of the amount, type, resource provider, and location of in-situ burn boom identified and ensured available.

(ii) The identification of the amount, type, resource provider, and location of support vessels, identified and ensured available, to deploy, and if necessary, tow the in-situ burn boom during burning operations.

(iii) The identification of the amount, type, resource provider, and location for each ignition device required to support the required Effective Daily Burn Capacity (EDBC) of each in-situ burn package.

(iv) The identification of the amount, location, and resource provider of trained personnel necessary to support the required EDBC of each in-situ burn package.

(v) If an oil spill removal organization has been approved by the Coast Guard and its capability is equal to or exceeds the response capability needed by the owner or operator for the credit level requested, the section may identify the oil spill removal organization and the level of in-situ burn removal capability being provided, and not the information required in paragraphs (j)(11)(i) through (11)(iv) of this section.

(12) The section must also separately list the resource providers and specific resources necessary to provide oil-tracking capabilities required in this subpart. The oil tracking resources to be listed within this section must include the following:

(i) The identification of resource provider.

(ii) Type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil tracking requirements of § 155.1050(k).

* * * * *

12. In § 155.1050—

a. Remove and reserve paragraph (j);

b. Redesignate paragraphs (l), (m), (n), (o), and (p), as paragraphs (o), (p), (q), (r), and (s) respectively; and

c. Add new paragraphs (l), (m), and (n) to read as follows:

§ 155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.

* * * * *

(l) The owner or operator of a vessel carrying Groups II through IV petroleum oil as a primary cargo that operates in any inland, nearshore, or offshore area with pre-authorization or expedited

approval for dispersant use must identify in their response plan, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas.

(1) Dispersant response resources must be capable of commencing dispersant-application operations at the site of a discharge within 7 hours of the decision by the Federal On-Scene Coordinator to use dispersants.

(2) Dispersant response resources must include the following:

(i) Sufficient dispersant capability for application as required by paragraph (l)(3) of this section. Any dispersants identified in a response plan must be of a type listed on the National Oil and Hazardous Substances Pollution Contingency Plan Product Schedule (40 CFR part 300) as maintained by the Environmental Protection Agency.

(ii) Dispersant-application platforms capable of delivering and applying the dispersant on a discharge in the amounts as required by paragraph (l)(3) of this section. At least 50 percent of each effective daily application capacity (EDAC) tier requirement must be achieved through the use of fixed wing aircraft-based application platforms.

(iii) Dispersant-application personnel trained in and capable of applying dispersant within the performance criteria as outlined in ASTM F 1413–92. For dispersant-application systems not fully covered by ASTM F 1413–92, such as fire monitor-type applicators, adequacy of performance criteria must be documented by presentation of independent evaluation materials (*e.g.* laboratory tests field tests, reports of actual use, etc.) which document the design and performance specifications.

(iv) Dispersant-application systems ensured available, including trained personnel, that are capable of applying dispersants in accordance with the recommended procedures contained within ASTM F 1737–96.

(3) Dispersant stockpiles, application platforms, and other supporting resources must be ensured available in a quantity and type sufficient to treat a vessel's worst case discharge (as determined by using the criteria in Section 8 of appendix B to this part), or in quantities sufficient to meet the requirements in Table 155.1050(l), whichever is the lesser amount.

TABLE 155.1050(L).—TIERS FOR EFFECTIVE DAILY APPLICATION CAPABILITY

	Response time for completed application (hours)	Dispersant application—Dispersant: oil treated in gallons (Gulf Coast)	Dispersant application—Dispersant: oil treated in gallons (All Other U.S.)
Tier 1	12	8,250:165,000	4,125:82,500
Tier 2	36	23,375:467,000	23,375:467,000
Tier 3	60	23,375:467,000	23,375:467,000
Total	60	55,000:1,100,000	50,875:1,017,500

Note: Gulf Coast Tier 1 is higher due to greater potential spill size and frequency in that area, and it is assumed that dispersant stockpiles would be centralized in the Gulf area. Alternative application ratios may be considered based on submission to the Coast Guard (G–MOR) of peer-reviewed scientific evidence of improved capability.

(m) The owner or operator of a vessel carrying Groups II, IV petroleum oil as a primary cargo that operates in any inland, nearshore, or offshore area with pre-authorization or expedited approval for in-situ burning may request credit which will count toward his or her on-water mechanical recovery capability for worst case discharge response Tiers 2 and 3 up to the amounts identified in paragraph (m)(2) of this section. No credit is available for Tier 1. To receive this credit, the vessel owner or operator must identify and ensure, through contract or other approved means the availability of the necessary resources to sustain in-situ burning operations for the level of credit being requested.

(1) In-situ burn response resources must be capable of commencing ignition of oil at the site of a discharge within 12 hours of the initial authorization of the Federal On-Scene Coordinator to conduct in-situ burning to receive credit against Tier 1 requirements.

(2) In-situ burn response resources for all response tiers must include the following:

(i) Sufficient in-situ burn boom.

(ii) Vessel platforms capable of towing and tending in-situ burn boom in the operating environments where credit is requested.

(iii) Sufficient ignition devices to support burning operations.

(iv) Personnel trained in conducting in-situ burning operations.

(v) All equipment ensured available as required in paragraphs (m)(2)(i) through (m)(2)(iii) of this section must be capable of sustained use in the operating environments for which credit is requested.

TABLE 155.1050(M).—MAXIMUM ALLOWABLE TIERS FOR EFFECTIVE DAILY BURN CAPABILITY

	Response time for completed burning [1] (hours)	Daily burn capacity (EDBC) [2] (bbls)	Cumulative equipment requirements				
			Fireproof boom (feet) [3]	Fire resistant boom (feet) [3]	Hand-held igniter	Heli-torch igniter [4]	Support vessels
Tier 1	24	5,000	500	500	4	1	2
Tier 2	48	10,000	1,000	1,500	12	1	4
Tier 3	72	10,000	1,000	2,500	20	1	4

[1] Tiered response times represent the maximum allowable time from the instant when in-situ burning is authorized for use by the Federal On-scene coordinator to the completion of the operational burn period for that tier.

[2] EDBC amounts for Tiers 2 and 3 above may be applied against the corresponding tiers for on-water mechanical recovery (EDRC) as required to respond to an owner or operator's worst case discharge.

[3] Assumes fireproof boom is reusable for all three tiers. Fire resistant boom will be consumed by the fire and therefore, require replacement at the start of each new operational period.

[4] If a helitorch igniter system is identified and ensured available, one-time igniters are not required. Alternative application ratios may be considered based on submission to the Coast Guard (G–MOR) of peer-reviewed scientific evidence of improved capability.

(3) In areas that have ice-bound conditions throughout prolonged periods of the year, credit levels for EDBC against on-water mechanical recovery requirements can be elevated, as deemed appropriate, by the respective Area Committee for the area where the extra credit is being considered. Extra EDBC levels are at the discretion of the Area Committee, however, it is not recommended that EDBC levels comprise more than 50 percent of the total on-water recovery capability for a planholder in any one particular Captain of the Port area.

(n) The owner or operator of a vessel carrying Groups I through IV petroleum oil as a primary cargo must identify in the response plan, and ensure the availability of, through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities.

(1) Aerial oil tracking resources must be capable of arriving at the site of a discharge within three hours from the time of the initial notification of the discharge for a distance up to 50 nautical miles from shore. Aerial oil tracking resources should plan on a minimum of two hours for a recall period and one hour of flight time to arrive on-scene.

(2) Aerial oil tracking must include the following resources:

(i) Appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking in paragraph (n)(1) of this section.

(ii) Sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill operations, commencing upon initial assessment, and capable of coordinating on-scene cleanup operations, including dispersant, in-situ burn, and mechanical recovery operations.

(iii) Observation personnel must be trained in the protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity. Observation personnel must be trained in the use of assessment techniques as outlined in ASTM F 1779–97, and familiar with the use of other guides, such as NOAA's ''Open Water Oil Identification Job Aid for Aerial Observation,'' and NOAA's ''Characteristic Coastal Habitats'' Guide.

(iv) Aerial oil tracking resources must be capable of supporting oil spill removal operations continuously for three ten-hour operational periods during the initial seventy-two hours of the discharge.

* * * * *

13. In appendix B to part 155, revise section 8, and following Table 6, add Tables 7, 8, and 9 to read as follows:

Appendix B to Part 155—Determining and Evaluating Required Response Resources for Vessel Response Plans

* * * * *

8. Determining the Capability of High-Rate Response Methods

8.1 Calculating Cumulative Dispersant-Application Capacity Requirements.

8.1.1. A vessel owner or operator should plan either for a dispersant capacity to respond to a vessel's worst case discharge (WCD) of oil, or for the amount of the dispersant resource capability as required by § 155.1050(l)(3) of this part, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

8.1.2. Determine the volume of oil carried in gallons, and the appropriate cargo group for the type of petroleum oil carried (Groups II, III, IV). For vessels carrying mixed cargoes, assume a total cargo volume using the cargo group that constitutes the largest portion of the oil being carried, or the cargo group with the smallest natural dissipation factor.

8.1.3. Multiply the total cargo amount in gallons by the natural dissipation factor for the appropriate cargo group as follows: Group II factor is 0.50; Group III factor is 0.30, and Group IV factor is 0.10. This represents the amount of cargo that can be expected to be lost to natural dissipation. Subtract the cargo amount lost to natural dissipation from the total cargo amount carried to determine the remaining oil cargo available for treatment by dispersant-application.

8.1.4. Multiply the cargo available for dispersant treatment by the dispersant to oil planning application ratio of 1 part dispersant to 20 parts oil (0.05). The resultant number represents the cumulative total dispersant-application capability that must be ensured available within the first 60 hours.

8.1.5. The following is an example of the procedure described above: A vessel with a 1,000,000 gallons capacity of crude oil (specific gravity 0.87) will transit through an area with pre-authorization for dispersant use in the nearshore environment on the U.S. East Coast.

Cargo carried: 1,000,000 gallons, Group III oil.

Natural Dissipation Factor for Group III: 30%

General formula to determine oil available for dispersant treatment: ((WCD)—[(WCD) × (natural dissipation factor)] = available oil.

E.g., 1,000,000 gal—(1,000,000 gal × 0.30) = 700,000 gallons available oil.

Cumulative application capacity = Available oil × planning application ratio (1 gal dispersant to 20 gals oil = 0.05), 700,000 gal oil × (0.05) = 35,000 gallons cumulative dispersant-application capacity.

The requirements for cumulative dispersant-application capacity (35,000) for this vessel's WCD is less than the overall dispersant capability cap for non-Gulf Coast waters as required by § 155.1050(l)(3) of this part. As such, this vessel would not need to meet the entire amount for Tier 3, but would be required to meet the following tier requirements (totaling 35,000 gallons application):

Tier 1 4,125 gallons
Completed in 12 hours
Tier 2 23,375 gallons
Completed in 36 hours
Tier 3 7,500 gallons
Completed in 60 hours

8.2 Determining Effective Daily Application Capacities ''EDAC'' for Dispersant Response Systems.

8.2.1. This section discusses methods to be used for the purposes of determining the effective daily application capacity of a dispersant response system. This methodology considers mobilization factors for dispersant platforms as well as dispersant stockpiles and platform application rates (as published in the 1999 Summary Report of Public Workshop for Response Plan Equipment CAPs).

8.2.2. For each Captain of the Port Zone where a dispersant response capability is required, the response plan must identify the following:

- The type, number, and location of each dispersant-application platform intended for use in meeting dispersant delivery requirements specified in § 155.1050(l)(3) of this part.
- The amount and location of available dispersant stockpiles to support each platform.
- A primary staging site for each platform that will serve as its base of operations for the duration of the response.

8.2.3. Using the readiness factors from Table 7 of this appendix and platform capability factors in Table 8 of this appendix, calculate mobilization times and dispersant delivery capabilities for each platform. For each aircraft platform—

MP = R + T + L
MP = Mobilization of platform
R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant application system for transport)
T = Transit time it takes for dispersant-application system to be transported to the staging area mobilization (in hours)
L = 1 hour to load dispersant at the staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours

for Tier 2, and less than 48 hours for Tier 3.

For each stockpile—

MS= R + T + L
MS = Mobilization of Stockpile
R = Recall of loading personnel/ transportation assets and loading dispersant for transport if applicable
T = Transit time to staging site
L = 1 hour for loading on delivery platform. Note that transit time to the spill site is included in delivery capability calculations for aircraft but not for vessels. Total time for stockpile mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3;

Delivery capability for Tier 1 should be calculated as follows:

R/10 × 12—T
R = EDAC Rate (from Table 8)
10 = 10 hours in operational period
12 = assumed hours of daylight for planning purposes
T = mobilization time (either for platform or stockpile time whichever is greater). Delivery capability for all Tier 1 platforms should at least equal amount specified for Tier 1 in § 155.1050(l)(3) of this part; and

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 8 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this part.

For each vessel platform—

MP = R + T + L
MP = Mobilization of platform
R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant-application system for transport
T = Transit time (time it takes for dispersant application system to be transported to the staging area mobilization Transit time from staging site or usual location of facility to the spill site
L = 1 hour to load dispersant at staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3. Usual location of the vessel is the location where the vessel is typically employed when not engaged in dispersant-application operations. Spill site is the location in the Captain of the Port zone furthest from the dispersant platform staging site or the usual location of the vessel.
MS = R + T
MS = Mobilization of Stockpile
R = Recall of loading personnel/ transportation assets and loading dispersant for transport if applicable
T = Transit time to staging site. Total time for stockpile mobilization should be less than 6 hours for Tier 1, less than 23 for hours Tier 2, and less than 47 hours for Tier 3 to allow time for loading dispersant on delivery platform.

Delivery capability for tier 1 should be calculated as follows:

R/10 × 12—T
R = EDAC Rate (from Table 8 of this appendix)
10 = 10 hours in operational period
12 = assumed hours of daylight for planning purposes
T = mobilization time either for platform or stockpile time whichever is greater. Delivery capability for all Tier 1 platforms should be at least equal the amount specified for Tier 1 in § 155.1050(l)(3) of this part.

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 8 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this part.

8.2.3.1 EDAC must be calculated for each platform and supporting stockpile, and added together as appropriate to meet the dispersant-application tier requirements.

8.2.3.2 The following is an example of the procedure described above: A plan lists a stockpile of 5,000 gallons of dispersant located 35 miles from a central staging site (a coastal airport) but not loaded for transport, and a DC–3 aircraft based at a facility approximately 75 miles from the staging site. The DC–3 is dedicated to dispersant spraying operations. The EDAC allowed toward Tier 1 for this dispersant-application system can be calculated as follows:

Stockpile: Amount − 5000 gallons.

Stockpile Mobilization time: R = 4 hours, T = 35 miles/35 miles per hour or 1 hour, hours = 4 + 1 + 1 hour loading = 6 hours.

Platform Mobilization: R = 2 hours, T = 75 miles/150 miles per hour or 0.5 hours + 1 hour loading at staging site = 2 + 1.5 + 1 = 3.5 hours.

Operational period ''OP'' = 12 hours daylight—5 hours (use longer of stockpile or platform mobilization time) = 7 hours (i.e., commencing 6 hours after notification of approval and continuing until the end of the first 12 hour daylight period).

Tier 1 delivery capability for this platform = (Table 8) EDAC rate = 5000 gallons/10 hours × 6 = 3000 gallons application capacity.

8.2.3.3 Table 8 of this appendix is based on average characteristics (for planning and review purposes) for most types of application platforms typically used for spraying dispersants. However, other platform types do exist, and additional platform types are expected to develop with time. The Coast Guard will review requests to establish EDAC rates for other platform types at their discretion. EDAC calculations for additional platforms will use the same methodology as used to establish the existing rates already contained within Table 8 of this appendix.

8.3 Determining Effective Daily Burn Capacities ''EDBC'' for In-situ Burn Response Systems.

8.3.1 For the purposes of determining the effective daily application capacity of in-situ burn resources, the information within this section applies.

8.3.2 For each Captain of the Port zone where an in-situ burn response capability is ensured available, the response plan must identify the following:

- The type, location, and amount of in-situ burn boom available.
- The amount and location of available ignition sources. If ignition system ensured available is a helitorch, a source of pilots trained in the use of the helitorch and suitable aircraft must be identified that can respond within the required response times.
- The identification of supporting vessels and trained operators capable of towing, deploying, and tending the fire boom.

8.3.3 Using the readiness factors from Table 9, mobilization times are calculated for each in-situ burn system. The General Formula for calculating Tier 1 mobilization time is as follows:

T = (MB + MV) or (MH), whichever is greater (in hours)
T = Total Mobilization
MB = Mobilization of In-situ burn boom/ hand held igniters
MB = R + L + T1
R = Recall of loading personnel/ transportation assets
L = Loading to truck
T1 = Transit time to vessel staging site
MV = Mobilization of Support Vessels = L + T2
L = Boom loading to vessel
T2 = Transit time to spill site
MH = Mobilization of Helitorch = R + T1 + L + T2
R = Recall of personnel/platform +
T1 = Transit time to staging site
L = Torch loading
T2 = Transit time to spill site

8.3.4 The mobilization times are used to ensure that a full 12 hour ''operational period'' or ''OP'' for in-situ burning is available for Tier 1. All operational period calculations assume approval for use is granted at zero hour, and that a maximum of 12 hours is available to support oil collection and burning within the initial 24-hour period. The available time allowed to support in-situ burning is slightly longer (12 hours) in comparison to dispersant operations (10 hours) as in-situ burning operations can continue on for a limited period during darkness where dispersant spraying would be suspended due to decreased visibility. The 12-hour period is divided into four 1-hour burning cycles, each preceded by a 2-hour oil containment and collection cycle.

8.3.4.1 The general formula for calculating the tier 1 operational period of a system is: Operational Period ''OP'' = 24 hours—(the mobilization time for the boom + platform or the mobilization time for the supporting helitorch igniter (if used), whichever is greater.

8.3.5 For planning purposes, an in-situ burning system is comprised of the following minimum components that must be ensured available: minimum 500 ft. fire boom, two support vessels to tend and tow the boom, and four hand-held igniters or one helitorch system. 500 ft. sections of fire resistant boom are credited with a 5,000 bpd burning capacity, and are also considered to have a service life of one operational period. For example, a second (Tier 2) and third (Tier 3) section of 500 ft. boom must be ensured

available if the planholder desires to claim a 5,000 bpd credit for all three tiers.

8.3.6 Planholders may request extensions of boom service lives beyond one operational period for ''fire-proof'' type boom, such as stainless steel, or water-cooled boom designs, when such boom has been tested and can be adequately documented as providing extended service capabilities. Planholders may receive credit for multiple operational periods using the same 500 ft. section of boom dependent upon the documentation presented to the Coast Guard for review and approval.

* * * * *

TABLE 7.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall period ''R''	Transit to staging Site ''T'' [1]	Transit to Spill Site ''S'' [2]
Aircraft dedicated to dispersant response operations	2	D/150+1	N/A
Aircraft dedicated to spraying operations	3	D/150+1	N/A
Aircraft nondedicated	4	D/150+1	N/A
Vessel dedicated (preloaded)	2	0	D/5
Vessel dedicated (not loaded)	2	D/5+1	D/5
Vessel non-dedicated (preloaded)	4	0	D/5
Vessel non-dedicated (not loaded)	4	D/5+1	
Dispersant Stockpile (preloaded for transport to staging site)	2	D/35	D/5
Dispersant Stockpile (not preloaded for transport to staging site)	[3]4	D/35	N/A

[1] Transit times to staging site for aircraft based on average speed of advance of 150 kts and ''D'' distance between aircraft home base and forward staging site for dispersant operations. Transit times for vessels from usual location of vessel to staging site based on average speed of advance of 5 kts and ''D'' is distance to spill site ''D''. Speed waivers for transit speeds may be granted based on actual performance of platform. Transit times for stockpile based on average speed of advance of 35 mph by truck and ''D'' distance from stockpile location to dispersant staging site, such as a coastal airport.

[2] Transit times to spill site for aircraft is included in the calculations contained in table 8 because of the relatively high speed of these platforms compared to vessels. Transit times for vessels to the spill site are calculated from the usual location of vessel to staging site based on average speed of advance of 5 kts and ''D'' is distance to spill site ''D''. Speed waivers for transit speeds may be granted based on actual performance of platform.

[3] Assume 2 hours to load dispersant stockpiles on to trucks for transport to the staging site.

[4] For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

TABLE 8.—PLATFORM CAPABILITY FOR OIL DISPERSANT DELIVERY OVER A 10–HOUR PERIOD

Platform	Distance out (N. Miles) [1]	EDAC Rate estimated dispersant applied in 10 Hours
Helicopter	50	1,500.00
Air tractor	50	8,000.00
DC–3	50	5,000.00
DC–4	50	17,495.38
DC–6	50	18,000.00
C–130	50	32,972.28
P–3	50	20,000.00
Fire Monitor-Equipped Vessel	50	6,000.00

TABLE 9.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall Period ''R'' + ''L'' load time	Transit to staging site ''T1''	Transit to Spill Site ''T2''
In-situ Burn Boom/HH Igniters to staging sites (MB)	2 + 2 [1]	D/35 [4]	N/A
Support Vessels (MV)	NA + 2 [2]	N/A	(10 or D/5) [3]
Aircraft/helitorch igniter (MH)	4 + 1	D/90 [5]	D/90

[1] Loading Time for in-situ boom onto a truck would be zero if the boom is co-located at the same waterfront facility as the vessels used to ferry the boom to the spill.

[2] Loading Time for in-situ boom onto a support vessel would be zero if the boom is already loaded onto a support vessel.

[3] Transit times for support vessels based on average speed of advance of 5 kts and maximum distance from shore to spill site of fifty miles. Speed waivers for transit speeds may be granted based on actual performance of platform.

[4] Transit times for in-situ boom from warehouse to vessel dock based on average speed of advance of 35 mph by truck and ''D'' distance from storage location to vessel staging site.

[5] Transit times for aircraft/helitorch based on average speed of advance of 90 kts and combined distance ''D'' between aircraft home base, forward staging site and spill location.

[6] For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

Dated: April 12, 2002.

Paul J. Pluta,

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

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BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK21

Definition of Psychosis for Certain VA Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to define the term ''psychosis.'' The term is used but not defined in certain statutes that provide presumptive service connection for compensation or health care purposes. The intended effect of this proposed amendment is consistent application of these statutory provisions.

DATES: Comments must be received on or before December 10, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK21.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7284.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Provisions

There are three sections in title 38, United States Code, that refer to psychosis in veterans and are pertinent to this regulation.

Section 1112(a)(1) of title 38, United States Code, presumes that certain chronic diseases that become manifest to a compensable degree within one year of a veteran's separation from active service were incurred or aggravated during that service. The term ''chronic disease,'' as defined at 38 U.S.C. 1101(3), includes ''psychoses.'' Section 3.309(a) of title 38, Code of Federal Regulations, implements 38 U.S.C. 1112(a)(1) and 1101(3).

Section 1112(b)(8) of title 38, United States Code, presumes that a ''psychosis'' that becomes manifest to a compensable degree at any time after service in a former prisoner-of-war was incurred or aggravated during that service. Section 3.309(c) of title 38, Code of Federal Regulations, implements this statutory provision.

Section 1702 of title 38, United States Code, presumes that ''active psychosis'' that develops in certain wartime veterans within two years of separation from active service was incurred during active service. This presumption is only for purposes of hospital, nursing home, domiciliary, and medical care.

None of these statutory or regulatory provisions defines the term ''psychosis'' or specifies which mental disorders are included in that category. In addition, the legislative histories of the relevant statutory provisions provide no guidance with regard to interpreting these terms.

Medical Interpretation

VA's Schedule for Rating Disabilities requires that mental disorders be diagnosed according to the diagnostic criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (APA Manual), Fourth Edition (DSM–IV). Although the term ''psychosis'' continues to be widely used, it has not served as an organizing principle in the APA Manual since 1980 when DSM–III was published. DSM–IV does not have a ''psychosis'' category of mental disorders.

Appendix C of DSM–IV, at page 770, states that the term ''psychotic'' has historically had a number of definitions, ''none of which has achieved universal acceptance.'' It therefore appears that the term ''psychosis,'' and its plural form ''psychoses,'' have no commonly accepted meaning.

Proposed Definition

DSM–IV, Appendix A, pages 689 and 694–695, in addressing differential diagnoses of psychotic disorders, generally includes mental disorders in which at least one of the following psychotic symptoms is a defining feature: delusions; hallucinations; disorganized speech; or grossly disorganized behavior. In our judgment, these defining features are reasonable and appropriate for VA purposes.

According to DSM–IV, pages 19 and 694–695, the following mental disorders contain at least one of the above-mentioned DSM–IV, Appendix A, psychotic symptoms: psychotic disorder due to a general medical condition; substance-induced psychotic disorder; schizophrenia; schizophreniform disorder; schizoaffective disorder; mood disorder with psychotic features; delusional disorder; psychotic disorder not otherwise specified; brief psychotic disorder; and shared psychotic disorder. If one of these conditions is diagnosed in a veteran, all other regulations involved in determining entitlement to service connection must be considered.

We propose to add new § 3.384 to title 38, Code of Federal Regulations, to state that for purposes of 38 CFR part 3, those conditions are defined as psychoses.

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 rule would 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. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment 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. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment 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 number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits,

Health care, Pensions, Veterans, Vietnam.

Approved: October 4, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be 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 3.384 is added under the undesignated center heading ''Rating Considerations Relative to Specific Diseases'' to read as follows:

§ 3.384 Psychosis.

For purposes of this part, the following conditions are considered psychoses:

(a) Psychotic disorder due to a general medical condition;

(b) Substance-induced psychotic disorder;

(c) Schizophrenia;

(d) Schizophreniform disorder;

(e) Schizoaffective disorder;

(f) Mood disorder with psychotic features;

(g) Delusional disorder;

(h) Psychotic disorder not otherwise specified;

(i) Brief psychotic disorder; and

(j) Shared psychotic disorder.

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

[FR Doc. 02–25995 Filed 10–10–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[IN144–1b; FRL–7390–4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to Particulate Matter (PM) control requirements for certain natural gas combustion sources in Indiana. EPA also proposes to approve various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM nonattainment area. The Indiana Department of Environmental Management (IDEM) submitted these revisions to Title 326 of the Indiana Administrative Code, Section 6–1 (326 IAC 6–1) as a requested revision to the Indiana State Implementation Plan (SIP) on December 19, 2001. The requested SIP revision eliminates PM emissions limits on certain natural gas combustion sources in specified counties, and replaces the limits with a requirement that such sources may only burn natural gas. The requested SIP revision also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the requested SIP revision adds PM contingency measures for the Lake County, Indiana PM nonattainment area.

DATES: EPA must receive written comments on this proposed rule by November 12, 2002.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. *You may inspect copies of the State submittal and EPA's analysis of it at:* Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

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

Table of Contents

I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

We are proposing to approve revisions to PM control requirements for certain natural gas combustion sources in Indiana. We are also proposing to approve various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM nonattainment area. The requested SIP revision eliminates PM emissions limits on certain natural gas combustion sources in specified counties, and replaces the limits with a requirement that such sources may only burn natural gas. The requested SIP revision also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the requested SIP revision adds PM contingency measures for the Lake County, Indiana PM nonattainment area.

II. Where can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: September 19, 2002.

William E. Muno,

Acting Regional Administrator, Region 5.

[FR Doc. 02–25855 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV047–6021b; FRL–7391–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing emission limitations for hot mix asphalt plants. In the Final Rules section of this **Federal Register**, EPA is approving West Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 12, 2002.

ADDRESSES: Written comments should be mailed to Walter K. Wilkie, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, at the EPA Region III address above, or by e-mail at Lewis.Janice@epa.gov. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to address requirements for the Operation of Hot Mix Asphalt Plants. The revision consists of the adoption of Rule 45CSR3—To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants. For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 30, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–25853 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 078–0030; FRL–7393–2]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a simultaneous limited approval and limited disapproval of revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) concerning definitions, volatile organic compound (VOC) emissions from dry cleaning and spray painting and as well as visible emissions from mobile equipment. We are also proposing full approval of revisions to the ADEQ portion of the Arizona State SIP concerning VOC emissions from petroleum storage tanks and visible emissions from mobile equipment.

We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by November 12, 2002.

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

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

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

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

A copy of the rule may also be available via the Internet at *http://www.sosaz.com/public_services/Title_18/18_table.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 947–4118.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules proposed for limited approval and limited disapproval with the date that they were adopted and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ADEQ	R18–2–701	Definitions	11/15/93	07/15/98
ADEQ	R18–2–725	Standards of Performance for Existing Dry Cleaning Plants	11/15/93	07/15/98
ADEQ	R18–2–727	Standards of Performance for Spray Painting Operations	11/15/93	07/15/98
ADEQ	R18–2–801	Classification of Mobile Sources	11/15/93	07/15/98
ADEQ	R18–2–802	Off-Road Machinery	11/15/93	07/15/98

On December 18, 1998, we determined that the rule submittals in Table 1 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

Table 2 lists the rules proposed for full approval with the date that they were adopted and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 2.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ADEQ	R18–2–710	Standards of Performance for Existing Vessels for Petroleum Liquids.	11/15/93	07/15/98
ADEQ	R18–2–803	Heater-Planer Units	11/15/93	07/15/98
ADEQ	R18–2–804	Roadway and Site cleaning Machinery	11/15/93	07/15/98
ADEQ	R18–2–805	Asphalt or Tar Kettles	11/15/93	07/15/98

On December 18, 1998, we determined that the rule submittals in Table 2 met the completeness criteria.

B. Are There Other Versions of These Rules?

There is no prior version of submitted Rule R18–2–701. We approved versions of submitted Rules R18–2–710, R18–2–725, and R18–2–727 as SIP Rules R9–3–510, R9–3–525, and R9–3–527, respectively, on April 23, 1982 (47 FR 17485). We approved versions of submitted Rules R18–2–801, R18–2–802, R18–2–803, R18–2–804, and R18–2–805 as SIP Rules R9–3–601, R9–3–602, R9–3–603, R9–3–604, and R9–3–605, respectively, on April 23, 1982 (47 FR 17485).

C. What Are the Changes in the Submitted Rules?

- The new Rule R18–2–701 lists 33 definitions that apply to the rules in article 7 (the R18–2–7xx series).
- Rule R18–2–710 deletes section E concerning seasonal volatility adjustments of gasoline. Section E required a seasonal schedule for delivery of four different volatility grades of gasoline.
- Rule R18–2–725 adds a definition for ''photochemically reactive solvents.''
- Rule R18–2–727 adds a definition for ''photochemically reactive solvents,'' adds a prohibition on the use of a photochemically reactive solvent in architectural coatings for commercial purposes, and adds a prohibition on the dilution of architectural coatings with a photochemically reactive solvent.
- Rules R18–2–801, R18–2–802, and R18–2–803 are renumbered, and Rule R18–2–801 is renamed.
- Rules R18–2–804 and R18–2–805 are renumbered and reformatted.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). All areas regulated by ADEQ rules are ozone attainment (*see* 40 CFR part 81), and VOC rules need not meet the requirements of RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements for VOC rules include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice,* (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
- *Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks,* EPA–450/2–77–036 (December 1977).
- *Control of Volatile Organic Emissions Petroleum Liquid Storage in External floating Roof Tanks,* EPA–450/2–78–047 (December 1978).
- *Control of Volatile Organic Emissions from Perchloroethylene Dry Cleaning Systems,* EPA–450/2–78–050 (December 1978).
- *Control of Volatile Organic Emissions from Large Petroleum Dry Cleaners,* EPA–450/3–82–009 (September 1982).
- *Control of Volatile Organic Emissions from Existing Stationary Sources—Volume I: Control Methods for Surface-Coating Operations,* EPA–450/2–76–028 (November 1976).

Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including RACT for stationary sources of PM–10. The areas regulated by the rules include PM–10 nonattainment areas. RACM/RACT is required to be fulfilled for all source categories unless there are no major sources of PM–10 and a particular source category does not contribute significantly to PM–10 levels in excess of the NAAQS (*i.e., de minimis* sources). *See General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992) and *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998, 42011 (August 16, 1994). The activities subject to Rules R18–2–801, R18–2–802, R18–2–803, R18–2–804 and R18–2–805 do not have major sources or emit a significant amount of PM–10 according to the PM–10 attainment plans in the relevant nonattainment areas and therefore the rules are not required to meet RACM/RACT control levels.

The guidance and policy documents that we used to define specific enforceability and SIP relaxation requirements for PM–10 rules are as follows:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR Part 51.
- *PM–10 Guideline Document,* (EPA–452/R093–008).

B. Do the Rules Meet the Evaluation Criteria?

The rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSDs.

C. What Are the Rule Deficiencies?

Rule R18–2–701 has the following deficiencies:

- ''Calcine'' should not be limited to only lime plants.
- ''Process Weight'' should be eliminated, because it has no meaning unless it is given for a specific time period.
- ''Process Weight Rate'' should be defined in the rule and not be based on Rule R18–2–702, which is not in the SIP.

Rule R18–2–725 has the following deficiencies:

- The enforceability is limited, because there are no monitoring and recordkeeping requirements.
- The enforceability is limited, because there is no test method given for the efficiency of recovery of solvent emmissions.

Rule R18–2–727 has the following deficiencies:

Rules R18–2–801 and R18–2–802 have the following deficiencies:

• The rules should be restricted to apply to used or in-use nonroad engines and not to new nonroad engines. Section 209(e) of the CAA prohibits states from adopting or attempting to enforce any standard relating to the control of emissions from (A) new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower and (B) new (or remanufactered) locomotives or new (or remanufactered) engines which are used in locomotives. States are not precluded under section 209(e) from regulating the use and operation of nonroad engines, including regulating daily mass emission limits (such as through an opacity standard), once the engine is no longer new, according to 40 CFR part 89, subpart A, appendix A.

• The rules should exclude from applicability locomotives or engines which are used in locomotives. Locomotives are required to be in compliance with Federal emission standards throughout their useful life.

• The rules should exempt nonroad engines from any potential requirement to retrofit in order to meet the opacity standard unless California has an identical retrofitting requirement. States are precluded from requiring retrofitting of used nonroad engines to meet emission standards, except that states may adopt and enforce retrofitting requirements identical to California retrofitting requirements which have been authorized by EPA, according to 40 CFR part 89, subpart A, appendix A.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is proposing a limited approval of Rules R18–2–701, R18–2–725, R18–2–727, R18–2–801, and R18–2–802 to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this limited disapproval is finalized, sanctions will not be imposed under section 179 of the CAA because these are not required submittals. Note that the submitted rules have been adopted by the ADEQ, and our final limited disapproval would not prevent the local agency from enforcing them.

We are also granting full approval to Rules R18–2–710, R18–2–803, R18–2–804, and R18–2–805.

We will accept comments from the public on the proposed limited approval and limited disapprovals and the proposed full approvals for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 3 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 3.—OZONE NONATTAINMENT MILESTONES

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

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 4 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 4.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 19, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–25856 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7542]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Connecticut	Newtown (Town), Fairfield County.	Pond Brook	Approximately 850 feet downstream of Currituck Road.	None	*331

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 440 feet upstream of U.S. Route 6.	None	*403
Maps available for inspection at Edmond Town Hall, 45 Main Street, Newtown, Connecticut.					
Send comments to Mr. Robert Rosenthal, Town of Newtown First Selectman, 45 Main Street, Newtown, Connecticut 06470.					
Maine	Newry (Town), Oxford County.	Sunday River	At downstream corporate limits	None	*648
			At upstream corporate limits	None	*845
		Barkers Brook	At the confluence with Sunday River	None	*651
			A point approximately 240 feet upstream of Broadway Drive.	None	*1,112
Maps available for inspection at the Newry Town Hall, 422 Bear River Road, Newry Maine.					
Send comments to Mr. Stephen Wight, Chairman of the Town of Newry Board of Selectmen, 422 Bear River Road, Newry, Maine 04261.					
New Jersey	Estell Manor (City), Atlantic County.	Tuckahoe River	Approximately 0.7 mile upstream of Cumberland Avenue.	None	*56
			At State Route 49	None	*22
		Great Egg Harbor	At the confluence of Great Egg Harbor River and South River.	None	*9
Maps available for inspection at the Estell Manor City Municipal Building, 148 Cumberland Avenue, Estell Manor, New Jersey.					
Send commments to The Honorable Gary Buck, Mayor of the City of Estell Manor, P.O. Box 102, 148 Cumberland Avenue, Estell Manor, New Jersey 08319.					
Tennessee	Rockwood (City), Roane County.	North Fork Black Creek	Approximately 300 feet downstream of South Front Avenue.	*875	*872
			Approximately 200 feet upstream of South Lenoir Avenue.	*885	*882
		East Fork Black Creek	At the upstream side of West Wheeler Street.	*879	*880
			Approximately 380 feet upstream of North Front Avenue.	*915	*912
		Black Creek Side	At the confluence with Black Creek	*868	*866
		Channel	At the divergence from North Fork Black Creek.	*875	*872
		Black Creek	Approximately 1,580 feet upstream of U.S. Route 70.	*858	*854
			Approximately 220 feet upstream of West Rockwood Street.	877	*878
		Middle Fork Black Creek	Approximatley 140 feet downstream of North Chamberlain Avenue.	*879	*878
			Approximately 2,420 feet upstream of Strang Street.	None	*924
Maps available for inspection at the City Hall Building, 110 North Chamberlain Avenue, Rockwood, Tennessee 37854.					
Send comments to The Honorable Mike Miller, Mayor of the City of Rockwood, 110 North Chamberlain Avenue, Rockwood, Tennessee 37854.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–25960 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7540]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a

newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
KENTUCKY **Whitley County (Unincorporated Areas)**				
Cumberland River	Approximately 2.1 miles upstream of State Route 25 West.	*935	*934	City of Williamsburg, Whitley
	Approximately 7.7 miles upstream of State Route 25 West.	*944	*943	County (Unincorporated Areas)

ADDRESSES

Whitley County (Unincorporated Areas)

Maps available for inspection at the City of Williamsburg Mayor's Office, 116 North Second Street, Williamsburg, Kentucky.

Send comments to The Honorable Bill Nighbert, Mayor of the City of Williamsburg, P.O. Box 119, Williamsburg, Kentucky 40769.

Whitley County (Unincorporated Areas)

Maps available for inspection at the Whitley County Courthouse, 210 Main Street, Williamsburg, Kentucky.

Send comments to The Honorable Mike Patrick, Whitley County Judge Executive, Whitley County Courthouse, P.O. Box 237, Williamsburg, Kentucky 40769.

NORTH CAROLINA **Hyde County (Unincorporated Areas)**				
Pungo River Canal	Approximately 2.5 miles upstream of Shallop Creek	None	•7	Hyde County (Unincorporated Areas)
	Approximately 1,100 feet upstream of Tiffany Trail	None	•10	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

ADDRESSES

Hyde County (Unincorporated Areas)

Maps available for inspection at the Hyde County Inspection Department, 1129 Main Street, Swan Quarter, North Carolina.

Send comments to Mr. Bryan Steens, Hyde County Manager, P.O. Box 188, 20 Oyster Creek Road, Swan Quarter, North Carolina 27885.

NORTH CAROLINA
Hoke County (Unincorporated Areas) and City of Raeford

Big Marsh Swamp	At the county boundary	None	•188	Hoke County (Unincorporated Areas)
	Approximately 100 feet downstream of Conoly Road	None	•230	
Big Marsh Swamp Tributary	At the confluence with Big Marsh Swamp	None	•198	Hoke County (Unincorporated Areas)
	Approximately 1.0 mile upstream of Old Wire Road	None	•226	
Big Middle Swamp	At the confluence with Raft Swamp	None	•205	Hoke County (Unincorporated Areas)
	Approximately 1,750 feet downstream of L McLaughlin Road.	None	•276	
Big Middle Swamp Tributary.	At the confluence with Big Middle Swamp	None	•244	Hoke County (Unincorporated Areas)
	Approximately 680 feet downstream of Laurinburg Road.	None	•254	
Buffalo Creek	At the confluence with the Lumber River	None	•235	Hoke County (Unincorporated Areas)
	Approximately 1.7 miles upstream of the confluence of Buffalo Creek Tributary 1.	None	•383	
Buffalo Creek Tributary 1	At the confluence with Buffalo Creek	None	•274	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of the confluence with Buffalo Creek.	None	•289	
Buffalo Creek Tributary 2	At the confluence with Buffalo Creek	None	•289	Hoke County (Unincorporated Areas)
	Approximately 1.3 miles upstream of the confluence with Buffalo Creek.	None	•360	
Gum Swamp	At the county boundary	None	•219	Hoke County (Unincorporated Areas)
	Approximately 120 feet upstream of Spring Hill Road	None	•230	
Jordan Swamp	At the county boundary	None	•218	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of Old Maxton Road	None	•234	
Little Creek	At the confluence with the Lumber River	None	•246	Hoke County (Unincorporated Areas)
	Approximately 1.3 miles upstream of Pendergrass Road.	None	•290	
Little Marsh Swamp	At the county boundary	None	•191	Hoke County (Unincorporated Areas)
	Approximately 30 feet downstream of Golf Course Road.	None	•222	
Little Middle Swamp	At the confluence with Raft Swamp	None	*205	Hoke County (Unincorporated Areas)
	Approximately 1,300 feet downstream of Old Maxton Road.	None	*230	
Little Raft Swamp	At the county boundary	None	*187	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of Laurinburg Road	None	*258	
Little Raft Swamp Tributary	At the confluence with Little Raft Swamp	None	*197	Hoke County (Unincorporated Areas)
	Approximately 0.4 mile upstream of Wilson Road	None	*223	
Long Swamp	Approximately 500 feet upstream of Bullard Road	None	*207	Hoke County (Unincorporated Areas)
	Approximately 0.5 mile upstream of Wilson Road	None	*225	
Lumber River	At the downstream county boundary	None	*205	Hoke County (Unincorporated Areas)
	At the upstream county boundary	None	*268	
Lumber River Tributary	At the confluence with the Lumber River	None	*259	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of Ashemont Road	None	*360	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
McNeills Mill Creek	At the confluence with Big Marsh Swamp	None	*195	Hoke County (Unincorporated Areas)
	Approximately 1,100 feet upstream of Pate Road	None	*226	
Mountain Creek	At the confluence with the Lumber River	None	*247	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of Army Road	None	*329	
Mountain Creek Tributary ...	At the confluence with Mountain Creek	None	*280	Hoke County (Unincorporated Areas)
	Approximately 0.7 mile upstream of the confluence with Mountain Creek.	None	*300	
Quewhiffle Creek	At the confluence with the Lumber River	None	*255	Hoke County (Unincorporated Areas)
	Approximately 1.2 miles upstream of Calloway Road ...	None	*347	
Quewhiffle Creek Tributary 1.	At the confluence with Quewhiffle Creek	None	*288	Hoke County (Unincorporated Areas)
	Approximately 40 feet downstream of Strother Road	None	*328	
Quewhiffle Creek Tributary 2.	At the confluence with Quewhiffle Creek	None	*289	Hoke County (Unincorporated Areas)
	At the county boundary	None	*313	
Tributary to Quewhiffle Creek Tributary 1.	At the confluence with Quewhiffle Creek Tributary 1	None	*297	Hoke County (Unincorporated Areas)
	Approximately 0.8 mile upstream of Calloway Road	None	*353	
Raft Swamp	At the county boundary	None	*182	Hoke County (Unincorporated Areas)
	Approximately 100 feet downstream of Turnpike Road	None	*279	
Raft Swamp Tributary 1	At the confluence with Raft Swamp	None	*205	Hoke County (Unincorporated Areas)
	Approximately 375 feet downstream of Redsprings Road.	None	*219	
Raft Swamp Tributary 2	At the confluence with Raft Swamp	None	*252	Hoke County (Unincorporated Areas)
	Approximately 0.4 mile upstream of the confluence with Raft Swamp.	None	*265	
Toneys Creek	At the confluence with Raft Swamp	None	*211	Hoke County (Unincorporated Areas), City of Raeford
	Approximately 800 feet downstream of Turnpike Road	None	*265	
Toneys Creek Tributary 1 ..	At the confluence with Toneys Creek	None	*215	Hoke County (Unincorporated Areas), City of Raeford
	Approximately 0.5 mile upstream of Laurinburg Road/ Interstate 40.	None	*260	

ADDRESSES

Hoke County (Unincorporated Areas)

Maps available for inspection at the Hoke County Planning and Zoning Department 227 North Main Street, Raeford, North Carolina.

Send comments to Mr. Michael N. Wood, Hoke County Manager, P.O. Box 210, 227 North Main Street, Raeford, North Carolina 28376

City of Raeford

Maps available for inspection at the Raeford City Public Works Department, 315 North Main Street, Raeford, North Carolina

Send comments to the Honorable Bob Gentry, Mayor of the City of Raeford, 315 North Main Street, Raeford, North Carolina 28376.

NORTH CAROLINA
Moore County (Unincorporated Areas)

Aberdeen Creek	At the confluence with Drowning Creek	None	*273	Moore County (Unincorporated Areas), Town of Southern Pines, Village of Pinehurst
	Approximately 250 feet downstream of Williams Drive	None	*470	
Aberdeen Creek Tributary 1	At Plantation Drive	None	*385	Town of Southern Pines
	Approximately 0.7 mile upstream of Plantation Drive	None	*442	
Aberdeen Creek Tributary 2	At the confluence with Aberdeen Creek	None	•386	Village of Pinehurst
	Approximately 0.6 mile upstream of the confluence	None	•426	
Aberdeen Creek Tributary 3	At the confluence with Aberdeen Creek	None	•386	Village of Pinehurst,
	Approximately 100 feet upstream of National Drive	None	•463	Town of Southern Pines
Aberdeen Creek Tributary 4	At the confluence with Aberdeen Creek	None	•418	Town of Southern Pines
	Approximately 1,175 feet upstream of the confluence ..	None	•442	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Deep Creek	At the confluence with Horse Creek	None	•302	Moore County (Unincorporated
	Approximately 1.0 mile upstream of the confluence with Sandy Run.	None	•367	Areas), Village of Foxfire
Drowning Creek	At the county boundary	None	•268	Moore County (Unincorporated
	Approximately 400 feet downstream of Purdue Road	None	•672	Areas)
Drowning Creek Tributary 2	At the confluence with Drowning Creek	None	•458	Moore County (Unincorporated
	Approximately 1.4 miles upstream of Martin Road	None	•545	Areas), Village of Foxfire
Horse Creek	At the confluence with Drowning Creek	None	•284	Moore County (Unincorporated
	Approximately 0.4 mile upstream of Linden Road	None	•374	Areas), Village of Pinehurst
Horse Creek Tributary 1	At the confluence with Horse Creek	None	•319	Moore County (Unincorporated
	Approximately 1.2 miles upstream of the confluence with Horse Creek.	None	•431	Areas)
Horse Creek Tributary 2	At the confluence with Horse Creek	None	•342	Moore County (Unincorporated
	Approximately 1.2 miles upstream of the confluence	None	•401	Areas), Town of Aberdeen, Village of Pinehurst
Horse Creek Tributary 4	At the confluence with Horse Creek	None	•366	Moore County (Unincorporated
	Approximately 1,300 feet upstream of Linden Road	None	•441	Areas), Village of Pinehurst
Jackson Creek	At the confluence with Drowning Creek	None	•370	Moore County (Unincorporated
	Approximately 1,975 feet upstream ofCurrie Mill Road	None	•437	Areas), Village of Foxfire
Jackson Creek Tributary 1	At the confluence with Jackson Creek	None	•373	Moore County (Unincorporated
	Approximately 0.4 mile upstream of the confluence of Tributary to Jackson Creek Tributary 1.	None	•394	Areas), Village of Foxfire
Jackson Creek Tributary 3	At the confluence with Jackson Creek	None	•415	Moore County (Unincorporated
	Approximately 1.7 miles upstream of the confluence with Jackson Creek.	None	•443	Areas)
Lake Auman	Entire shoreline of Lake Auman within community	None	•525	Moore County (Unincorporated Areas)
McCallum Branch	At the confluence with Aberdeen Creek	None	•340	Town of Aberdeen, Village of
	Approximately 0.4 mile upstream of confluence	None	•340	Pinehurst
Pinehurst Lake	Entire shoreline of Pinehurst Lake within community	None	•413	Village of Pinehurst
Quewhiffle Creek Tributary 2.	At the county boundary	None	•313	Moore County (Unincorporated
	Approximately 0.4 mile downstream of Lockey Drive	None	•401	Areas), Town of Aberdeen
Tributary to Drowning Creek Tributary 2.	At the confluence with Drowning Creek Tributary 2	None	•470	Moore County (Unincorporated Areas)
	Approximately 1,800 feet upstream of Eagle Branch Road.	None	•516	
Tributary to Jackson Creek Tributary 1.	At the confluence with Jackson Creek Tributary 1	None	•380	Moore County (Unincorporated Areas), Village of Foxfire
	Approximately 1,750 feet downstream of Jackson Springs Road.	None	•402	
Tributary to Quewhiffle Creek Tributary 2.	At the confluence with Quewhiffle Creek Tributary 2	None	•316	Moore County (Unincorporated Areas)
	Approximately 0.4 mile upstream of confluence of Quewhiffle Creek Tributary 2.	None	•343	

ADDRESSES

Town of Aberdeen

Maps available for inspection at the Aberdeen Planning Department, 115 North Poplar Street, Aberdeen, North Carolina.

Send comments to The Honorable Betsy Mofield, Mayor of the Town of Aberdeen, P.O. Box 785, 115 North Poplar Street, Aberdeen, North Carolina 28315.

Village of Foxfire

Maps available for inspection at the Foxfire Village Zoning Department, 1 Town Hall Drive, Foxfire Village, North Carolina.

Send comments to The Honorable Samuel Brandes, Mayor of the Village of Foxfire, 1 Town Hall Drive, Foxfire Village, North Carolina 27281.

Moore County (Unincorporated Areas)

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Maps available for inspection at the Moore County Planning Department, 101A Monroe Street, Carthage, North Carolina.

Send comments to Mr. David McNeil, Moore County Manager, P.O. Box 905, Courthouse Square, Carthage, North Carolina 28327.

Town of Pinebluff

Maps available for inspection at the Pinebluff Zoning Department, 325 East Baltimore Avenue, Pinebluff, North Carolina.

Send comments to The Honorable Earlene Lamb, Mayor of the Town of Pinebluff, P.O. Box 367, 325 East Baltimore Avenue, Pinebluff, North Carolina 28373.

Village of Pinehurst

Maps available for inspection at the Pinehurst Planning Department, 395 Magnolia Road, Pinehurst, North Carolina.

Send comments to Mr. Andrew Wilkinson, Pinehurst Village Manager, P.O. Box 5589, 395 Magnolia Road, Pinehurst, North Carolina 28374.

Town of Southern Pines

Maps available for inspection at the Southern Pines Planning Department, 180 Southwest Broad Street, Southern Pines, North Carolina.

Send comments to the Honorable Frank Quis, Mayor of the Town of Southern Pines, 125 Southeast Broad Street, Southern Pines, North Carolina 28387.

SOUTH CAROLINA
(City of Goose Creek, City of Hanahan, and the unincorporated areas of Berkeley County)

Lake Marion	Entire shoreline within Berkeley County	None	*77	Berkeley County (Unincorporated Areas).
Atlantic Ocean (Wambaw Creek).	From confluence with South Santee River to Forest Road 204.	None	*8	Berkeley County (Unincorporated Areas).
Atlantic Ocean (South Santee River).	From confluence with Wambaw Creek to confluence with Santee River.	None	*9	Berkeley county (Unincorporated Areas).
Atlantic Ocean (Santee River).	At confluence of South Santee River	None	*9	Berkeley County (Unincorporated Areas).
	Approximately 8.1 miles upstream of confluence of South Santee River.	None	*8	
Atlantic Ocean (Clouter Creek).	At the confluence of Cooper River and Clouter Creek ..	*14	*16	Berkeley County (Unincorporated Areas).
	Approximately 500 feet east of Cooper River Levee along Mark Clark Expressway (I–526).	None	*12	
Wando River	Approximately 1,000 feet northeast of intersection of Bluffview Lane and Cainboy Village Road.	None	*11	Berkeley County (Unincorporated Areas).
	Approximately 650 feet southeast of intersection of Ashmont Drive and Jamesbury Road.	*11	*9	
Beresford Creek	Approximately 1,000 feet south of intersection of Legrand Boulevard and Clements Ferry Road.	*10	*12	Berkeley County (Unincorporated Areas).
	Approximately 0.871 mile southeast of intersection of Greenan Court and Clemens Ferry Road.	*11	*14	
Atlantic Ocean (Goose Creek).	Approximately 1,000 feet north of intersection of Yeamanshall Road and North Rhett Avenue.	None	*11	City of Hanahan, City of Goose Creek.
	Approximately 4,500 feet south of intersection of Wilkinson Way and Torpedo Road.	None	*13	
Atlantic Ocean (Cooper River).	Approximately 1 mile east of intersection of Missile Haul Road and Bushy Park Road.	None	*13	City of Goose Creek.
	Approximately 1,000 feet south of intersection of Wilkinson Way and Red Bank Road.	None	*12	
Back River	At confluence of Cooper River	None	*13	City of Goose Creek.
	Approximately 1 mile downstream of confluence of Chicken Creek.	None	*7	
Foster Creek	At confluence with Back River	None	*7	City of Goose Creek.
	Approximately 0.5 mile downstream of Pearl Street	None	*11	

ADDRESSES

Berkeley County (Unincorporated Areas)

Maps available for inspection at the Berkeley County Office Building, 223 North Live Oak Drive, Moncks Corner, South Carolina.

Send comments to Mr. Jim Rozier, Berkeley County Supervisor, 223 North Live Oak Drive, Moncks Corner, South Carolina 29461–2331.

City of Goose Creek

Maps available for inspection at the Goose Creek City Hall, 519 North Goose Boulevard, Goose Creek, South Carolina.

Send comments to The Honorable Michael J. Heitzler, Mayor of the City of Goose Creek, P.O. Drawer 1768, South Carolina 29445.

City of Hanahan

Maps available for inspection at the Hanahan City Administration Building, 1255 Yeamans Hall Road, Hanahan, South Carolina.

Send comments to Mr. Dennis Pieper, City of Hanahan Manager, 1255 Yeamans Hall Road, South Carolina 29406–2744.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
TENNESSEE **Carter County (Unincorporated Areas)**				
Doe River	Approximately 1,150 feet downstream of U.S. Highway 19E.	None	*2,496	Carter County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Julian Road	None	*2,663	
Doe River Overland Flow	Approximately 175 feet upstream of the confluence with Doe River.	*2,569	*2,568	Carter County (Unincorporated Areas).
	At divergence with Doe River	*2,587	*2,585	
Buck Creek	At confluence with Shell Creek	None	*2,642	Carter County (Unincorporated Areas).
	Approximately 1,775 feet upstream of Buck Creek Road.	None	*2,692	
Hampton Creek	At confluence with Doe River	*2,598	*2,597	Carter County (Unincorporated Areas).
	Approximately 2 miles upstream of confluence with Doe River.	None	*2,825	
Shell Creek	At confluence with Doe River	*2,577	*2,576	Carter County (Unincorporated Areas).
	Approximately 140 feet upstream of Ellis Hollow Road	None	*2,780	

ADDRESSES

Carter County (Unincorporated Areas)

Maps available for inspection at the Carter County Courthouse, 801 Elk Avenue, Elizabethton, Tennessee.

Send comments to Mr. Truman Clark, Carter County Executive, Carter County Courthouse, 801 Elk Avenue, Elizabethton, Tennessee 37643.

VIRGINIA **Shenandoah County and Incorporated Areas**				
North Fork Shenandoah River.	At the downstream county boundary	None	*517	Shenandoah County (Unincorporated Areas), Town of Strasburg, Town of Mount Jackson, Town of New Market.
	Approximately 4,000 feet upstream of State Route 953	None	*952	
Spring Hollow	At the confluence with North Fork Shenandoah River	None	*676	Shenandoah County (Unincorporated Areas), Town of Woodstock.
	Approximately 1,500 feet upstream of State Route 763	None	*930	
Stony Creek	At the confluence with North Fork Shenandoah River	None	*781	Shenandoah County (Unincorporated Areas), Town of Edinburg.
	Approximately 400 feet downstream of State Route 760.	*780	*781	

ADDRESSES

Shenandoah County (Unincorporated Areas)

Maps available for inspection at the Shenandoah County Planning and Zoning Department, 600 North Main Street, Suite 107, Woodstock, Virginia.

Send comments to Mr. Vincent Poling, Shenandoah County Administrator, 600 North Main Street, Suite 102, Woodstock, Virginia 22664.

Town of Edinburg

Maps available for inspection at the Edinburg Town Office, 101 Town Hall Avenue, Edinburg, Virginia.

Send comments to The Honorable Daniel J. Harshman, Mayor of the Town of Edinburg, P.O. Box 85, Edinburg, Virginia 22824.

Town of Mount Jackson

Maps available for inspection at the Mount Jackson Town Hall, 5945 Main Street, Mount Jackson, Virginia.

Send comments to The Honorable Joseph Williams, Mayor of the Town of Mount Jackson, P.O. Box 487, Mount Jackson, Virginia 22842.

Town of New Market

Maps available for inspection at the New Market Town Office, 9418 John Sevier Road, New Market, Virginia.

Send comments to The Honorable Ripley Click, Mayor of the Town of New Market, 217 Shenvalee Drive, New Market, Virginia 22844.

Town of Strasburg

Maps available for inspection at the Strasburg Town Office, 174 East King Street, Strasburg, Virginia.

Send comments to The Honorable Richard Orndorff, Jr., Mayor of the Town of Strasburg, P.O. Box 351, Strasburg, Virginia 22657.

Town of Toms Brook

Maps available for inspection at the Toms Brook Town Office, 3356 South Main Street, Toms Brook, Virginia.

Send comments to The Honorable Philip Fauber, Mayor of the Town of Toms Brook, Town Hall, P.O. Box 162, 3356 South Main Street, Toms Brook, Virginia 22660.

Town of Woodstock

Maps available for inspection at the Woodstock Municipal Building, 135 North Main Street, Woodstock, Virginia.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Send comments to The Honorable William C. Moyers, Mayor of the Town of Woodstock, Municipal Building, 135 North Main Street, Woodstock, Virginia 22664.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–25962 Filed 10–10–02; 8:45 am]

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Notices

Federal Register
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Friday, October 11, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number LS–02–13]

Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Agricultural Marketing Act of 1946 to require the Department of Agriculture's Agricultural Marketing Service (AMS) to issue country of origin labeling guidelines for voluntary use by retailers who wish to notify their customers of the country of origin of beef (including veal), lamb, pork, fish, perishable agricultural commodities, and peanuts. The guidelines contained within this notice include definitions that can be used by retailers and their suppliers and understood by other market participants, to facilitate the voluntary labeling or identification of commodities covered by this program by their respective country of origin. These voluntary guidelines also outline what the Agency believes represents the framework of a consumer notification, product marking, and recordkeeping program that would be required to carry out this program. AMS is committed to providing the industry and consumers with a workable voluntary program that will carry out the intent of the law. Public Law 107–171 also requires the Secretary to promulgate a regulation for mandatory labeling by September 30, 2004. Development of this mandatory regulation will begin in April 2003 and will likely be based on these voluntary guidelines from the current interim period as well as related input the Agency receives. AMS encourages submissions on the utility of these voluntary guidelines during the next 180 days. The forthcoming mandatory regulation will be developed through the rulemaking process, which will include a proposal and an opportunity for public comment. Although the benefits and costs of the voluntary program are difficult to quantify, the Agency believes that retailers will choose to participate if the benefits outweigh the costs. However, as the Agency moves toward the development of the regulation that will implement the mandatory program as required by Public Law 107–171, information concerning the benefits and the estimated or actual costs of implementing a program in compliance with the voluntary guidelines will be of great benefit to the Agency.

DATES: These voluntary guidelines are effective October 11, 2002. Submissions must be received by April 9, 2003.

ADDRESSES: Send written submissions to: Country of Origin Labeling Program, Agricultural Marketing Service, USDA, Stop 0249, Room 2092–S, 1400 Independence Avenue, SW, Washington, D.C. 20250–0249, or by fax to (202) 720–3499, or by e-mail to *cool@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by phone at: (202) 690–0262, or via e-mail at: *eric.forman@usda.gov*; or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by phone at: (202) 720–5705, or via e-mail at: *william.sessions@usda.gov*. Additional information may also be obtained over the Agency's website at: *www.ams.usda.gov/cool/*.

SUPPLEMENTARY INFORMATION:

Background

Section 10816 of Public Law 107–171 (7 U.S.C. 1638–1638d) amends the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621 *et seq.*) to require retailers to inform consumers of the country of origin for covered commodities. The term ''covered commodity'' is defined in the law as muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts. The terms ''retailers'' and ''perishable agricultural commodities'' are defined in the law as in the Perishable Agricultural Commodities Act of 1930 (PACA) (7 U.S.C. 499a(b)).

Interest has been expressed in expanding these covered commodities to include other commodities, such as pecans. The Department of Agriculture (USDA), however, does not have the authority to include commodities in this program other than those specified in the statute. For agricultural commodities that cannot be covered under these guidelines, the Department has different authority to develop voluntary user-fee programs to certify that a non-covered commodity is a product of the United States. Under such a program, a participating handler or processor could label its product as a USDA certified product of the United States. Any person interested in such a program should contact the Agricultural Marketing Service (AMS).

In the case of beef, lamb, and pork products, the law states that a retailer may use a ''United States Country of Origin'' label only if the product is from an animal that was exclusively born, raised, and slaughtered in the United States. However, in the case of beef, this definition also includes cattle exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States. In the case of farm-raised fish and shellfish, the product must be fish or shellfish hatched, raised, harvested, and processed in the United States. For wild fish and shellfish, it must either be harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In addition, the label must distinguish between farm-raised and wild fish products. In the case of peanuts and perishable agricultural commodities, they must be exclusively produced in the United States to carry that label.

To convey country of origin information to consumers, the law states that retailers may use a label, stamp, mark, placard, or other clear and visible sign on the covered commodity, or on the package, display, holding unit, or bin containing the commodity at the

final point of consumption. Food-service establishments—such as restaurants, bars, food stands, and similar facilities—are exempt.

The law makes reference to the definition of ''retailer'' in the PACA as the meaning of ''retailer'' for the application of country of origin labeling requirements. Under the PACA, a ''retailer'' is any person who buys or sells perishable agricultural products solely for sale at retail with a cumulative invoice value in any calendar year of more than $230,000. This definition excludes butcher shops, fish markets, and small grocery stores that either purchase fruit and vegetables at a level below this dollar volume threshold or do not purchase fruit and vegetables at all.

The law directs the Secretary to first issue guidelines for voluntary labeling and then, by September 30, 2004, to promulgate requirements for mandatory labeling. When the mandatory labeling program takes effect, the law states that the Secretary may require any person who prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable recordkeeping audit trail. According to the law, under the mandatory labeling program, suppliers are required to provide information to retailers indicating the country of origin of the covered commodity. Although the law states that the Secretary shall not use a mandatory identification system to verify country of origin under the mandatory labeling program, it does state that the Secretary may use, as a model, identity verification programs already in place. The law also provides enforcement procedures for the mandatory labeling program that includes fines, civil penalties, and cease and desist orders for retailers, packers, or other persons for willful violations.

Key Components of the Law

These voluntary guidelines describe a program that allows retailers, as defined by the law, to label covered commodities by their country of origin. It is important to note that industry is not required to participate in this voluntary labeling program that will be in effect until a mandatory program is implemented. However, for those retailers and other market participants who choose to adopt these voluntary guidelines, all of the requirements contained within must be followed. It also is important to note that retailers and other market participants can place country of origin information on labels independent of these voluntary guidelines, provided that current labeling laws are followed.

Defining a Covered Commodity

Covered commodities are muscle cuts of beef, lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish; wild fish; perishable agricultural commodities; and peanuts.

Ingredient in a Processed Food Item

The law excludes food items from country of origin labeling when a covered commodity is an ''ingredient in a processed food item.'' However, Public Law 107–171 does not define a ''processed food item.'' Therefore, the Agency must define what constitutes a ''processed food item'' for each covered commodity in the context of Public Law 107–171 for the purposes of these guidelines.

In developing the definition of ''processed food item'', the Agency considered using existing definitions of processing. For example, the National Organic Program defines processing as: cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container. While this definition was useful as a starting point, the Agency believes that such a definition would exempt commodities that Congress clearly intended to be subject to these guidelines. For example, with the coverage of muscle products of beef, lamb, and pork, Congress clearly intended that the slaughtering, cutting, and chilling of these commodities would not exempt them from the guidelines.

The Agency considered defining this exemption to exclude any ''ingredient'' listed on an ingredient label. Such an interpretation, however, would exclude many products that Congress intended to be covered by this statute. For example, if such an interpretation would be adopted, an item such as bagged lettuce, which lists only lettuce on the ingredients statement, could be excluded. The Agency believes that the mere listing of an otherwise covered commodity in an ingredient statement or list on a packaged covered commodity does not meet the threshold set forth in the law.

To determine when a covered commodity is an ingredient in a processed food item and excluded from these guidelines, the Agency has chosen to define a ''processed food item'' in two ways. First, a processed food item is defined as a combination of ingredients that result in a product with an identity that is different from that of the covered commodity. Such items include raw salmon when combined with other ingredients to produce sushi and peanuts when combined with other ingredients to produce a candy bar. However, blended and mixed covered commodities, which will be discussed in more detail later in this notice, where the covered commodities retain their identity are still covered by these guidelines. Such items include mixed vegetables such as peas and carrots.

Second, a commodity that is materially changed to the point that its character is substantially different from that of the covered commodity is also deemed to be a processed food item. This includes, but is not limited to, changes that occur as a result of cooking, curing, or restructuring. However, covered commodities that retain their identity when combined with other ingredients, such as water enhanced case ready steaks, are not considered to be ''processed food items'' under these guidelines. To the extent that this applies to specific covered commodities, further guidance is provided under the particular section for each category of covered commodity.

Whole Muscle Beef, Lamb, and Pork

All raw fresh and frozen whole muscle beef, lamb, and pork products are covered under these guidelines unless they are an ingredient in a processed food item or have been materially changed before retail marketing.

Where there are added ingredients, so long as the character of the whole muscle beef, lamb or pork is retained, the resulting products are covered. This includes such products as needle-tenderized steaks; seasoned, vacuum packaged pork loins; and water enhanced case ready steaks, chops and roasts. These items would be covered because combination of the ingredients and the whole muscle beef, lamb, or pork in does not result in a product with an identity that is different from that of the covered commodity.

In situations where the whole muscle beef, lamb, and pork is an ingredient in a processed food item and the identity of the processed food item is significantly different from that of the covered commodity, the processed food item is excluded from country of origin labeling. For example, items such as ready-to-cook Beef Wellington would be exempt because the combination of ingredients with the covered commodity (muscle cut of beef) creates a product with an identity different from the covered commodity.

When items are materially changed to the point that they do not retain their raw, whole muscle character they would also be excluded from country of origin labeling. This includes such products as restructured steaks and lamb pita meats, which contain pieces of whole muscle beef, pork or lamb that are formed back together. The cooking and curing of products (*e.g.*, the addition of nitrites) also excludes products from labeling. Examples of these products include corned beef briskets and bacon. This is because cooked and cured products, including raw whole muscle cured products, are functionally different products and are not typically marketed with fresh and frozen whole muscle meats at a retail establishment, but instead they are marketed with other excluded meat products.

Ground Beef, Lamb, and Pork

Public Law 107–171 specifically covers ''ground beef, ground lamb, and ground pork.'' The FSIS Food Standards and Labeling Policy Book (1998) defines products labeled as ground meats as not containing added water, cereal, soy derivatives, or other extenders. The Policy Book also specifically defines ground beef as not being able to have any salt, sweetening agents, flavorings, spices, or other seasonings added.

Using the FSIS standards for ground meat and ground beef as a guide, the Agency does not believe that any added ingredient items or further processed products produced from ground beef, ground lamb, or ground pork are covered.

Fresh and Frozen Fruits and Vegetables

The Perishable Agricultural Commodities Act defines perishable agricultural commodities as ''any of the following, whether or not frozen or packed in ice: Fresh fruits and vegetables of every kind and character; and * * * includes cherries in brine as defined by the Secretary in accordance with trade usages''. Therefore, frozen fruits and vegetables (*e.g.*, a package of frozen strawberries, or frozen French fried potatoes made from sliced potatoes) are covered commodities and fall under these country of origin labeling guidelines.

To maintain consistency with PACA, a frozen fruit or vegetable will be a covered commodity so long as its ''kind or character'' has not been altered. Therefore, for all perishable agricultural commodities, an ''ingredient in a processed food item'' is defined to mean an otherwise covered commodity that is a constituent in a food item where the identity of the food item is different from that of the covered commodity (*e.g.*, a frozen prepared pie that includes frozen sliced apples) or is included in a package with significant other foods (*e.g.*, a frozen entree consisting of a pre-cooked meat item and frozen vegetables). Alternatively, when a perishable agricultural commodity is processed (*i.e.*, frozen so as to remain subject to the PACA) and packaged with only preservatives, seasoning, sweeteners or other minor ingredients, the covered commodity would fall under these voluntary country of origin labeling guidelines.

Peanuts

Because the vast majority of peanuts sold at retail are shelled, roasted, and salted, the Agency believes these products were intended to be covered by the law. Accordingly, shelling, roasting, salting, and flavoring of peanuts would not exclude these products from being subject to Public Law 107–171. However, further processed peanut products, including such items as candy coated peanuts, peanut brittle, and peanut butter would not be covered by country of origin labeling guidelines. Similarly, where the peanuts are ingredients in other food products, such as peanuts in a candy bar, they would be excluded.

Wild and Farm-Raised Fish and Shellfish

All fresh and frozen fish and shellfish items are covered by these country of origin labeling guidelines. All cooked and canned fish products, including such items as canned tuna and canned sardines, and restructured fish products, such as fish sticks and surimi, are excluded. Similarly, processed products where the fish or shellfish is an ingredient, such items as sushi, crab salad, and clam chowder, are excluded.

Labeling Country of Origin for Products Produced Exclusively in the United States

If following these guidelines, a retailer shall label a covered commodity as having a ''United States Country of Origin'' only if the following criteria are met:

1. Beef: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States (including animals that were born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

2. Lamb and Pork: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States.

3. Farm-raised Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish hatched, harvested, and processed in the United States.

4. Wild Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

5. Fresh and Frozen Fruits and Vegetables, and Peanuts: Covered commodities must be derived exclusively from produce or peanuts grown, packed and, if applicable, processed in the United States.

Product otherwise meeting the requirements of ''United States Country of Origin'' may retain that designation after export for further processing in a foreign country and reentry into the United States for retail sale so long as a verifiable recordkeeping audit trail is maintained and such labeling is consistent with other Federal labeling requirements.

Labeling Country of Origin for Imported Products (*i.e.*, Produced Entirely Outside of the United States)

Currently, Federal law—the Tariff Act of 1930 as amended (19 U.S.C. 1304), the Federal Meat Inspection Act, the Poultry Products Inspection Act as amended (21 U.S.C. 451 *et seq.*), and other legislation requires most imports, including food items, to bear labels informing the ''ultimate purchaser'' of their country of origin. Ultimate purchaser has been defined as the last U.S. person who will receive the article in the form in which it was imported. Containers (*e.g.*, cartons and boxes) holding imported fresh fruits and vegetables, for example, must be labeled with country of origin information when entering the United States. (**Note:** The PACA requires all labels on subject commodities to be accurate, but requires no specific labeling information.) Consumer-ready packages, including food products (*e.g.*, a vacuum packaged imported lamb leg, a bundle of asparagus, or a package of frozen strawberries), although they are packed in a box, currently must have country of origin labels on each consumer-ready package. In contrast, a retailer may take loose produce out of a container and display it in an open bin, selling each individual piece of produce that has not been labeled. A placard or other label indicating country of origin is not currently required. If the article is destined for a U.S. processor or manufacturer where it will undergo ''substantial transformation,'' that

processor or manufacturer is considered the ultimate purchaser. As a result, meat and other items have not been required to carry a country of origin mark after cutting or processing in the United States and may presently be labeled product of the United States.

Under these guidelines, the country of origin for products produced entirely outside of the United States shall be the country as specified by the requirements of existing Federal laws at the time the product arrives at the U.S. port of entry. For example, an imported lamb carcass may have actually resulted from an animal slaughtered in the exporting country but born in a country other than the exporting country. However, for the purposes of these labeling guidelines, the imported lamb carcass may be labeled as the product of the exporting country.

Using this country of origin information for imported products, retailers (and their suppliers) will have to maintain the country of origin identity of this class of products to the final point of sale of a covered commodity. So, for the imported lamb carcass example above, under these guidelines if the carcass is fabricated into cuts in the United States, a resulting lamb loin marketed at retail would be marked as product of the exporting nation as it is not eligible for a United States origin claim.

Labeling Country of Origin When the Product Has Entered the United States During the Production Process (*i.e.*, Mixed Origin That Includes the United States)

The law explicitly defines the requirements for covered commodities to be labeled with a ''United States Country of Origin.'' However, the law is considerably less prescriptive for products produced completely or in part outside of the United States. In these cases, the law only requires that retailers inform consumers at the point of sale of a covered commodity of the country of origin.

A number of animals born in foreign countries are raised and slaughtered in the United States. Also, some animals born in the U.S. are raised in foreign countries and then may be slaughtered in either that foreign country or returned to the United States for slaughter. As all three criteria (*i.e.*, born, raised, slaughtered for beef, lamb, and pork) are needed for product to be considered ''United States Country of Origin,'' the Agency has to define how the products from mixed origin animals should most appropriately be labeled. Similarly, the law states that peanuts and perishable agricultural commodities must be ''produced'' in the United States to be labeled ''United States Country of Origin.'' Since many such products may be grown, packed, or processed in different countries, the Agency must determine how they should be labeled.

The Agency recognizes that the definition provided in the law does not allow products that were produced in both the United States and in a foreign country to be called ''United States Country of Origin'' or even ''Product of the United States and Country X.'' However, the Agency also recognizes that products such as pork products derived from a pig that was born in a foreign country (*e.g.*, Country X), raised, and slaughtered in the United States cannot be labeled as ''Product of Country X'' as much of the production of that animal was in the United States. Accordingly, these guidelines provide a system where such products that were produced in both foreign markets and in the United States would be labeled to identify what production processes occurred in a foreign market and what production processes occurred in the United States, up to the point that the country of origin definition was determined. For the pork example above, the product label could either read, ''From Country X hogs Raised and Slaughtered in the United States,'' or alternatively, ''Born in Country X, Raised and Slaughtered in the United States.'' A different example would be vegetables grown in the United States, frozen (processed) in a foreign country, and imported back into the United States for retail sale. This product could be labeled as, ''Grown in the United States, Processed in Country X.''

The Agency is aware that in some cases, a covered commodity will undergo production processes in two or more foreign countries prior to entering the United States for additional processing or a final process such as slaughter. In these cases, verifiable product information will not always be available for all points in the production process (*i.e.*, born, raised, or grown and packed) prior to the port of entry. In these cases, the product label will designate the country of origin as specified by existing Federal laws (*e.g.*, requirements of the U.S. Customs Service) at the time the product arrives at the U.S. port of entry and any additional major processes (*e.g.*, slaughter for beef or processing for peanuts) performed in the United States be listed on the product label. For example, if a calf was born in Country X and raised in Country Y before being imported for slaughter in the United States, an acceptable product label under these guidelines for the covered commodities derived from this animal would be: ''From Cattle Imported from Country Y, Slaughtered in the United States.'' However, alternatively, if all of the production process information is known for the product that occurred in both Country X and Country Y, it may be included on the product label. So, for the previous example, a label of, ''Born in Country X, Raised in Country Y, and Slaughtered in the United States'' would be acceptable under these guidelines if a verifiable recordkeeping trail was available, but it would not be required since two or more countries (prior to the product entering the United States) are involved.

The Agency believes this level of detail is required under the statute and will be consistent with the law's purpose of providing meaningful information to consumers. However, the Agency does have concerns that requiring meat products to carry labels that refer to the slaughtering of livestock could be viewed negatively by consumers. As a result, the Agency will allow the term ''Processed'' to be used in lieu of the term ''Slaughtered'' on meat products.

Defining Country of Origin for Blended or Mixed Products

The law requires the Agency to formulate guidelines for country of origin labeling for ground beef (and to a lesser extent ground lamb and pork), mixed fruit and vegetables, and blended seafood products that are covered commodities. For the purposes of these labeling provisions, blended or mixed products are those that contain one or more covered commodities from one or more countries. The Agency recognizes that these items are often a mixture of raw materials that are derived from covered commodities produced both in the United States and in countries outside of the United States. Each of the raw material sources for mixed or blended items would have a country of origin as defined by these guidelines.

In addition, the Agency recognizes that it could be misleading to consumers if only a small percentage of a mixture of a covered commodity met the definition of United States origin and yet the mixture could list the United States first ahead of other countries in a country of origin declaration on the package. Therefore, under these guidelines the applicable country of origin labeling for each raw material source (as defined in the guidelines) must be reflected in the labeling of the mixed or blended retail item by order of prominence by weight. This being the case, ground beef would be labeled with

the applicable country of origin information as required by the guidelines for each raw material source in descending order of prominence by weight.

For example, the label ''From Country X Cattle Slaughtered in the United States; Product of Country Y; and United States Product'' could be the label on a package of ground beef for a mixture of three beef raw material sources where the most substantial raw material source was from cattle born and raised in Country X and slaughtered in the United States, followed by imported Country Y beef trimmings, and then followed by trimmings from beef completely of United States origin. Likewise, the labeling for a bag of shrimp tails containing shrimp that were sourced from multiple countries must, under these guidelines, specify the country of origin of each of the sources of the shrimp in order of their prominence by weight for those shrimp tails in the bag. It is important to note that these guidelines do not require the label to list the actual percentage of weight for each constituent ingredient (*e.g.*, 50 percent United States, 40 percent Country X, 10 percent Country Y).

In the case of mixed or blended products where the individual constituents can be separately identified, the guidelines would require the container to be labeled to individually identify the country of origin of each constituent. An example of a mixed or blended product where the individual constituents can be separately identified is a bagged salad. For a bagged salad that contains lettuce, spinach, and peppers from three different countries, the package label would list the applicable country of origin separately for each constituent ingredient.

Method of Notification

The law states that country of origin notification may be provided to consumers by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. However, it is important to note that this requirement does not supercede any existing labeling requirements and any such country of origin notification must not obscure other labeling information required by existing regulatory requirements.

The guidelines allow market participants to utilize a variety of different labeling nomenclatures to denote the country of origin of a covered commodity. For example, ''U.K.'' and ''United Kingdom of Great Britain and Northern Ireland'' are both allowed under the guidelines. Similarly, covered commodities meeting the guidelines for a ''United States Country of Origin'' may be labeled by any commonly understood designations such as:

1. Country of Origin—United States;
2. Product of the United States;
3. Produced in the United States; or
4. Product of USA.

The Agency kept this portion of the guidelines non-prescriptive to provide the industry with the most flexibility in implementing the program in the least costly manner possible.

State and Regional Labeling Programs

Under this voluntary program, the law states that retailers notify consumers of the country of origin of covered commodities. The Agency has determined that State and regional labeling programs, such as ''Washington Apples,'' ''Idaho Potatoes,'' and ''California Grown'' do not meet this requirement. Therefore, such State and regional labeling claims cannot be accepted in lieu of country of origin labeling.

Remotely Purchased Products

For sales of a covered commodity where the customer purchases a covered commodity prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, *etc.*), the retailer, as defined by these guidelines, shall provide the country of origin information on the sales vehicle (*i.e.*, Internet site, home delivery catalog, *etc.*) as part of the information describing the covered commodity being offered for sale. This is because of the Agency's belief that consumers must be made aware of the country of origin of the covered commodity before the purchase is made.

Verification and Enforcement of Country of Origin Labeling Claims Under the Voluntary Program

A distinction was made by Congress when constructing the legislation authorizing this program between the voluntary labeling program and the mandatory labeling program. During the voluntary labeling timeframe covered by these guidelines, the Agency will not perform compliance visits pursuant to Public Law 107–171 and has no authority under the law to pursue enforcement action against entities participating in this voluntary program. However, it is important to note that when retailers and their suppliers choose to adopt the guidelines that all of the provisions contained within must be followed. Any reference by retailers and their suppliers to the use of these guidelines when certain provisions are not being met could be considered a labeling claim that is not truthful and therefore may be a violation of the PACA and other applicable labeling laws and subject to enforcement under these laws.

The law contains several provisions for the verification of country of origin claims. The law states that, ''The Secretary may require that any person that * * * distributes a covered commodity for retail sale maintain a verifiable record keeping audit trail * * * to verify compliance * * *'' However, the law also sets forth that, ''The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity.'' To have a meaningful program, retailers and their down-line suppliers will have to maintain a verifiable audit trail on covered commodities to substantiate country of origin labeling claims. The law states that, ''To certify the country of origin of a covered commodity, the Secretary may use as a model certification programs in existence on the date of enactment of this Act.'' The Agency encourages all retailers who voluntarily choose to adopt these guidelines to contact the Agency to gain a better understanding of the various verification programs operated by the Agency that are already in place in certain market segments that would meet the requirements of this program.

Verification and Enforcement of Country of Origin Labeling Claims Under the Mandatory Program

Enforcement of the country of origin labeling provisions of Public Law 107–171 relative to the frequency and extent of surveillance activities, complaint response, retailer and violation tracking, and public disclosure of information obtained by the Agency are all areas that will be addressed in the mandatory program. Accordingly, the Agency will not perform surveillance activities, investigate complaints, prosecute violations, or otherwise enforce the voluntary guidelines (except as might normally occur under other program authorities). However, as a preparatory measure, retailers and others may request that the Agency perform advisory audits on a user-fee basis to receive feedback on their application of the voluntary system.

Retention of Records

These guidelines require a two-year records retention policy. This timeframe was chosen because it is consistent with

the current records retention requirements of the PACA, which govern these same retailers.

Economic Implications

Though the benefits and costs of the voluntary program are difficult to quantify, the Agency believes that retailers will only choose to participate if the benefits outweigh the costs. As the Agency moves toward the development of a regulation to implement the mandatory program as required by Public Law 107–171, information concerning the benefits and the estimated or actual costs of implementing a program in compliance with the voluntary guidelines will be of great benefit to the Agency. The Agency is aware that studies have been conducted by USDA's Food Safety and Inspection Service (FSIS) and the United States General Accounting Office regarding implications of country of origin labeling and will use this information accordingly.

Labeling of Covered Commodities Marketed to Others Besides Retailers

It is important to note that these guidelines do not apply to covered commodities marketed to others besides retailers, as defined in the law. This includes covered commodities sold to such businesses as food service establishments, butcher shops, and foreign outlets. So, for example, boxed whole muscle beef cuts sold to an importer in Japan would be labeled as they currently are labeled under existing regulations.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Agency has requested emergency approval from the Office of Management and Budget for the information collection burden imposed by this program.

The Guidelines

These guidelines include definitions that can be used by retailers and their suppliers and understood by other market participants, to facilitate the labeling or identification of commodities covered by this program by their respective country of origin. These guidelines also outline what the Agency believes represents the framework of a consumer notification, product marking, and recordkeeping program that would be required to carry out this program.

Voluntary Country of Origin Labeling Guidelines

Definitions

Unless otherwise defined, the following terms should be construed as follows:

''Act'' means the Agricultural Marketing Act of 1946, (7 U.S.C. 1621 *et seq.*).

''Agency'' means the Agricultural Marketing Service, United States Department of Agriculture.

''Beef'' means meat produced from cattle, including veal.

''Consumer package'' means any container or wrapping in which any covered commodity is enclosed for use in the delivery or display of such commodity to retail purchasers.

''Covered commodity'' means fresh or frozen muscle cuts of beef (including veal), lamb, and pork, ground beef, lamb, and pork, as well as farm-raised fish, wild fish, and shellfish (including steaks, nuggets, any other flesh from farmed raised fish and shellfish), perishable agricultural commodities as defined in the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)), and peanuts. Covered commodities are excluded from these guidelines if the commodity is an ingredient in a processed food item.

''Department'' means the United States Department of Agriculture.

''Farm-raised fish'' means net-pen aquaculture or other farm-raised fish or shellfish; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

''Food service establishment'' means a restaurant, cafeteria, lunchroom, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public. Food service establishments include salad bars, delicatessens, and other prepared food enterprises that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

''Ground beef'' means ground beef of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

''Ground lamb'' means ground lamb of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

''Ground pork'' means ground pork of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

''Ingredient'' means the component, either in part or in full, of a finished food product.

''Lamb'' means meat, other than mutton, produced from sheep.

''Legibly'' means English language text that can be easily read.

''Material change'' means altered prior to retail to the extent that the product does not meet the definition of covered commodity. To be considered ''materially changed,'' changes to a commodity must be of such magnitude that its character is substantially different from that of the covered commodity. Specifically, for the following:

1. Whole muscle beef, lamb, and pork: Altered to the point that its character is no longer that of the covered commodity; such as through restructuring, cooking, and curing. Examples include ham, raw corned beef brisket, and restructured beef steaks.

2. Ground beef, lamb, and pork: The addition of any ingredients or cooking. Examples include ground beef with vegetable protein, cooked ground beef crumbles, bratwurst, fresh pork sausage, and lamb sausage.

3. Fresh and frozen fruits and vegetables: Altered to the point that its character is no longer that of the covered commodity. Examples include orange and other fruit juices.

4. Peanuts: Altered to the point that its character is no longer that of the covered commodity. An example is peanut butter.

5. Wild fish and farm-raised fish: Altered to the point that its character is no longer that of the covered commodity. Includes the cooking and canning of fish and shellfish. Examples include canned tuna and canned sardines as well as surimi and restructured fish sticks.

''Perishable agricultural commodity'' means fresh and frozen fruits and vegetables of every kind and character where the original character has not been changed (for example, frozen green beans would be included, but frozen concentrated orange juice would be excluded) and includes cherries in brine as defined by the Secretary in accordance with trade usages.

''Person'' means any individual, partnership, corporation, association, or other legal entity.

'' Pork'' means meat produced from hogs.

''Processed food item'' means either:

1. A combination of ingredients that may include a covered commodity but the identity of the processed food item

is different from that of the covered commodity; or

2. A covered commodity that has undergone a material change.

''Produced in any country other than the United States'' means born, raised, slaughtered, grown, packed, processed, or harvested (as applicable to the covered commodity), outside the fifty U.S states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Trust Territories of the Pacific Islands, and the waters of the United States (as defined in these guidelines), or by a vessel not registered in the United States.

''Raised'' means, in the case of beef, lamb, and pork, the period of time following weaning until slaughter.

''Retailer'' has the meaning given the term in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)), *i.e.*, a person who is a dealer engaged in the business of selling any perishable agricultural commodity solely at retail with an invoice value in any calendar year of more than $230,000.

''Secretary'' means the Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

''Slaughter'' means the point in which a livestock animal (including cattle, swine, and sheep) is prepared into meat products fit for human consumption. For labeling purposes, the term ''slaughtered'' is interchangeable with the term ''processed.''

''United States'' means the fifty U.S states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Trust Territories of the Pacific Islands, and the waters of the United States (as defined in these guidelines).

United States country of origin'' means in the case of:

1. Beef: From animals born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

2. Lamb and pork: From animals born, raised, and slaughtered in the United States.

3. Farm-raised fish: From fish hatched, raised, harvested, and processed in the United States.

4. Wild-fish: From fish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

5. Fresh and frozen fruits and vegetables, and peanuts: From products produced in the United States.

''U.S. flagged vessel'' means a ship or boat registered in the United States or documented under chapter 121 of title 46, United States Code.

''Vessel flag'' means the country of registry for a vessel, ship, or boat.

''Waters of the United States'' means those fresh and ocean waters contained within the 200-mile boundary of the Exclusive Economic Zone (EEZ) surrounding the United States.

''Wild fish'' means fish and shellfish, regardless of origin, harvested in the wild; and fillets, steaks, nuggets, and any other flesh from a wild fish or shellfish.

Country of Origin Notification

In voluntarily providing notice of the country of origin as covered by this statute, the following guidelines shall be followed:

1. Consumer Notification

A. General

I. All covered commodities offered for sale individually, in bulk bins, cartons, crates, barrels, clusters, or consumer packages shall be legibly marked with the country of origin.

II. Country of origin labeling may be applied prior to or after delivery to the United States.

B. Exemptions

I. Food service establishments are exempted from the country of origin guidelines.

C. Exclusions

I. Covered commodities are excluded from country of origin labeling if they are an ingredient in a processed food item. Examples include:

i. Whole muscle beef, lamb, and pork: Ready-to-cook Beef Wellington.

ii. Ground beef, ground lamb, ground pork: A meal kit that includes ground beef and other ingredients.

iii. Fresh and frozen fruit and vegetables: Frozen prepared pie that includes frozen sliced apples.

iv. Peanuts: Peanuts in a candy bar.

v. Wild and farm-raised fish and shellfish: Salmon sushi.

D. Designation of Wild Fish and Farm-Raised Fish

I. The notice of country of origin for wild fish and farm-raised fish shall specify and distinguish between wild fish and farm-raised fish.

E. Labeling Covered Commodities of United States Country of Origin

I. They must fully meet the definition of United States Country of Origin as put forth in the Definitions section of these guidelines.

II. Products further processed or handled in foreign countries after reaching the threshold point in which the country of origin of the covered commodity is determined may still qualify for ''United States Country of Origin'' under these guidelines if the product's identity is maintained under a verifiable recordkeeping system. Otherwise, such products shall be labeled with the country from which it was exported in conformance with existing Federal laws. An example is a beef carcass meeting the definition of ''Product of United States Origin'' exported to another country for cutting into steaks. The resulting steaks from this carcass that are imported back into the United States may either be marked as product of ''Country X'' or, alternatively, if a verifiable recordkeeping system is in place, ''Product of United States Origin.''

F. Labeling Imported Products

I. Shall be labeled with the country from which it was exported in conformance with existing Federal laws.

II. For covered commodities that undergo different phases of preparation, production or processing in various countries prior to export to the United States, the label may also include additional country of origin information if the product's identity is maintained under a verifiable recordkeeping system. This includes referencing production processes which may have occurred in the United States prior to export to a foreign country and ultimate import back into the United States.

G. Labeling Covered Commodities From Multiple Countries That Include the United States

I. Beef, Lamb, Pork:

i. If an animal was born or raised in a foreign country prior to slaughter in the United States, the resulting meat products shall be labeled to show the processing steps that occurred in a foreign country prior to slaughter in the United States consistent with existing Federal law at the time the animal entered the United States. For example, if a calf is born and raised in a foreign country, and then exported for further raising and slaughtering in the United States, the label could either read, ''From Country X'' cattle Raised and Slaughtered in the United States,'' or, alternatively, ''Born and Raised in Country X and Raised and Slaughtered in the United States.''

ii. If the animal was born or raised in two or more foreign countries prior to slaughter in the United States, the resulting meat products shall be labeled as originating from animals from the

country as determined under existing Federal law at the time they entered the United States and for the process(es) occurring in the United States. For example, a steer born in Country X, exported to Country Y for raising, and then exported to the United States for slaughter could have the label, ''From Country Y cattle Slaughtered in the United States.'' However, such products may instead be labeled to identify each specific country (*e.g.*, ''Born in Country X, Raised in Country Y, and Slaughtered in the United States'') if the animal's identity was maintained under a verifiable recordkeeping system.

II. Fresh and Frozen Fruits and Vegetables, and Peanuts

i. In the case where a covered commodity was grown and packed in a foreign country prior to processing in the United States, the product shall be labeled with the foreign country where it was grown and/or packed in accordance with existing Federal law at the time when the product entered the United States. For example, the product label could be applied as: ''Grown and packed in Country X and Processed in the United States.''

ii. In the case where a covered commodity was grown and packed in two or more foreign countries prior to processing in the United States, the product shall be labeled with the foreign country it was grown and/or packed in accordance with existing Federal law at the time when the product entered the United States. For example, product may have been grown in Country X, packed in Country Y, and processed in the United States. When the product entered the United States, under existing Federal law it would be identified as product of Country Y and could carry the label ''Product of Country Y, Processed in the United States.'' However, such products may instead be labeled to identify each specific country and in applicable chronological order by country if the product's identity was maintained under a verifiable recordkeeping system.

III. Wild Fish and Farm-raised Fish: In the case where a covered commodity was harvested in the waters of or by a flagged vessel of one country and processed in another country or onboard a vessel with a different flag, the product label shall be applied as: ''Harvested in (Country X, as applicable) and Processed in (Country Y, as applicable).''

H. Blended Products

I. For commingled, blended, or mixed covered commodities offered for retail sale that are prepared from raw materials originating from different countries (*e.g.*, ground beef, salads, or fresh or frozen mixed fruits or vegetables) the label shall indicate the country of origin information of each constituent or component covered commodity raw material source in accordance with these guidelines by order of prominence by weight.

II. The product label shall be applied as: ''Produced from covered commodities with the following countries of origin: (Raw material source A, with born, raised, slaughtered, grown, packed, harvested, or processed information as applicable to the commodity as defined by these guidelines), (Raw material source B, with born, raised, slaughtered, grown, packed, harvested, or processed as applicable to the commodity as defined by these guidelines),'' and so forth until all covered commodity raw material sources are accounted for by order of prominence by weight.

III. Products made from commingled, blended, or mixed covered commodities where processing has altered the commodity's character (*e.g.*, cooked vegetables in a soup), do not have to be labeled as to the country of origin of the constituent items.

I. Remotely Purchased Products

I. For sales of a covered commodity where the customer purchases a covered commodity prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, *etc.*), the retailer, as defined by these guidelines, shall provide the country of origin information on the sales vehicle (*i.e.*, Internet site, home delivery catalog, *etc.*) as part of the information describing the covered commodity being offered for sale.

2. Markings

A. Country of origin notification markings can either be in the form of a placard, sign, label, sticker, or other format that allows consumers to identify the country of origin of particular covered items. The placard, sign, label, sticker or other display must be placed in a conspicuous location. Country of origin information may be typed, printed, or handwritten. Labels must be written in English; additional accompanying languages are permissible. Country of origin notification shall be written in a form that allows the consumer to read them when selecting items to be purchased.

B. Abbreviations and variant spellings, which unmistakably indicate the country such as: ''U.K.'' for ''The United Kingdom of Great Britain and Northern Ireland'' and ''Brasil'' for ''Brazil'' are acceptable. The adjectival form of the name of a country or region/city within a country may not be used as proper indication of the country of origin of imported commodities. For example, product names such as ''Spanish peanuts'' which are most commonly used to designate a product variety and not the actual origin of the product, would, without a further designation of country of origin, be unacceptable even if the products did actually originate from that country. Symbols (flags, national symbols, *etc.*) may not be used to denote a country of origin, but may be used in conjunction with an acceptable country of origin label.

C. State or regional labeling programs will not be accepted in lieu of country of origin labeling.

D. The phrases ''Product of Country X,'' and/or ''Grown in Country X,'' and/or ''Imported from Country X,'' can be used to denote the country of origin for products produced entirely in any country other than the United States.

3. Recordkeeping

A. Every person that prepares, stores, handles, or distributes a covered commodity for retail sale must keep records on the country of origin for a period of at least two years.

B. Any person engaged in the business of supplying a covered commodity to a retailer must make available information to the retailer indicating the country of origin of the covered commodity. Such persons, which include but are not limited to, producers, growers, handlers, packers, processors, and importers, must maintain auditable records documenting the origin of covered commodities. Self-certification by such persons is not sufficient.

C. Retailers must ensure that a verifiable audit trail is maintained through contracts or other means, recognizing that suppliers throughout the production/marketing chain have a responsibility to maintain the necessary supporting records.

D. All records must be legible and written in English, and may be maintained in either electronic or hard copy formats. To ensure accurate labeling and provide an auditable document trail, retailers must have records at the place of final sale that identify the country of origin of all covered commodities sold at that facility. In addition, records of any person who prepares, stores, handles, or distributes a covered commodity and/or comprehensive records maintained by the retailer may be located at points of distribution and sale, warehouses, or at central offices. Wherever maintained

and in whatever format, these records must be readily accessible to review by the retailer and the Department.

E. Records for domestically produced and/or processed products must clearly identify the location of the growers and production facilities. When similar covered commodities may be present from more than one country or different production regimes, a verifiable segregation plan must be in place. For imported commodities, records must provide clear product tracking from the port of entry into the United States.

F. Recognizing retailers and their suppliers may have different accounting and inventory documentary systems; various forms of documentation will be acceptable provided the necessary tracking information is available.

4. Enforcement

A. The Secretary will not perform surveillance of retailers, investigate complaints, prosecute violations, or otherwise enforce the provisions of the voluntary guidelines.

B. The voluntary guidelines will not interfere with or supercede any other statutory requirement for country of origin labeling for the covered commodities. (*i.e.*, all other Federal and/or state labeling requirements remain in force).

C. As a preparatory measure, retailers and any other person that prepares, stores, handles, or distributes a covered commodity for retail sale may request that the Agency perform advisory audits on a user-fee basis to receive feedback on their application of the voluntary system.

Authority: 7 U.S.C. 1621 *et seq.*

A.J. Yates,

Administrator.

[FR Doc. 02–25734 Filed 10–8–02; 3:00 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice requesting nominations.

SUMMARY: The Secretary of Agriculture intends to renew the charter of the Advisory Committee on Beginning Farmers and Ranchers (Committee). The Committee provides advice to the Secretary on ways to encourage Federal and State beginning farmer programs to provide joint financing to beginning farmers and ranchers, and other methods of creating new farming and ranching opportunities. Nominations of persons to serve on the Committee are invited.

DATES: Nominations will be accepted through November 12, 2002, and should be submitted to Mark Falcone, Designated Federal Official (DFO) for the Committee, at the address below.

ADDRESSES: Mark Falcone, DFO for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-*mail mark_falcone@wdc.fsa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on the following: (1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

The law requires that members include representatives from the following groups: (1) The Farm Service Agency (FSA); (2) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act); (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer or rancher programs; (5) the Cooperative State Research, Education, and Extension Service; (6) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers; and (7) other entities or persons providing lending or technical assistance to qualified beginning farmers or ranchers. The Secretary has also appointed farmers and ranchers to the Committee.

Departmental Regulation 1042–119 dated November 25, 1998, formally established the Committee and designated FSA to provide support. One-third of the Committee membership was replaced when the Committee charter was reestablished on January 15, 2001. Approximately one-third of the 19 existing members will be replaced when the charter is renewed in January 2003. FSA is now accepting nominations of individuals to serve for a 2-year term on the Committee. Reappointments are made to assure effectiveness and continuity of operations. The duration of the Committee is indefinite. No member, other than a USDA employee, can serve for more than 6 consecutive years.

Nominations are being sought through the media, the **Federal Register**, and other appropriate methods. Persons nominated for the Committee will be required to complete and submit an Advisory Committee Membership Background Information Questionnaire (Form AD 755). The questionnaire is available on the Internet at http://www.fsa.usda.gov/dafl/Downloads/ad755.pdf. Questionnaires can be completed on-line. However, nominees must print their completed forms from an Adobe PDF file and mail or fax them to the above address or fax number. The form may also be requested by telephone, fax, or e-mail. All inquiries about the nomination process and submissions of the AD 755 should be made to Mark Falcone at the addresses and numbers listed above.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

The Committee meets at least once a year and all meetings are open to the public. Committee meetings provide an opportunity for members to exchange ideas and provide advice on ways to increase opportunities for beginning farmers and ranchers. Members discuss various issues and draft recommendations, which are submitted to the Secretary in writing.

Signed in Washington, DC, on October 4, 2002.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. 02–25923 Filed 10–10–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2003 project development and 2002 project monitoring. Agenda topics will include future project development and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393). The meeting is open to the public.

DATES: The meeting will be held on October 22, 2002, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: October 4, 2002.

David T. Bull,

Forest Supervisor.

[FR Doc. 02–25951 Filed 10–10–02; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Sunshine Act Meeting

September 30, 2002.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 66th Meeting in Hanover, NH on October 17–18, 2002. The Business Session open to the public will convene at 8:15 a.m. Friday, October 18, in the Agenda items include:

(1) Call to order and approval of the Agenda.
(2) Approval of the Minutes of the 65th Meeting.
(3) Reports from Congressional Liaisons.
(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will begin at 8:15 a.m., Thursday, October 17. 2002. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 02–26140 Filed 10–9–02; 12:58 pm]

BILLING CODE 7555–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 10, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, Space and Naval Warfare Systems Center, San Diego, California.
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington.
Contract Activity: Space and Naval Warfare Systems Center, San Diego, California.

Service Type/Location: Custodial and Refuse Removal Services, Fort Johnson Military Family Housing, Southport, North Carolina, U.S. Army Military Ocean Terminal, Sunny Point (MOTSU), North Carolina.
NPA: Coastal Enterprises of Jacksonville, Inc, Jacksonville, North Carolina.
Contract Activity: 597th U.S. Army Transportation Terminal Group, Southport, North Carolina.

Service Type/Location: Grounds Maintenance, Army Research Laboratory (ARL), Adelphi, Maryland.
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland.
Contract Activity: Army Research Lab, Adelphi, Maryland.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Cleaner, Water Soluble, 6840–01–367–2912, 7930–01–367–2910, 7930–01–367–2959, 7930–01–367–2961, 7930–01–367–2963.
NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.
Contract Activity: GSA, General Products Center, Fort Worth, Texas.

G. John Heyer,

General Counsel.

[FR Doc. 02–26032 Filed 10–10–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 10, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 5, August 2, and August 9, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 44808, 50416 and 51819) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Accordingly, the following products and service are added to the Procurement List:

Products

Product/NSN: Cup, Paper, Disposable, Hot
7350–00–NIB–0177
7350–00–NIB–0178
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana
Contract Activity: GSA, General Products Center, Fort Worth, Texas
Product/NSN: Paper, Toilet Tissue, 48 Ct., 2-ply
8540–00–NIB–0043
NPA: Outlook-Nebraska, Incorporated, Fremont, Nebraska
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Service

Service Type/Location: Janitorial & Related Services, Social Security Administration, Southeastern Program Service Center, Birmingham, Alabama
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama
Contract Activity: Social Security Administration, Baltimore, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 02–26033 Filed 10–10–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Submission for OMB Approval; Comment Request; Proposal and Application for Federal Assistance, and Civil Rights Guidelines

ACTION: Extension of a currently approved collection, comment request.

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: Economic Development Administration (EDA).

Title: Proposal for Federal Assistance, Application for Federal Assistance and Civil Rights Guidelines.

Agency Form Number: ED–900P and ED–900A.

OMB Approval Number: 0610–0094.

Type of Request: Extension of a currently approved collection.

Burden: 48,700 hours (9,900 for ED–900P and 38,800 for ED–900A).

Average Hours Per Response: ED–900P Proposal for Federal Assistance—9 hours, ED–900A–Application for Federal Assistance and Civil Rights Guidelines—48.5 hours.

Number of Respondents: Approximately 1,900 respondents.

Needs and Uses: The Economic Development Administration (EDA) provides investments that will help our partners across the nation (states, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and high skill, high wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives. The information in the application is needed to determine conformance to statutory and regulatory requirements, the quality of the scope of work proposed to address the pressing needs and other economic problem(s) of the area, the merits of the activity for which funding is requested and the ability of the prospective applicants to carry out the proposed activities successfully. Those interested in obtaining a grant are to first submit a preapplication and then be invited to submit an application. The Civil Rights Guidelines are required by the Department of Justice Regulations at 28 CFR 42.404, which directs Federal agencies to publish (Title VI of the Civil Rights Act of 1964, as amended) guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information of the requirements of Title VI of the Civil Rights Act of 1964. To responsibly administer its programs, EDA must obtain certain data on the jobs to be created and saved, by those that apply for and receive its assistance (applicants and recipients), and by those that create or save 15 or more jobs as a result of EDA's assistance.

Affected Public: State, local or Tribal Government and not-for-profit organizations.

Frequency: One time for preapplication and application, and on occasion for the Civil Rights Guidelines for post-approval and monitoring compliance.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, U.S. Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via Internet at *dhynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 7, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–25916 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100702B]

Proposed Information Collection; Comment Request; Limits of Application of Take Prohibitions

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before December 10, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lamont Jackson at (301) 713–1401 or Steve Stone at (503) 231–2317, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et. seq*.) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it ''deems necessary and advisable to provide for the conservation of'' threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits ''take'' of any endangered species (''take'' includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were protected by virtually blanket application of the section 9 take prohibitions. There are now 20 separate Evolutionarily Significant Units (ESUs) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. NMFS is obligated to enact necessary and advisable protective regulations.

NMFS makes section 9 prohibitions generally applicable to many of those threatened ESUs, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted. The regulations describe programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. The regulations do not apply the take prohibitions to those programs and circumstances. Some of these limits on the take prohibitions entail voluntary submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

II. Method of Collection

Submissions may be in paper or electronic format.

III. Data

OMB Number: 0648–0399.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government; business or other for-profit organizations; and farms.

Estimated Number of Respondents: 201.

Estimated Time Per Response: 20 hours for a road maintenance agreement; 5 hours for a diversion screening limit project; 30 hours for an urban development package; 10 hours for an urban development report; 20 hours for a tribal plan; and 5 hours for a report of aided, salvaged, or disposed of salmonids.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to Public: $843.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 2, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26015 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 100702C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Applications and Reports for Registration as a Tanner or Agent.

Form Number(s): None.

OMB Approval Number: 0648–0179.

Type of Request: Regular submission.

Burden Hours: 102.

Number of Respondents: 51.

Average Hours Per Response: 2.

Needs and Uses: The Marine Mammal Protection Act (MMPA) mandates the protection and conservation of marine mammals and makes the taking, killing or serious injury of marine mammals, except under permit or exemption, a violation of the Act. An exemption is provided for Alaskan natives to take marine mammals if the taking is for subsistence or for creating and selling authentic native articles of handicraft and clothing. Possession of marine mammals and marine mammal parts by other than Alaskan natives is therefore prohibited. As native handicrafts are allowed by the MMPA to enter interstate commerce, an exemption is also needed to allow non-natives to handle the skins or other marine mammal product, whether to tan the pinniped hide or to act as an agent for the native to sell his handicraft products. Persons register for an exemption, and registered parties must file annual reports. The information is needed by NOAA to manage the program and provide for effective law enforcement.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion; annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26016 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 100802A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Report of Whaling Operations.

Form Number(s): None.

OMB Approval Number: 0648–0311.

Type of Request: Regular submission.

Burden Hours: 48.

Number of Respondents: 52.

Average Hours Per Response: 30 minutes for a Captain to report and to mark gear; 5 minutes for a Native American whaling commission to enter a Captain's report into its report; and 5 minutes for a commission to fax a report to NOAA.

Needs and Uses: Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). Captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information. The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA. The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission, which uses it to monitor compliance with its requirements.

Affected Public: Individuals or households, not-for-profit institutions.

Frequency:

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 3, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26017 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 010222048–2229–04

The Wills, Codicils, and Testamentary Trusts Exception to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request For Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, *codified at* 15 U.S.C. §§ 7001 *et seq.* (''ESIGN'' or ''the Act''), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. § 7001(a). Section 103 (a) and (b) of the Act, however, provides that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding court documents; probate and domestic law matters; certain provisions of state uniform commercial codes; utility service cancellations, real property foreclosure and defaults; insurance benefits cancellations; product recall notices; and documents related to hazardous materials and dangerous substances. 15 U.S.C. §§ 7003(a),(b). Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications and Information, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. § 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically

on the wills, codicils, and testamentary trusts exception to the ESIGN Act. *See* 15 U.S.C. § 7003(a)(1). NTIA will publish separate notices requesting comment on the other exceptions listed in section 103 of the ESIGN Act.[1]

DATES: Written comments and papers are requested to be submitted on or before December 10, 2002.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: *esignstudy__wills@ntia.doc.gov*. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: For questions about this request for comment, contact: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone (202) 482–1816 or electronic mail: *jscarlett@ntia.doc.gov*. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provides that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: court documents and records, probate and domestic law matters; documents executed under certain provisions of state commercial law; consumer law covering utility services, real property foreclosures and defaults, and insurance benefit notices; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for wills, codicils and testamentary trusts is found in section 103(a) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

(a) Excepted Requirements.— The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by—

* * * *

(1) a State statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN Act is found in section 103(c)(1) of the Act as set forth below.

(c) Review of Exceptions.—

(1) Evaluation required.— The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Wills, Codicils, and Testamentary Trusts

Wills, codicils, and testamentary trusts are documents used by an owner (donor or testator) of real or personal property to transfer that property from the testator to other persons or entities (beneficiaries) after the death of the testator. State legislatures and state courts have primary jurisdiction for establishing procedures and rules that govern wills, codicils, and testamentary trusts when there is some relationship between the state, and either the property or the testator. The ESIGN exception for wills, codicils, and testamentary trusts means that when either of these documents is executed electronically or using an electronic signature, the document is *not* required to be accorded the same legal validity or effect as a paper document. Section 102(a)(1) of ESIGN provides that the states may adopt electronic transactions statutes, however, that give the state exclusive jurisdiction with regard to electronic transactions that occur within the state. *See* 15 U.S.C. § 7002(a). This section allows states to modify, limit, or supersede the application of ESIGN to electronic transactions that occur within the state law by adopting either the Uniform Electronic Transactions Act (known as UETA) as approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws (NCCUSL) or a statute that specifies an alternative procedure for the use and acceptance of electronic signatures, which complies with the provisions of ESIGN. *See id.*

States have used section 102(a)(1) of ESIGN to adopt electronic transactions laws that exclude state-exclusive areas from the application of ESIGN or the state's electronic transactions law. Approximately thirty-nine states have adopted the version of UETA recommended by NCCUSL or their own version of UETA. *See* National Conference of Commissioners on Uniform State Laws at http://www.nccusl.org/nccusl/LegislativeByState.pdf. The legislative history of UETA enunciated by the NCCUSL provides a rationale for excluding certain types of documents from the scope of the law. *Id.* According to the legislative notes of the Drafting Committee for UETA, some exclusions were warranted while other areas should not be omitted from the state UETA laws. *See id.* at 13–16. The comments on the UETA final draft states that the exclusion of wills, codicils, and testamentary trusts is largely salutary given the unilateral context in which the records are created and the unlikely use of such records in ''transactions'' as defined by UETA. *Id.* at 14, n. 4. The notes provide that an electronic transaction is an interaction between two or more persons, while a document such as a will, trust, or health care power of attorney evidences a unilateral act that is not covered by the Act. *Id.* at 13.

The majority of the states that have passed UETA laws have expressly excluded wills, codicils, testamentary trusts from the operation of the state electronic transactions laws. *Id.* The absence of an exception in a state's UETA law for wills, codicils, and testamentary trusts, however, does not automatically make these documents subject to that law. If the underlying substantive law requires a paper writing

[1] Comments submitted in response to **Federal Register** notices requesting comment on the other exceptions to ESIGN will be considered as part of the same section 103 evaluation and not as a separate review of the Act. NTIA is also evaluating the court documents exception to ESIGN. *See* 67 *Fed.Reg.* 56277 (Sept. 3, 2002).

or prohibits the use of an electronic signature for the formation of these documents, electronic documents for wills, codicils, and testamentary trusts would not be legally valid. For example, the Maryland Code provides that every will shall be in writing, signed by the testator, attested to and signed by two or more credible witnesses in the presence of the testator. Md. Code Ann., Estates and Trusts, § 4–102. Although the law does not expressly preclude the use of electronic signatures or documents, the Maryland Rules do not consider a photocopy or facsimile copy of a will or codicil as an original document for purposes of filing with the Register of Wills. *See* Md. Code Ann., Estates and Trusts, Rule 6–108 (b). Alternatively, another state's substantive law governing wills and probate matters may allow documents to be formed in an electronic format or established using an electronic signature.

The legislative history of the ESIGN Act does not indicate the intent of the drafters in making an exception for wills, codicils, and testamentary trusts. However, the personal nature of the information disclosed in these documents and the relative privacy interests of the donor and beneficiaries may raise issues that do not arise in legal proceedings involving commercial or other civil matters. Information regarding changes in state law to allow electronic filings or access to documents pertaining to testamentary documents would assist in the evaluation of whether consumers would be adequately protected if the wills, codicils, and testamentary trusts exception to ESIGN is eliminated from the Act.

The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of the exceptions set out in section 103 of the Act to determine whether the exceptions continue to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluation no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President's principal advisor on telecommunications policies pertaining to the Nation's economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN section 103 evaluation of the wills, codicils, and testamentary trusts exception is intended to evaluate the current status of the law and procedure regarding this issue, in preparation for a report to Congress on whether this exception remains necessary to protect consumers. This evaluation is not a review or analysis of laws relating to these documents for the purpose of recommending that Congress draft legislation or propose changes to those laws but to advise Congress of the current state of law, practice, and procedure regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on ongoing specific federal and state procedures or rulemaking proceedings concerning wills, codicils, or testamentary trusts.

Invitation to Comment

NTIA requests that all interested parties submit written comment on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comment from all parties that may be affected by the removal of the wills, codicils, and testamentary trusts exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and estate law practitioners. The comments submitted will assist NTIA in evaluating the potential impact of the removal of the wills, codicils, and testamentary trusts exception from ESIGN on state estate law, and state electronic transactions laws. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Describe state laws, if any, that allow for the creation, access, filing or probate wills, codicils, or testamentary trusts are by electronic means, including video or audio versions.

2. Discuss how statutes that require written documents for trusts, wills, and testamentary trusts may be affected if the exception is eliminated from the ESIGN Act.

3. State how consumers would be affected if the exception is eliminated from the ESIGN Act. Describe the laws or methods that would be available for consumer protection if the exception for wills, codicils, and testamentary trusts is eliminated from the Act.

4. Describe any state or federal law, other than ESIGN or UETA, that requires wills, codicils, and testamentary trusts to be excluded from the operation of ESIGN or the state uniform electronic transactions law.

5. Describe uniform laws that allow wills, codicils, or testamentary trusts to be created, authenticated, filed, or admitted to probate in an electronic format or using an electronic signature.

6. Discuss any unique issues surrounding the execution of wills, codicils, and testamentary trusts that may be considered in determining whether these documents may be processed in an electronic format. This list is not exhaustive and any other issue relevant to the execution of wills, codicils, or testamentary trusts may be discussed.

a. privacy and security of information contained in the will;

b. authentication of signatures for testator and witnesses;

c. retention and storage of electronic documents;

d. software compatibility and development; and

e. the impact of advances in technology during the lifetime of the donor on the probate process.

7. Discuss any other documents related to the probate, filing, or execution of wills, codicils and testamentary trusts that courts accept in electronic form (including but not limited to, letters of administration, notice of appointment of personal representative, notice of publication, personal notice to heirs).

8. Discuss whether any uniform laws governing wills, codicils, or testamentary trusts have been adopted and the impact on these laws if the ESIGN exception for these documents is eliminated (*e.g.*, the Uniform Probate Code, the Uniform Intestacy, Wills, and Donative Transfers Act).

9. Provide a description of any instance in which wills, codicils, or testamentary trusts have been executed in an electronic format. Discuss whether there are plans to implement procedures for the on-line execution of such documents.

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: October 7, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–25942 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–60–S

CONSUMER PRODUCT SAFETY COMMISSION

Information Quality Guidelines: Notice of Availability

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission is announcing the availability of its final Guidelines for Ensuring the Quality, Objectivity, Utility, and Integrity of Information disseminated by the Commission.

EFFECTIVE DATE: October 11, 2002.

ADDRESSES: Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or that office, room 502, East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Mary Kelsey, Office of Information Services, Consumer Product Safety Commission, 301–504–0000 ext. 2230, e-mail *mkelsey@cpsc.gov;* or Terry Hardy, Office of Planning and Evaluation, 301–504–0416 ext. 2191, e-mail *thardy@cpsc.gov.*

SUPPLEMENTARY INFORMATION: These guidelines and supporting documents are available on the internet at *http://www.cpsc.gov/library/infoguideliness.html* and are issued pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106–554, which mandated that the Office of Management and Budget (OMB) issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.'' The statute further requires OMB to require each Federal agency to issue its own guidelines. OMB's amended final guidance appears at 67 FR 8452, February 22, 2002, and at *http://www.whitehouse.gov/omb/fedreg/final_information_quality.htm.* The OMB guidelines, as further revised at 67 FR 9797, March 4, 2002, required each Federal agency to post its own draft guidelines on the internet by May 1, 2002, which the Consumer Product Safety Commission has done. These final guidelines incorporate comments from the public and OMB. Hereafter, starting on January 1, 2004, agencies must file annual fiscal year reports to OMB on the number, nature and resolution of complaints about alleged noncompliance with the agency guidelines.

A paper copy of the guidelines may also be obtained by telephoning Mary Kelsey at 301–504–0000 ext. 2230.

Dated: October 7, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–25914 Filed 10–10–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office if the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 10, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy) (Military Community and Family Policy) Educational Opportunities Directorate, ATTN: Rebecca Posante, 1745 Jefferson Davis Highway, Suite 302, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Rebecca Posante at (703) 602–4949 x114.

Title, Applicable Form, and OMB Control Number: Exceptional Family Member Medical and Educational Summary Form; DD Form 2792, OMB Control Number 0704–0411.

Needs and Uses: This information collection requirement is necessary to screen members of military families to determine if they have special medical or educational conditions so that these conditions can be taken into consideration when the service member is being assigned to a new location with his/her family. The information is used by the personnel system to identify special considerations necessary for future assignments. The DD Form 2792, *Exceptional Family Member Medical and Educational Summary,* associated with this information collection, will also be used by civilian personnel offices to identify family members of civilian employees who have special needs in order to advise the civilian employee of the availability of services in the location where they will be potentially employed. Local and state school personnel will complete the educational portion of DD Form 2792 for children requiring special educational services.

Affected Public: Individuals or households; State, local and tribal government.

Annual Burden Hours: 3,188.

Number of Respondents: 12,757.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: tri-annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Military Departments of the Department of Defense screen all family members prior to a service member and Federal employee being assigned to an overseas location and to some assignments in the United States. DD Form 2792, *Exceptional Family Member Medical and Educational Summary Form,* will be completed for family members who have been identified with a special medical or educational need to document the medical or educational needs and service requirements. Their needs will be matched to the resources available at the overseas location to determine the feasibility of receiving appropriate services in that location. The information is used by the Military Service's personnel offices for purposes of assignment only. DD Form 2792 will also be completed for family members of civilian employees to document their special health or educational needs in order to advise the civilian employee of the availability of the needed services.

Dated: October 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–25939 Filed 10–10–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–62]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–62 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

30 SEP 2002

In reply refer to:
I-02/013049

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-62 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Hungary for defense articles and service estimated to cost $55 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 02-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Hungary**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$25 million
Other	$30 million
TOTAL	$55 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 160 AIM-9M-8/9 Sidewinder missiles, training missiles, All-Up-Round containers, software integration, test and tool sets, support equipment, maintenance facilities, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and other related elements of logistics support.**

(iv) **Military Department: Navy (AAB)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 30 SEP 2002

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Hungary – AIM-9M-8/9 Sidewinder Missiles

The Government of the Republic of Hungary has requested a possible sale of 160 AIM-9M-8/9 Sidewinder missiles, training missiles, All-Up-Round containers, software integration, test and tool sets, support equipment, maintenance facilities, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and other related elements of logistics support. The estimated cost is $55 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Hungary and further weapon system standardization and interoperability with U.S. forces. These missiles will enhance the Hungarian Air Force's air-to-air intercept defensive capability.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Corporation of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of several U.S. Government and contractor representatives for one-week intervals to participate in program review and technical reviews to Hungary.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The external view of the AIM-9M-8/9 Sidewinder missile is Unclassified and not sensitive. Advanced technology included in the missile: Active Optical Target Detector (AOTD), Gyro Optics Assembly within the Guidance Control Section (GCS), Infrared Countermeasures (IRCM), Detection and Rejection Circuitry, and a reduced smoke rocket motor. The equipment/hardware, software, and maintenance are classified Confidential. Pilot training is classified Secret. Manuals and technical documents are classified Secret. Performance and operating information is classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that could reduce overall effectiveness.

3. A determination has been made that Hungary can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–25941 Filed 10–10–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory board has been scheduled as follows:

DATES: 6–7 November 2002 (0900 a.m. to 1700 p.m.).

ADDRESSES: The Pentagon, Defense Intelligence Agency, Director's conference room, 3E267.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. Carnegie, Program Manager, DIA Advisory Board, 7400 Defense Pentagon, Washington, DC 30301–7400, 703/697–7898.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The board will receive briefings on and discuss several current intelligence issues and advise the Acting Director, DIA, on related departmental matters.

Dated: October 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–25938 Filed 10–10–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting date change.

SUMMARY: On Wednesday, March 13, 2002 (67 FR 11293) the Department of Defense announced closed meetings of the Defense Science Board Task Force on Discriminant Use of Force. The meeting scheduled for October 21–22, 2002, has been rescheduled to December 3–4, 2002. The meeting will be held at SAIC, 4001 N. Fairfax Drive, Arlington, VA.

Dated: October 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–25940 Filed 10–10–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Naval Sea Systems Command

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Naval Sea Systems Command (NAVSEASYSCOM) announces a proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 10, 2002.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commander, Naval Sea Systems Command (SEA 04X13), 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

FOR FURTHER INFORMATION CONTACT: Sherrell Smith or Leonard Thompson, respectively at (703) 602–4170 (Ext. 139 or 137), to request additional information or to obtain a copy of the proposal and associated collection instruments.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Facilities Available for the Construction or Repair of Ships; OMB Control No. 0703–0006.

Needs and Uses: This collection of information provides NAVSEASYSCOM and the Maritime Administration with a list of facilities available for the construction or repair of ships and information utilized in a data base for assessing the production capacity of the individual shipyards. Respondents are businesses involved in shipbuilding and/or repair.

Affected Public: Businesses or other for profit institutions.

Annual Burden Hours: 621.

Number of Respondents: 138.

Responses per Respondent: 1.

Average Burden per Response: 4.5 hours.

Frequency: Annually and as requested.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: October 3, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–25935 Filed 10–10–02; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 12, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer,

publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 7, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Early Reading First Program **Federal Register** Notice Inviting Applications, and Application Packet.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 900.

Burden Hours: 12,000.

Abstract: The Early Reading First program will provide grants to eligible local educational agencies (LEAs) and public and private organizations located in those LEAs to transform early childhood education programs into centers of excellence to help young at-risk children achieve the language, cognitive, and early reading skills they need to succeed when they enter Kindergarten.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2021. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–25925 Filed 10–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 12, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 7, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Child Care Access Means Parents in School (CCAMPIS) Program—A Guide for Preparation of Applications.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 300. Burden Hours: 300.

Abstract: Collection of information is necessary in order for the Secretary of Education to make new grants under the Child Care Access Means Parents in School Program. This collection will also be used to obtain the programmatic and budgetary information needed to evaluate applications and make funding decisions based on the authorizing statute of Section 419N of subpart 7, Title IV of the Higher Education Act of 1965, as amended.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2170. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–25926 Filed 10–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.359B]

Early Reading First Program

AGENCY: Department of Education.

ACTION: Notice extending Full Application deadline date for Early Reading First Program for fiscal year (FY) 2002.

SUMMARY: The Secretary extends the deadline date for the submission of Full Applications by certain applicants (*see* the ''Eligibility'' section of this notice) under the Early Reading First Program discretionary grant competition for FY 2002. The Secretary takes this action to allow more time for the preparation and submission of applications by potential applicants and their partners in the State of Louisiana that were adversely affected by severe weather conditions resulting from Hurricane Lili. This extension is intended to help these potential applicants and their partners compete fairly with other applicants.

Eligibility: The extension of the deadline date in this notice applies to you if (1) You are an eligible applicant for the Full Application phase of the Early Reading First grant competition for FY 2002, and (2) you or one of your official partners is located in one of the areas of Louisiana listed below that the President has declared a disaster area as a result of Hurricane Lili.

Potential eligible applicants for Early Reading First for the purpose of this notice are defined as those eligible applicants who submitted Pre-Applications and that were invited by the Secretary (through the Office of Elementary and Secondary Education) to submit Full Applications.

The areas of Louisiana affected include the following cites, counties, or parishes: Acadia, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu Cameron East Baton Rouge, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermillion, Washington, and West Baton Rouge.

DATES: The new deadline date for receipt of Full Applications under the Early Reading First Program from applicants eligible for this extension is October 18, 2002. If you or a courier or delivery service delivers an application by hand, the deadline on October 18 is 4:30 p.m. For applicants in the above Louisiana areas only, this deadline replaces the original October 11, 2002 receipt deadline for Full Applications. All other instructions for transmitting applications in the Early Reading First application package (pp. E–3 and E–4) remain in effect. The deadline date for the transmittal of State process recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties remains as originally posted.

The invitation to submit applications was originally published in the **Federal Register** on June 7, 2002 (67 FR 39369–39374).

FOR FURTHER INFORMATION CONTACT: Tracy Bethel or Mary Ann Lesiak, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Washington, DC 20202–6132. Telephone: (202) 260–4555, or via Internet: *erf@ed.gov.* Applications for, and information about, the Early Reading First program competition are available here: *http://www.ed.gov/offices/OESE/earlyreading/index.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

If you want to transmit a recommendation or comment under Executive Order 12372, you can find the latest list and addresses of individual SPOCs on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants.*

If you are an individual with a disability, you may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to either of the contact persons listed in this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: October 8, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–26048 Filed 10–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

State Flexibility Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final application requirements, selection criteria, and competition schedule.

SUMMARY: The Secretary announces final application requirements, selection criteria, and the competition schedule for the State Flexibility (State-Flex) program.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401–0039 or via Internet: *StateFlex@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

SUPPLEMENTARY INFORMATION: On April 22, 2002, we published in the **Federal Register** (67 FR 19626–19629) a notice of proposed application requirements, selection criteria, and competition schedule for the State-Flex program, which is authorized under sections 6141 through 6144 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110). This notice announces final application requirements, selection criteria, and the competition schedule for the program.

Note: This notice does not solicit applications. A notice inviting applications under the State-Flex competition is published separately in this issue of the **Federal Register**.

Analysis of Comments and Changes

Four parties submitted various comments in response to the notice of proposed application requirements,

selection criteria, and competition schedule.

Comment: Two commenters expressed concern about the competition schedule and suggested that the second State-Flex competition be held after the date by which States must submit their definitions of adequate yearly progress (AYP) to the Department. The commenters indicated that a later schedule would also give States sufficient time to prepare their State-Flex applications.

Response: We recognize that some States may need additional time to develop their State-Flex proposals.

Changes: We are revising the competition schedule and will hold the second State-Flex competition no earlier than Spring 2003.

Comment: One commenter recommended that States not be required to submit their State definition of AYP in order to be considered eligible for State-Flex. Instead, the commenter suggested that in applying for State-Flex in the initial round of competition, States be permitted to submit an assurance that they will submit their AYP definition by January 2003.

Response: Implementation of the AYP requirements is fundamental to the State-Flex program. One of the primary purposes of the State-Flex program is to assist States and districts in meeting AYP. Given that the Department has not yet published final Title I AYP regulations, the Department will not require an SEA to submit its State AYP definition at the time it applies for State-Flex authority.

If the Department has not approved a State's AYP definition by the time it applies for State-Flex authority, an SEA may only be granted conditional State-Flex authority. The Department will not grant final approval of an SEA's State-Flex application unless the State submits its AYP definition by the AYP deadline established by the Department and the Department approves that definition.

Changes: The Department has revised the State-Flex application requirements. An SEA will not be required to submit its State AYP definition prior to or as part of its State-Flex application. Instead, in its application, an SEA will be required to provide an assurance that it will submit the definition by the AYP deadline established by the Department.

In conducting this competition, the Department will review the quality of State-Flex plans, including the quality of the local performance agreements that are submitted as part of those plans. Based on that review, the Department will grant State-Flex authority to up to four SEAs. If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

Comment: One commenter recommended that a State not be required to include in its State-Flex application the five-year performance agreements that the State proposes to enter into with its LEAs. Instead, the commenter suggested that the State be allowed to submit the format for the performance agreements along with LEA demographics and a signed assurance from participating LEAs that they will participate in the program and comply with its requirements.

Response: Section 6141 of ESEA specifically requires a State to submit, as part of its State-Flex application, the performance agreements that the State proposes to enter into with eligible LEAs.

Changes: None.

Comment: One commenter suggested that applicants be required to submit the following information to enable the Secretary to evaluate whether they are focusing on serving the needs of students most at risk of educational failure: (1) Data indicating the gap between low- and high-achieving students in the districts for which local performance agreements are proposed, as well as data indicating the achievement gap statewide; (2) The number and percentage of schools in each district that qualify for Title I schoolwide programs; (3) The amount of local education funds spent per pupil at Title I schools compared to the per-pupil spending at non-Title I schools; and (4) Any formula the State and districts would use to target consolidated Federal funds to students most at risk of education failure, as well as strategies to target State-level activities to address the achievement gap.

Response: We agree that there is a need for applicants to provide statewide and LEA student achievement data to enable the Department to assess whether State-Flex authority will be used to address the needs of students most at risk of educational failure. However, we do not believe that the additional information suggested by the commenter is necessary for us to evaluate adequately a State-Flex proposal. On the basis of the selection criteria and the revised application requirements for this competition, we will be able to focus State-Flex agreements on SEAs serving the needs of students most at risk of educational failure.

Changes: We will require applicants to submit statewide baseline academic data, as well as LEA student achievement profiles. We have clarified in the application requirements section of this notice the contents of local performance agreements, which include baseline academic data for those LEAs.

Comment: One commenter expressed concern that States may use the State-Flex program in a manner that undermines the parent involvement provisions contained in ESEA. The commenter suggested that the Secretary evaluate State-Flex applications based on the degree to which parent involvement requirements contained in ESEA are maintained, and also recommended that the Secretary require an assurance that States will provide parents and other stakeholders with notice and opportunity to comment on the State-Flex application.

Response: In the April 22, 2002 **Federal Register** notice, we did not include all of the statutory application requirements. We did not believe that it was necessary to seek public comments on some of the more explicit requirements included in the legislation. However, all of the statutory application requirements, including required assurances, are discussed in the application package.

In addition, we agree that the Department should evaluate applications, in part, based on the degree to which the SEA and LEAs with proposed performance agreements have included parents in the development of their proposals.

Changes: We have revised the selection criteria to include a factor relating to parental involvement in the development of the proposals.

Comment: One commenter argued that the Department incorrectly stated that the five-year period of State-Flex authority may be shortened or extended contingent on a State's compliance with the State-Flex requirements, and should delete this statement. The commenter suggested, instead, that the overall application process outline a process for reviewing and deciding issues of continued participation in State-Flex or renewal of State-Flex authority.

Response: The legislation states that the Secretary must, after providing notice and an opportunity for a hearing, promptly terminate a State-Flex agreement if an SEA fails to make adequate yearly progress for two

consecutive years. The legislation also provides that, after providing notice and an opportunity for a hearing, the Secretary may terminate a State-Flex agreement if there is evidence that an SEA has failed to comply with the terms of the agreement. In addition, the legislation provides that the Secretary must renew a State's State-Flex authority if the State has met all the terms and requirements of the State-Flex program.

The Secretary does not believe that it is necessary to issue, at this time, additional guidance on the termination or renewal of a State-Flex agreement.

Changes: None.

Comment: One commenter suggested that the Secretary evaluate applications for State-Flex based on the degree to which States decline to direct how their LEAs use Title V, Part A funds, as the purpose of Title V, Part A is to support local reform efforts.

Response: The statute allows SEAs that are granted State-Flex authority to specify how all LEAs in the State will use their Title V, Part A funds. This is one of the benefits an SEA receives under its grant of State-Flex authority; discouraging State-Flex participants from taking full advantage of the flexibility afforded to them under the program would be inconsistent with the intent of the legislation.

Changes: None.

Comment: One commenter suggested that an SEA be required to include in its State-Flex proposal a description of how each proposed local performance agreement will meet the general purposes of the programs that the applicable LEAs would consolidate under their agreements.

Response: Although we did not intend to seek public comments on some of the more explicit requirements included in the legislation, we agree that this description should be part of the applications.

Changes: We have modified the application requirements to state expressly that each local performance agreement must, as part of its five-year proposal, include a description of how the LEA will meet the general purposes of the programs that are consolidated.

Comment: One commenter urged us to require each applicant to explain how it will continue to comply with all applicable civil rights requirements, and to include in its application a description of the accounting procedures and safeguards that it would employ to ensure proper disbursement of, and accounting for, Federal funds.

Response: In the April 22, 2002 **Federal Register** notice of proposed application requirements, selection criteria, and competition schedule (67 FR 19626–19629), we did not include all of the statutory application requirements. We did not believe that it was necessary to seek public comments on some of the more explicit requirements included in the legislation. However, all of the statutory application requirements, including those addressed in this notice, are discussed in the application package.

With respect to the comment on civil rights compliance, all applicants, as mandated by the legislation, will be required to submit an assurance that they are complying and will continue to comply with all applicable civil rights requirements. We will also require applicants to submit an assurance regarding fiscal control and fund accountability.

Changes: None.

I. Application Requirements

Each State-Flex applicant must submit—

(a) *An assurance that it will submit its State AYP definition required under section 1111(b)(2) of the ESEA by the AYP deadline established by the Department.* Each SEA seeking a grant of State-Flex authority from the Secretary must provide, as part of its application, an assurance that it will submit to the Department its State AYP definition by the AYP deadline established by the Department.

Note: If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

(b) *Statewide baseline academic data and LEA achievement profiles.* Each SEA seeking to enter into a State-Flex agreement with the Secretary must provide, as part of its proposed agreement, statewide student achievement data for the most recent available school year, including data from assessments consistent with section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the extent possible, an SEA must provide data for both mathematics and reading or language arts, and the SEA must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged. (These are the categories, among others, by which an LEA will disaggregate data for determining AYP under section 1111(b)(2) of the reauthorized ESEA. Furthermore, these are the categories, among others, by which an LEA had to disaggregate data for reporting assessment results under section 1111(b)(3) of the predecessor ESEA.)

In addition to submitting baseline achievement data that are disaggregated, to the extent possible, by the categories noted above, SEAs may also submit baseline achievement data that are further disaggregated by gender and by migrant status, and baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators should also be disaggregated.

The SEA must also provide a profile of student achievement trends in LEAs across the State, and indicate why it proposes to enter into agreements with particular LEAs rather than others.

(c) *The SEA's strategies for consolidating funds, making AYP, narrowing achievement gaps, and advancing the education priorities of the State.* Each SEA seeking State-Flex authority must submit a five-year plan that describes—

(i) How the SEA would consolidate and use State-level Federal funds from programs included in the scope of the State-Flex authority to assist the SEA in making AYP, narrowing achievement gaps, and advancing the education priorities of the State and the LEAs within the State;

(ii) How the strategies and goals in the LEA agreements support the State's strategies described in this proposal and will assist the State in making AYP and narrowing achievement gaps; and

(iii) The specific limitations, if any, that it would impose on the use of funds provided to LEAs in the State under section 5112(a) of the ESEA, and how these limitations would assist all LEAs in the State in making AYP and narrowing achievement gaps.

(d) *Proposed performance agreements with LEAs.* Each SEA seeking State-Flex authority must submit, as part of its application, five-year performance agreements that the SEA proposes to enter into with not fewer than four, and not more than ten, LEAs (at least half of which must be high-poverty LEAs). The SEA should indicate why it proposes to enter into agreements with these LEAs, rather than with other LEAs in the State.

Each proposed LEA agreement must include:

(i) *Baseline academic data.* For each LEA with which it proposes to enter into a local performance agreement, the SEA must provide, on behalf of that LEA, student achievement data for the most recent available school year, including data from assessments under section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the extent possible, the SEA must provide data for that LEA for both mathematics and reading or language arts, and must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged. (These are the categories by which an LEA will disaggregate data for determining AYP under section 1111(b)(2) of the reauthorized ESEA. Furthermore, these are the categories, among others, by which an LEA had to disaggregate data for reporting assessment results under section 1111(b)(3) of the predecessor ESEA.)

In addition to submitting baseline achievement data that are disaggregated, to the extent possible, by the categories noted above, the SEA may also submit baseline achievement data on behalf of that LEA that are further disaggregated by gender and by migrant status, and baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators should also be disaggregated.

(ii) *Specific, measurable education goals.* For each proposed local performance agreement, the SEA must submit, on behalf of that LEA, a five-year local performance agreement plan that contains specific, measurable educational goals, with annual objectives, that the LEA seeks to achieve by consolidating and using funds in accordance with the terms of its proposed agreement. The goals must relate to meeting AYP, raising student achievement, and narrowing achievement gaps relative to the baseline achievement data and other baseline data that are submitted.

(iii) *Strategies for meeting its goals and the general purposes of the consolidated programs.* For each proposed local performance agreement, the SEA must submit, on behalf of that LEA, a five-year plan that contains specific strategies for reaching its stated goals. In particular, the plan must describe how the LEA will consolidate and use funds received under Subpart 2 of Part A of Title II (Teacher and Principal Training and Recruitment); Subpart 1 of Part D of Title II (Enhancing Education Through Technology); Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities); and Subpart 1 of Part A of Title V (Innovative Programs).

As part of each five-year plan, the SEA must also describe how the LEA will meet the general purposes of the programs that are consolidated under the local performance agreement. In particular, an SEA must describe how each proposed plan would—

(A) Improve teacher and principal quality and increase the number of highly qualified teachers in classrooms (Title II, Part A);

(B) Improve teaching and student academic achievement through the use of technology in schools (Title II, Part D);

(C) Support programs that prevent violence in and around schools and that prevent the illegal use of alcohol, tobacco, and drugs (Title IV, Part A); and

(D) Support local education reform efforts that are consistent with and support statewide education reform efforts (Title V, Part A).

II. Selection Criteria

The Secretary will use the following criteria to select the SEAs with which he will enter into State-Flex agreements:

(a) *Identification of the Need for the State-Flex Authority and the Proposed Performance Agreements.* (25 points) The Secretary considers the SEA's need for State-Flex authority, including the need for the performance agreements that the SEA proposes in its State-Flex application. In determining need, the Secretary considers the extent to which—

(i) The SEA's proposal identifies achievement gaps among different groups of students, particularly in each of the LEAs with which the SEA proposes to enter into a performance agreement.

(ii) The State-Flex authority and proposed performance agreements will address the needs of students most at risk of educational failure.

(iii) The LEAs that would enter into performance agreements with the SEA serve a substantial portion of the students in the State who are most at risk of educational failure.

(iv) Requirements in the Federal programs that the SEA and LEAs with performance agreements plan to consolidate create barriers to implementing specific State and local education reform strategies.

(b) *Quality of SEA and LEA Strategies for Making Adequate Yearly Progress (AYP), Narrowing Achievement Gaps, and Enhancing Education Priorities.* (30 points) The Secretary considers the quality of the strategies that the SEA will implement under its grant of State-Flex authority, including the quality of the strategies in each of the proposed performance agreements, for making AYP, narrowing achievement gaps, and for enhancing State and local education priorities. In determining the quality of these strategies, the Secretary considers the extent to which—

(i) The strategies that the SEA proposes for consolidating and using funds under the scope of the State-Flex authority and for directing how LEAs in the State will use funds under section 5112(a) of the ESEA will likely assist the State in meeting its definition of AYP, narrowing achievement gaps, and advancing its education priorities.

(ii) The performance agreements that the SEA proposes to enter into with LEAs in the State will likely assist the State in meeting its definition of AYP, narrowing achievement gaps, and advancing its education priorities.

(iii) The strategies in each of the proposed performance agreements, especially the strategies for consolidating and using funds under the scope of the agreements, will likely assist each affected LEA in meeting the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps.

(iv) The extent to which the SEA and LEAs with proposed performance agreements included parents, especially parents of children most at risk of educational failure, in the development of the State-Flex proposal and proposed local performance agreements.

(v) The State-Flex proposal and each of the proposed performance agreements represent a coherent, sustained approach for meeting the purposes of the State-Flex program.

(vi) The timelines for implementing the strategies in the State-Flex proposal, including timelines in the proposed performance agreements, are reasonable.

(c) *Quality of the Management Plans.* (30 points) The Secretary considers the quality of the management plans that the SEA and affected LEAs would follow in implementing State-Flex activities. In reviewing the quality of the management plans, the Secretary considers the extent to which—

(i) The SEA will provide effective technical assistance and support to LEAs with performance agreements.

(ii) The SEA and each LEA with a performance agreement will use disaggregated student achievement data and data on other academic indicators

to manage their proposed activities, to monitor their own progress on an ongoing basis, and to make appropriate adjustments to their implementation strategies.

(iii) The SEA will monitor LEA activities under each of the performance agreements, evaluate the effectiveness of each agreement, and propose modifications to LEA activities or to the agreements, as appropriate.

(d) *Adequacy of the Resources.* (15 points) The Secretary considers the adequacy of the resources for the grant of State-Flex authority and the proposed performance agreements. In considering the adequacy of the resources, the Secretary considers the extent to which—

(i) The funds that the SEA proposes to consolidate under the grant of State-Flex authority are adequate to support the strategies that it seeks to implement with these funds.

(ii) The funds that each LEA plans to consolidate under its respective performance agreement are adequate to support the strategies in its agreement.

(iii) The SEA will coordinate the activities supported with funds consolidated under its grant of State-Flex authority with activities funded with other resources to meet the purposes of the State-Flex initiative.

(iv) Each LEA with a performance agreement will coordinate the activities supported with funds consolidated under its agreement with activities funded with other resources to meet the purposes of the agreement.

(v) The costs that the SEA and affected LEAs will incur under the grant of State-Flex authority and the proposed performance agreements are reasonable in relationship to the goals that will be achieved.

III. Application Process

The Secretary will conduct two separate State-Flex competitions. A notice inviting applications for the initial group of State-Flex SEAs is published elsewhere in this issue of the **Federal Register**. Depending on the number and quality of the applications submitted, the Secretary intends to select up to four SEAs to receive State-Flex authority during the initial competition.

In conducting this competition, the Department will review the quality of State-Flex plans, including the quality of the local performance agreements that are submitted as part of those plans. Based on that review, the Department will grant State-Flex authority to up to four SEAs. If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

The remaining State-Flex slots will be awarded during a second State-Flex competition to be held no earlier than Spring 2003.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

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Program Authority: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub.L. 107–110).

Dated: October 8, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–26003 Filed 10–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

State Flexibility Program; Office of Elementary and Secondary Education, Department of Education; Notice Inviting Applications for State Flexibility Authority

Purpose of the Program: To provide State educational agencies (SEAs), and the local educational agencies (LEAs) with which they have performance agreements, with additional flexibility in order to assist them in meeting the State's definition of adequate yearly progress (AYP) and specific, measurable goals for improving student achievement and narrowing achievement gaps.

Eligible Applicants: SEAs with AYP definitions approved by the Department or SEAs that submit an assurance that they will provide the Department with a State AYP definition that meets the requirements of section 1111(b)(2) of the Elementary and Secondary Education Act (ESEA) by the AYP deadline established by the Department.

Note: Hawaii, Puerto Rico, and the outlying areas are not eligible to apply for State-Flex because they do not have the minimum number of LEAs required for State-Flex authority.

If one of its LEAs has entered into a Local-Flex agreement with the Secretary, an SEA may subsequently seek State-Flex authority only if that LEA agrees to have its Local-Flex agreement submitted as one of the proposed performance agreements in the SEA's State-Flex application.

Applications Available: October 11, 2002.

Deadline for Transmittal of Applications: January 17, 2003.

Supplementary Information: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110), authorize the Secretary of Education to grant State flexibility (State-Flex) authority to up to seven SEAs, permitting them to (1) consolidate certain Federal education funds that are provided for State-level activities and State administration and use those funds for any educational purpose authorized under the ESEA in order to meet the State's definition of AYP and advance the education priorities of the State and its LEAs; and (2) specify how LEAs in the State will use funds allocated under section 5112(a) of the ESEA (State Grants for Innovative Programs). In addition, an SEA with State-Flex authority must enter into performance agreements with not fewer than four, but no more than ten, LEAs (at least half of which must be high-poverty LEAs), giving those LEAs the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the ESEA in order to meet the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps.

The Secretary will select State-Flex SEAs on a competitive basis in accordance with the selection criteria contained in a notice published elsewhere in this issue of the **Federal Register**. The application requirements and a description of the application process are also provided in that notice.

The Secretary intends to select up to four SEAs for participation in State-Flex under this competition. In conducting this competition, the Department will review the quality of State-Flex plans, including the quality of the local

performance agreements that are submitted as part of those plans. Based on that review, the Department will grant State-Flex authority to up to four SEAs. If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

The Department will select the additional State-Flex SEAs in a subsequent competition.

For Further Information Contact: Ms. Milagros Lanauze. Telephone: (202) 401–0039 or via Internet: *StateFlex@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Applications: You may obtain a copy of the application on the Department's web site at: *http://www.ed.gov/GrantApps/#stateflex.*

You may also obtain a copy of the application from the contact person identified under **FOR FURTHER INFORMATION CONTACT**.

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Program Authority: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

Dated: October 8, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–26004 Filed 10–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.170A]

Office of Postsecondary Education; Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of the Jacob K. Javits Fellowship (JKJ) Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise to undertake graduate study in selected fields in the arts, humanities, and social sciences leading to a doctoral degree, or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. The selected fields in the arts are: Creative writing, music performance, music theory, music composition, music literature, studio arts (including photography), television, film, cinematography, theater arts, playwriting, screenwriting, acting, and dance. The selected fields in the humanities are: Art history (including architectural history), archeology, area studies, classics, comparative literature, English language and literature, folklore, folklife, foreign languages and literature, history, linguistics, philosophy, religion, speech, rhetoric, and debate. The selected fields in the social sciences are: Anthropology, communications and media, economics, ethnic and cultural studies, geography, political science, psychology (excluding clinical psychology), public policy and public administration, and sociology (excluding the master's and doctoral degrees in social work).

Eligible Applicants: Individuals who at the time of application: Intend to pursue, at accredited U.S. institutions of higher education in academic year 2003–2004, doctoral or master's degrees (if the master's degree is the terminal highest degree awarded) in fields selected by the JKJ Board; have not completed their first full year of study for doctoral or master's degrees in the fields for which the individuals are applying; and are eligible to receive grants, loans, or work assistance pursuant to section 484 of the Higher Education Act, as amended. An individual must be a citizen or national of the United States, a permanent resident of the United States, in the United States for other than a temporary purpose and intending to become a permanent resident, or a citizen of any one of the Freely Associated States.

Note: An individual who has had a JKJ Fellowship in any field of study is ineligible.

Applications Available: October 11, 2002.

Deadline for Transmittal of Applications: December 11, 2002 for the JKJ Program. January 31, 2003 for the Free Application for Federal Student Aid.

Estimated Available Funds: $10,000,000.

Estimated Average Size of Awards: $36,000.

Estimated Number of Awards: 107 individual fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85, 86, 97, 98 and 99; and (b) The regulations for this program in 34 CFR part 650.

SUPPLEMENTARY INFORMATION: *Stipend Level:* The Secretary will determine the JKJ fellowship stipend for the academic year 2003–2004 based on the level of support provided by the National Science Foundation (NSF) graduate fellowships as of February 1, 2003, except that the amount will be adjusted as necessary so as not to exceed the JKJ fellow's demonstrated level of financial need.

Institutional Payment: The Secretary will determine the institutional payment for the 2003–2004 academic year by adjusting the previous academic year institutional payment, which is $11,031 per fellow, by the U.S. Department of Labor's Consumer Price Index for the 2002 calendar year. The institutional payment will be reduced by the tuition and fees the institution charges and collects from a JKJ fellow.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive

policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project For Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The JKJ Program—CFDA No. 84.170A is one of the programs included in the pilot project. If you are an applicant under the JKJ Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit the Applicant Information Sheet and Personal Statement electronically, however, you must submit all other application materials in hardcopy, including your letters of recommendation, transcripts, GRE report (if required for your field of study), and supporting materials in the arts.
- Within three working days of submitting your electronic application fax a signed copy of the Applicant Information Sheet to the Application Control Center after following these steps:

1. Print the Applicant Information Sheet from the e-APPLICATION system.
2. Make sure that you sign this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of Applicant Information Sheet.
5. Fax the Applicant Information Sheet to the Application Control Center at (202) 260–1349.

You may access the electronic grant application for the JKJ Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Federal Student Aid Information Center, P.O. Box 84, Washington DC 20044–0084. Telephone (toll free): 1–800–433–3243, FAX: (319) 358–4316. The application may also be accessed on the JKJ Web site: *http://www.ed.gov/offices/OPE/HEP/iegps/javits.html.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at 1–800–730–8913.

FOR FURTHER INFORMATION CONTACT: Carolyn Proctor, Jacob K. Javits Fellowship Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7542 or via Internet: *ope_javits_program@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1134–1134d.

Dated: October 8, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–26011 Filed 10–8–02; 3:02 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 02–57–NG, et al.]

Office Of Fossil Energy

[FE Docket NO. 02–57–NG, et al.]

Avista Corporation, et al.; Orders Granting and Amending Authority To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during September 2002, it issued Orders granting and amending authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 7, 2002.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas and Petroleum, Import and Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume (Bcf)	Export volume (Bcf)	Comments
1806	9–04–02	Avista Corporation, 02–57–NG	100		Import of natural gas from Canada, beginning on June 26, 2002, and extending through June 25, 2004.
1149–B	9–12–02	BC Gas Utility Ltd., 96–07–NG	8		Amendment to import authority to increase volumes from 6 Bcf per year to 8 Bcf per year, and extend the term of the authority until April 30, 2004.
1808	9–16–02	BC Gas Utility Ltd., 02–60–NG	35	35	Import and export natural gas from and to Canada, beginning on December 19, 2002, and extending through December 18, 2004.
1750–A	9–17–02	Enbridge Gas Distribution Inc. (Formerly The Consumers' Gas Company Ltd.), 01–86–NG.			Name change on blanket import and export authority.
1739–A	9–17–02	Aquila, Inc. (Formerly UtiliCorp United Inc.), 01–78–NG.			Name change on blanket import authority.
1809	9–19–02	BP Canada Energy Marketing Corp., 02–62–NG.	500		Import and export a combined total of natural gas from and to Canada, beginning on September 24, 2002, and extending through September 23, 2004.
1810	9–20–02	Cook Inlet Energy Supply L.L.C., 02–61–NG.	400		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on September 20, 2002, and extending through September 19, 2004.
1811	9–23–02	Dominion Exploration Canada Ltd. 02–64–NG.	25		Import of natural gas from Canada, beginning on October 1, 2002, and extending through September 30, 2004.
1809	9–25–02	BP Canada Energy Marketing Corp., 02–62–NG.			Errata Notice. Term of the authority incorrectly stated.
1812	9–30–02	Montana-Dakota Utilities Co., A Division of MDU Resources Group, Inc., 02–63–NG.	10		Import of natural gas from Canada, beginning on December 1, 2002, and extending through November 30, 2004.

[FR Doc. 02–25989 Filed 10–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–1–002]

ANR Pipeline Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, ANR Pipeline Company (ANR) filed a revised tariff sheet to eliminate two service agreements with Alcoa, Inc. and Alcoa Building Products, Inc. from its list of non-conforming agreements. The two agreements no longer contain MDQ adjustments provisions that the Commission found to constitute unacceptable material deviations in ANR Pipeline Company, 98 FERC ¶ 61,247 (2002).

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 section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 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, call (202) 502–8222 or for TTY (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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25800 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–056]

ANR Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, ANR Pipeline Company (ANR) tendered for filing three negotiated rate agreements between ANR and BP Energy Company (BP) pursuant to ANR's Rate Schedules PTS–2, ITS and ITS (Liquefiables). ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the agreements to be effective October 1, 2002.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25827 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. ER02–1367–000 and ER02–1367–001]

Federal Energy Regulatory Commission Calpine Oneta Power, L.P.; Notice of Issuance of Order

October 4, 2002.

Calpine Oneta Power, L.P. (Calpine Oneta) submitted for filing a tariff under which Calpine Oneta will engage in the sales of capacity, energy and certain ancillary services at market-based rates. Calpine Oneta also requested waiver of various Commission regulations. In particular, Calpine Oneta requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Calpine Oneta.

On July 17, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests 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 Calpine Oneta 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).

Absent a request to be heard in opposition within this period, Calpine Oneta 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 Calpine Oneta, 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 Calpine Oneta's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 17, 2002.

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 Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25797 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–5–000]

CMS Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002.

Take notice that on October 1, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing to become effective November 1, 2002.

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets listed on Appendix A reflect: a 0.27% increase (Field Zone to Zone 2), a 0.32% increase (Zone 1A to Zone 2), a 0.24% increase (Zone 1B to Zone 2), a 0.06% increase (Zone 2 only), a 0.42% increase (Field Zone to Zone 1B), a 0.47% increase (Zone 1A to Zone 1B), a 0.39% increase (Zone 1B only), a 0.24% increase (Field Zone to Zone 1A), a 0.29% increase (Zone 1A only) and a 0.16% increase (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that copies of this filing are being served on all affected shippers 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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25813 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–020]

Colorado Interstate Gas Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Colorado Interstate Gas Company (CIG) tendered for filing three Firm Transportation Service Agreements (FTSAs) between CIG and Williams Energy Marketing & Trading Company (successor to Barrett Resources

Corporation), El Paso Energy Raton, L.L.C and Primero Gas Marketing Company. The FTSAs are being submitted for Commission acceptance of negotiated rate provisions to be effective October 1, 2002.

CIG states the FTSA's are being filed to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25820 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1959–000]

CPN Bethpage 3rd Turbine Inc.; Notice of Issuance of Order

October 4, 2002.

CPN Bethpage 3rd Turbine Inc. (CPN) submitted for filing an application for authority to engage in the sale of wholesale energy, capacity replacement reserves and ancillary services at market-based rates. CPN also requested waiver of various Commission regulations. In particular, CPN requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CPN.

On July 23, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests 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 CPN 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).

Absent a request to be heard in opposition within this period, CPN 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 CPN, 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 CPN's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 17, 2002.

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 Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25798 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. ER02–2227–000, ER02–2228–000, ER02–2229–000, ER02–2230–000, ER02–2231–000, and ER02–2232–000]

Federal Energy Regulatory Commission Creed Energy Facility, LLC; Feather River Energy Center, LLC; Goose Haven Energy Center, LLC; Lambie Energy Center, LLC; Pajaro Energy Center, LLC; Wolfskill Energy Center, LLC; Notice of Issuance of Order

October 4, 2002.

Creed Energy Facility, LLC (Creed), Feather River Energy Center, LLC (Feather River), Goose Haven Energy Center, LLC (Goose Haven), Lambie Energy Center, LLC (Lambie), Pajaro Energy Center, LLC (Pajaro), and Wolfskill Energy Center, LLC (Wolfskill) (collectively, ''Applicants''), filed applications requesting that the Commission accept rate schedules under which the Applicants will make wholesale sales of electric energy, capacity, replacement reserves, and certain ancillary services at market-based rates; reassign transmission capacity; and resell firm transmission rights. In addition, Applicants requested waiver of various Commission regulations. In particular, Applicants requests that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability.

On August 30, 2002, the Commission issued an Order granting requests 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 the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be

adversely affected by continued approval of the Applicants' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 17, 2002.

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 Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25799 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–34–010]

Dauphin Island Gathering Partners; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheet listed below to become effective October 30, 2002.

First Revised Sheet No. 359

Dauphin Island states that the revised tariff sheets are being filed to comply with § 154.1(d) of the Commission's Regulations which state that any contract or executed service agreement that deviates in any material aspect from the form of service agreement must be filed with the Commission and such nonconforming agreement must be referenced in the pipeline's tariff.

Dauphin Island states that copies of its filing are being served on its customers and other interested parties.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 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, call (202) 502–8222 or for TTY (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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25815 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–566–000]

Dominion Transmission, Inc.; Notice of Annual EPCA Filing

October 4, 2002.

Take notice that on September 30, 2002, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourteenth Revised Sheet No. 31; Seventeenth Revised Sheet No. 32; Ninth Revised Sheet No. 34; Twelfth Revised Sheet No. 35; and Fifth Revised Sheet No. 39, with an effective date of November 1, 2002.

DTI states that the purpose of its filing is to comply with the Electric Power Cost Adjustment provision of the General Terms and Conditions of its FERC Gas Tariff, as that provision will be revised effective November 1, 2002, in accordance with the Stipulation and Agreement filed on June 22, 2001, in Docket No. RP00–632–003, and approved by Commission letter order issued in that proceeding on September 13, 2001.

DTI states that copies of the filing have been sent to DTI's customers and interested stated 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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25806 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–21–000]

Duke Energy Guadalupe Pipeline, Inc.; Notice of Petition for Rate Approval

October 4, 2002.

Take notice that on September 10, 2002, Duke Energy Guadalupe Pipeline, Inc. (Guadalupe) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation and storage services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Guadalupe proposes to establish a rate of $0.1852 per MMBtu for system-wide firm and interruptible transportation services and interruptible parking and loaning services. In addition, Guadalupe proposes a two-part rate consisting of a demand charge of $2.059 per MMBtu and a commodity charge of $0.2529 per MMBtu for its proposed power and peaking services. Guadalupe also proposes to charge a 1.9 percent fuel charge for all services

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and

equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or 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 with the Secretary of the Commission on or before October 18, 2002. 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 petition for rate approval is on file with the Commission and are available for public inspection. 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 (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.200(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25819 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. RP00–466–002 and RP00–618–003]

Federal Energy Regulatory Commission Enbridge Offshore Pipelines (UTOS) LLC; Notice of Compliance Filing

October 4, 2002.

Take notice that on October 1, 2002, Enbridge Offshore Pipelines (UTOS) LLC, (UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of October 1, 2002:

First Revised Sheet No. 125
Substitute First Revised Sheet No. 135
Substitute First Revised Sheet No. 144
Substitute First Revised Sheet No. 145

UTOS states that the filing is being made in compliance with the Commission's September 19, 2002 order in these proceedings.

UTOS states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable 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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 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 website 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 (202) 502–8222 or for TTY (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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25832 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–400–002]

Enbridge Pipelines (Midla) Inc.; Notice of Compliance Filing

October 4, 2002.

Take notice that on October 1, 2002, Enbridge Pipelines (Midla) Inc., (Midla) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with an effective date of June 1, 2002:

Substitute First Revised Sheet No. 111
Substitute First Revised Sheet No. 130
Substitute First Revised Sheet No. 134

Midla states that the filing is being made in compliance with the Commission's September 6, 2002 order in these proceedings.

Midla states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable 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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 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, call (202) 502–8222 or for TTY (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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25831 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–9–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

October 4, 2002.

Take notice that on October 2, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Seventh Revised Sheet No. 20; First Revised Sheet No. 3600; and Third Revised Sheet No. 3613, to become effective November 4, 2002.

As the Commission has not extended its policy, which provided for the removal of the rate ceiling for short-term

capacity release transactions of less than one year until September 30, 2002, Gulf South proposes to remove tariff provisions associated with the former policy.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25838 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–10–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

October 4, 2002.

Take notice that on October 2, 2002, 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 November 1, 2002:

Second Revised Sheet No. 2
Second Revised Sheet No. 102
First Revised Sheet No. 105
First Revised Sheet No. 201
First Revised Sheet No. 204
First Revised Sheet No. 302
Third Revised Sheet No. 306
First Revised Sheet No. 405
First Revised Sheet No. 503
Third Revised Sheet No. 604
Second Revised Sheet No. 605
First Revised Sheet No. 720
First Revised Sheet No. 2446
First Revised Sheet No. 2501
Original Sheet No. 4020
Second Revised Sheet No. 4100
Reserved Sheet Nos. 4101–4199
Second Revised Sheet No. 4200
Reserved Sheet Nos. 4201–4299
Second Revised Sheet No. 4300
Reserved Sheet Nos. 4301–4399
Second Revised Sheet No. 4400
Reserved Sheet Nos. 4401–4499
Second Revised Sheet No. 4500
Reserved Sheet Nos. 4501–4599
Second Revised Sheet No. 4600
Reserved Sheet Nos. 4601–4699
Original Sheet No. 4703
Reserved Sheet Nos. 4704–4749
Second Revised Sheet No. 4804
Reserved Sheet Nos. 4903–5199

Gulf South is revising the tariff sheets listed above in order simplify Gulf South's pro forma service agreements and to eliminate any possibility of confusion between the service agreement terms and conditions and other tariff provisions. The language from the standard terms and conditions of such agreements has either been eliminated or moved to another part of the tariff as more fully described below. Gulf South is also updating its tariff to eliminate its proprietary Operational Balancing Agreement form and proposes to utilize the NAESB Model Operational Balancing Agreement as the form document for its OBA agreements.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25839 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–361–003 and RP02–361–004]

Gulfstream Natural Gas System, LLC; Notice of Compliance Filings

October 4, 2002.

Take notice that on September 3 and September 12, 2002, Gulfstream Natural Gas System, L.L.C. (Gulfstream) submitted revised negotiated rate agreements with Seminole Electric Cooperative, Inc. and the City of Lakeland, Florida, respectively, pursuant to the Commission's July 3, 2002 order in Docket No. RP02–361–000. Gulfstream is requesting privileged treatment for the agreements pursuant to Section 388.112 of the Commission's regulations.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 11, 2002. 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, call (202) 502–8222 or for TTY (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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25833 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–567–000]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

October 4, 2002.

Take notice that on September 30, 2002, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 36. HIOS requests that this revised tariff sheet be made effective November 1, 2002.

HIOS states that the revised tariff sheet is being filed to modify HIOS's Rate Schedule FT–2 to give a shipper the ability to provide HIOS only thirty (30) days notice (in lieu of six months notice) of a change in the shipper's monthly maximum daily quantity (MDQ) in the event a federal lessor elects to take natural gas royalties-in-kind.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25807 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG02–7–000]

Kern River Gas Transmission Company; Notice of Filing

October 4, 2002.

On September 23, 2002, Kern River Gas Transmission Company filed its revised standards of conduct under Part 161 of the Commission's regulations, 18 CFR part 161.

Kern River Gas Transmission Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding 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 or 385.214) All such motions to intervene or protest should be filed on or before October 21, 2002. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to assess the document. For assistance, call (202) 502–8222 or TTY (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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25816 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2366–000]

Louis Dreyfus Energy LLC; Notice of Issuance of Order

October 4, 2002.

Louis Dreyfus Energy LLC (LDE) submitted for filing an application for authority to engage in the sales of electric power, energy transactions and ancillary services at wholesale at market-based rates. LDE also requested waiver of various Commission regulations. In particular, LDE requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by LDE.

On September 18, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests 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 LDE 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).

Absent a request to be heard in opposition within this period, LDE 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 LDE, 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 LDE's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 18, 2002.

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 Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25796 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–6–000]

Maritimes & Northeast Pipeline L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002.

Take notice that on October 1, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on November 1, 2002.

Fourth Revised Sheet No. 11
Second Rev First Revised Sheet No. 265

Maritimes states that it is making this Fuel Retainage Quantity filing, pursuant to Section 20 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Maritimes is proposing a reduction of 0.60% to the Winter Period Fuel Reimbursement Percentages (FRP) and also a reduction of 0.50% to the Spring Shoulder Period. The projected FRPs for each of the four periods will be 0.90%. In addition, Maritimes respectfully requests to revise its tariff to reflect an Index Price defined as the average of the daily Midpoint prices as published by Platts, Gas Daily for Dracut, Mass.during the relevant month, less the 100% load factor Rate Schedule MN365 maximum recourse rate in effect for such month.

Maritimes also states that it is submitting the calculation of the fuel retainage quantity (FRQ) Deferred Account amount, pursuant to Section 20 of the GT&C, which provides that Maritimes will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period.

Maritimes states that for the period August 1, 2001 through July 31, 2002, the FRQ Deferred Account resulted in a net credit balance of approximately $863,848.29, inclusive of carrying charges, that will be refunded to Maritimes' customers.

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes 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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25835 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–7–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002.

Take notice that on October 1, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to become effective November 1, 2002.

Natural states that the purpose of this filing is to revise the provisions of the General Terms and Conditions in Natural's Tariff relating to shipper creditworthiness. These changes are important to preserving the integrity of Natural's firm capacity in light of the deteriorating credit being experienced by some shippers, particularly energy trading companies.

Natural states that copies of the filing are being mailed to its 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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25836 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–38–000]

Northern Natural Gas Company; Notice of Technical Conference

October 4, 2002.

In the Commission's order issued on September 20, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, November 12, 2002, at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission,

[1] Northern Natural Gas Company, 100 FERC ¶ 61,278 (2002).

888 First Street, NE., Washington, DC 20426. Please contact Charles B. Spencer in the Office of the Secretary on (202) 502–8897, for further information.

All interested parties and Staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25801 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–410–001]

Paiute Pipeline Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on October 1, 2002, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective October 1, 2002:

Fourth Revised Sheet No. 61A
First Revised Sheet No. 61A.1
First Revised Sheet No. 61B

Paiute states that the purpose of its filing is to effectuate changes to the General Terms and Conditions of Paiute's tariff to comply with Order No. 587–O and a letter order issued September 16, 2002 in Docket No. RP02–410–000.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 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, call (202) 502–8222 or for TTY (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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25834 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–4–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002.

Take notice that on October 1, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective November 1, 2002.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to Fuel Reimbursement Percentages:

(1) A 0.01% increase in the Gathering Fuel Reimbursement Percentage;

(2) A 0.04% increase in the Field Zone Fuel Reimbursement Percentage;

(3) A 0.04% decrease in the Market Zone Fuel Reimbursement Percentage;

(4) A 0.22% increase in the Injection and a 0.22% increase in the Withdrawal Field Area Storage Reimbursement Percentages; and

(5) A 0.22% increase in the Injection and a 0.22% increase in the Withdrawal Market Area Storage Reimbursement Percentages.

Panhandle further states that copies of this filing are being served on all affected customers and applicable 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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25812 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP99–518–030]

Federal Energy Regulatory Commission

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, First Revised Sheet No. 15.

GTN states that this sheet is being filed to reflect the implementation of one negotiated rate agreement and the removal of five negotiated rate agreements. GTN requests that this tariff sheet become effective October 1, 2002.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25829 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–020]

Questar Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Questar Pipeline Company's (Questar) filed a tariff filing to implement a negotiated-rate contract for Dominion Exploration & Production, Inc. as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al*. The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25828 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–3–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002.

Take notice that on October 1, 2002, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 5, proposed to become effective November 1, 2002.

Southwest states that this filing is made in accordance with Section 16 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Southwest's FERC Gas Tariff, First Revised Volume No. 1. The Fuel Reimbursement Adjustment filed herewith reflects the following Fuel Reimbursement Percentages: (1) West Area Storage Facilities Injection 1.21% and Withdrawal 0.46%; and (2) East Area Storage Facilities Injection 2.51% and Withdrawal 1.17%.

Southwest further states that copies of this filing are being served on all affected customers and applicable 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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25811 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–109]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Northern Utilites, Inc. Tennessee requests that the Commission grant such approval effective November 1, 2002.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25821 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–110]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and NSTAR Gas Company. Tennessee requests that the Commission grant such approval effective November 1, 2002.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25822 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–111]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Bay State Gas Company. Tennessee requests that the Commission grant such approval effective November 1, 2002.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25823 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–112]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval (1) a copy of a Gas Transportation Agreement between Tennessee and Columbia Gas of Ohio (COH) pursuant to Tennessee's Rate Schedule FT-A (Service Package 8403) and (2) a copy of the June 6, 2002 Firm Transportation Negotiated Rate Letter Agreement entered into between Tennessee and COH (''Negotiated Rate Letter''). The filed Service Package 8403 and the Negotiated Rate Letter reflect a negotiated rate arrangement between Tennessee and COH to be effective November 1, 2002.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25824 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–113]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and NSTAR Gas Company. Tennessee requests that the Commission grant such approval effective November 1, 2002.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25825 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–495–003 and RP01–97–002]

Texas Gas Transmission Corporation; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective on November 1, 2002.

Texas Gas states that these tariff sheets filed herewith are being submitted in compliance with the Commission's ''Order on Order Nos. 637, 567–Gand 587–L Settlement'' issued August 27, 2002 in Docket Nos. RP00–495–000, *et al.*, (the Order).[1] Texas asserts that in that Order, the Commission found that Texas Gas states that it has generally complied with the requirements of Order No. 637,[2] subject to certain modifications discussed in the Order.

Texas Gas states that it was directed to file revised actual (not pro forma) tariff sheets within 30 days consistent with the discussion in the Order, but that the order directs that Texas Gas may not place the revised tariff sheets into effect before further order of the Commission.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the official service list, to Texas Gas's jurisdictional customers and to 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 section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 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, call (202) 502–8222 or for TTY (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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25802 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Texas Gas Transmission Corporation, 100 FERC 61,218 (2002).

[2] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996—December 2000) 31,091 (Feb. 9, 2000); order on rehearing, Order No. 637–A, FERC Stats. & Regs., Regulations Preambles (July 1996—December 2000) 31,099 (May 19, 2000); order on rehearing, Order No. 637–B, 92 FERC 61,062 (July 26, 2000); aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (DC Cir. Apr. 5, 2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–013]

Texas Gas Transmission Corporation; Notice of Filing of Refund Report

October 4, 2002.

Take notice that on October 2, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report pursuant with the provisions of Article XII of the Stipulation and Agreement (S&A) in the above-referenced docket and complying with Subpart F of Part 154 of the Commission's regulations.

Texas Gas states that the refund report details the amount of refunds made in accordance with the provisions of Article II, Section 2 of the S&A, which required Texas Gas to refund within 60 days of a Final Commission Order the difference between the amounts computed under the retroactive settlement base rates approved in Docket No. RP00–260 and the base tariff rates that were actually charged for service provided by Texas Gas for the period November 1, 2000 through July 31, 2002. Interest was computed in accordance with Subpart F, Section 154.501(d).

Texas Gas states that the refunds were made on September 16, 2002, accompanied by associated customer

reports to all of Texas Gas's jurisdictional customers receiving such refunds, as well as 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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 11, 2002. 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25830 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–052]

TransColorado Gas Transmission Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on October 1, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 Fifty-First Revised Sheet No. 21 and Twenty-Fourth Revised Sheet No. 22A, to be effective October 1, 2002.

TransColorado states that the filing is being made in compliance with the Cmmission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect one amended negotiated-rate contract with National Fuel Marketing Company.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 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, call (202) 502–8222 or for TTY (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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25826 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–8–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

October 4, 2002.

Take notice that on October 1, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 Seventeenth Revised Sheet No. 29, to become effective November 1, 2002.

Transco states that the filing is submitted pursuant to Section 38 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file a redetermination of its fuel retention percentage applicable to Rate Schedules LG–A, LNG, LNG–R and LG–S (LNG Rate Schedules) to be effective each November 1. The derivation of the revised fuel retention percentage included therein is based on Transco's actual gas required for operations (GRO) for the period September 1999 through August 2002 plus the balance accumulated in the Deferred GRO Account at August 31, 2002. Appendix A contains workpapers supporting the derivation of the revised fuel retention percentages.

Transco states that copies of the filing are being mailed to its affected 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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25837 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–422–001]

Transwestern Pipeline Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 6th Revised Sheet No. 50, to become effective October 1, 2002.

Transwestern states that on May 1, 2002, in Docket No. RM96–1–020, the Commission issued Order No. 587–O (Order), whereby the Commission amended its open access regulations that govern standards for conducting business and electronic communications with interstate pipelines. The Order, Transwestern states, required pipelines to make tariff filings by August 1, 2002, to implement provisions of the Order to become effective on October 1, 2002.

Transwestern states that it filed its 587–O Compliance filing on August 1, 2002 in Docket No. RP02–422–000. On September 16, 2002, the Commission issued the Compliance Filing Order in which Transwestern's Compliance filing was accepted subject to Transwestern reflecting NAESB Standard 5.3.24 Version 1.5 in its tariff. The instant filing adds the numeric reference of this Standard to Transwestern's tariff.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 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, call (202) 502–8222 or for TTY (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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25805 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–1–000]

Transwestern Pipeline Company; Notice of Tariff Filing

October 4, 2002.

Take notice that on October 1, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirteenth Revised Sheet No. 5B.02, to become effective November 1, 2002.

Transwestern's Stipulation and Agreement filed on May 2, 1995, in Docket Nos. RP95–271, *et al.*, as amended by Transwestern's Stipulation and Agreement filed on May 21, 1996, provided for annual adjustments to the Settlement Base Rates (''SBRs'') beginning November 1, 1998.

Transwestern states that the purpose of the instant filing is to set forth the factors and calculations used in determining the adjustments to the SBRs and to revise the SBRs to be effective November 1, 2002.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25809 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–2–000]

Transwestern Pipeline Company; Notice of Tariff Filing

October 4, 2002.

Take notice that on October 1, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised Sheet No. 5B.03, to become effective November 1, 2002.

Pursuant to Section 25 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Transwestern is filing a tariff sheet, which sets forth the new TCR II Reservation Surcharges that Transwestern proposes to put into effect on November 1, 2002.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25810 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–404–001]

Viking Gas Transmission Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective October 1, 2002:

Substitute Tenth Revised Sheet No. 39
Substitute Eighth Revised Sheet No. 41A
Substitute Third Revised Sheet No. 46A

Viking states that the purpose of this filing is to remove tariff language that is currently pending before the Commission in Docket No. RP00–497–000 from tariff sheets that were accepted by the Commission in its September 26, 2002, Letter Order issued in Docket No. RP02–404–000.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers, to affected state regulatory commissions and to the parties listed on the official service list in this 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 section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 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, call (202) 502–8222 or for TTY (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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25804 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–241–001]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Penalty Revenue Report

October 4, 2002.

Take notice that on July 23, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing revised schedules to its report of penalty revenue collected during Periods of Daily Balancing (PODB), filed April 30, 2002 in docket No. RP02–241–000.

Williams states that it made a filing on April 30, 2002 to report the amount of penalty revenue collected pursuant to the provisions of Article 9.6 of the General Terms and Conditions of its FERC Gas tariff during Periods of daily Balancing (PODB) occurring in the 1995–96 and 1996–97 winter heating seasons, and the proposed distribution of such revenue. Williams's April 30, 2002 filing contained several inadvertent errors related to Williams's interest calculations, the allocation of interest received between penalty categories, and an allocation of refunds to a party who should not have received a refund. A revised penalty Revenue Collected and revised penalty Distribution reports known as Revised Schedule 1 was filed.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above, as well as all of Williams's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before October 11, 2002. 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25803 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–572–000]

Williston Basin Interstate Pipeline Company; Notice of Annual Report

October 4, 2002.

Take notice that on September 30, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 358I, with an effective date of September 30, 2002.

Williston Basin states that as of July 31, 2002 it had a zero balance in FERC Account No. 191. As a result, Williston Basin will neither refund nor bill its former sales customers for any amounts under the conditions of Section No. 39.3.1 of its Tariff.

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 Section 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, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25808 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–37–002]

Williston Basin Interstate Pipeline Company; Notice of Amendment

October 7, 2002.

Take notice that on September 27, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506–5601, filed an amendment to its pending application filed on November 30, 2001, in Docket No. CP02–37–000, pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA), to modify the construction of the Grasslands Project by proposing 72 miles of reroutes, modifying facility construction to reduce the proposed maximum firm daily design delivery capacity from 120,000 dekatherms of natural gas per day to 80,000 dekatherms of natural gas per day and abandoning certain facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. 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 (202) 502–8222 or for TTY (202) 502–8659.

Specifically, Williston Basin states that it no longer requests authorization to construct and operate the Cabin Creek South and Recluse compressor stations. Williston Basin further states that it will no longer be necessary to construct an amine treatment facility as part of its proposal.

In addition, Williston Basin seeks authority in the amended proposal to:

- Install an additional 1,200 horsepower (hp) compressor unit at the existing Cabin Creek compressor station;
- Install electric coolers at the proposed Manning compressor station instead of running the coolers off the horsepower produced at the station;
- Increase the maximum allowable operating pressure (MAOP) on 28 miles of the existing 8-inch diameter Bitter Creek supply lateral in Wyoming from 1,203 psig to 1,440 psig;
- Replace three existing underground road crossings on the existing 8-inch Bitter Creek supply lateral with heavier grade pipeline to meet Department of Transportation requirements and to abandon in place the three existing underground road crossings being replaced;
- Modify the pipeline route by proposing 72 miles of pipeline re-routes due to landowner, environmental and construction concerns;
- Construct an alternate route, referred to as the Gunsite Pass Route, should Williston Basin not be able to utilize its originally proposed route;
- Change the method of calculating the volume-pressure relationship from the Panhandle Eastern method to the Colebrook method; and
- Defer $1.0 million of depreciation expense annually for the first three and one-half years of the Grasslands Project to be recovered over the following three and one-half years.

Williston Basin also proposes to revise its original construction schedule and construct the project in three phases with the option to construct Phase II and/or Phase III earlier than scheduled should Williston Basin determine that sufficient additional requests for capacity justify the earlier construction. It is stated that Williston Basin currently plans to construct Phase I to be in service effective November 1, 2003, Phase II to be in service effective November 1, 2004 and Phase III to be in service effective November 1, 2005.

Any questions regarding the amendment should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, P.O. Box 5601, Bismarck, North Dakota 58506–5601, at (701) 530–1560, or E-mail: *keith.tiggelaar@wbip.com*.

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 October 28, 2002, 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.

The Commission strongly encourages electronic filings. 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.

If the Commission decides to set the amendment 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.

All persons who have heretofore filed need not file again.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25976 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417–080]

Central Nebraska Public Power and Irrigation District; Notice of Availability of Final Environmental Assessment

October 7, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed a Land and Shoreline Management Plan for the Kingsley Dam Hydroelectric Project, located on the North Platte and Platte Rivers, in Garden, Keith, Lincoln, Dawson, and Gosper Counties, Nebraska, and has prepared a Final Environmental Assessment (FEA). The Kingsley Dam Project does not occupy any federal or tribal lands.

The FEA contains the staff's analysis of the potential environmental impacts and concludes that approving the Shoreline Management Plan, with staff recommended changes, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the FEA 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 (202) 502–8222 or for TTY (202) 502–8659 For further information, contact Steve Hocking at (202) 502–8753 or *steve.hocking@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25977 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11834–000 and 4026–033—Maine]

FPL Energy Maine Hydro, LLC and Androscoggin Reservoir Company; Notice of Availability of Final Environmental Assessment

October 4, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Upper and Middle Dam Storage Project located on the Rapid River, in Oxford and Franklin Counties, Maine, and has prepared an Final Environmental Assessment (FEA) for the project. In addition, the FEA analyzes the proposed permanent flow pursuant to Article 32 of the existing license for the Aziscohos Project, located on the Magalloway River, in Oxford County, Maine. In the FEA, the Commission's staff has analyzed the potential environmental effects of the project, and permanent minimum flow and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

On May 21, 2002, the Commission staff issued a draft Environmental Assessment (EA) for the Upper and Middle Dam Storage Project and the proposed permanent minimum flow from the Aziscohos Project and requested that any comments be filed within 30 days. Comments were filed by four entities and are addressed in the FEA.

The FEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA 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 1–866–208–3676 or for TTY (202) 502–8659, or e-mail *FERCONLINESUPPORT@FERC.GOV*.

For further information, contact Mark Pawlowski at (202) 502–6052.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25818 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–385–000]

Williams Gas Pipelines Central, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Redbud Power Pipeline Project and Request for Comments on Environmental Issues

October 4, 2002.

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 Redbud Power Pipeline Project involving construction and operation of facilities by Williams Gas Pipelines Central, Inc.(Williams) in Oklahoma County, Oklahoma.[1] These facilities would consist of about 12.6 miles of various diameter pipeline and a meter station with appurtenant 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.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about

[1] Williams' application was originally filed under the blanket certificate authority issued to Williams in Docket No. CP82–479–000 and the certificate procedures of Part 157 of the Commission's regulations. Williams' application was subsequently protested, however, and on September 5, 2002, its application was converted to a section 7(c) filing under the Natural Gas Act (NGA).

the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Williams provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

Williams wants to construct and operate 12.6 miles of a 30-inch and 24-inch-diameter pipeline lateral and a 12-inch-diameter delivery meter station with appurtenant facilities located in Oklahoma County, Oklahoma. The proposed facilities would transport up to 51,980 million British thermal units per day of natural gas to Redbud Energy, LP (Redbud) for its new non-jurisdictional 1,100 megawatt power generation station.

The new 12.6-mile-long lateral would commence at a point within Williams' existing Edmond Compressor Station and terminate on a site owned by Redbud. The lateral would consist of 12.3 miles of 30-inch-diameter pipeline and 0.3 miles of 24-inch-diameter pipeline. Pigging facilities are proposed at both ends of the lateral. Williams would construct a 100-foot by 150-foot meter station within the Redbud Power Plant.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 136.8 acres of land. Following construction, about 76.4 acres would be maintained as permanent right-of-way. The remaining 60.4 acres 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, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Public safety

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.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

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 below.

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 routes), 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 1, PJ–11.1.
- Reference Docket No. CP02–385–000.
- Mail your comments so that they will be received in Washington, DC on or before November 4, 2002.

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 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.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may 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

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''FERRIS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call 1–866–208–3676. 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).

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 potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, 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 (*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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25814 Filed 10–10–02; 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 Application Tendered for Filing With the Commission, Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

October 4, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 487–034.

c. *Date Filed:* September 25, 2002.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Lake Wallenpaupack Hydroelectric Project.

f. *Location:* On Wallenpaupack Creek, in Wayne and Pike Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Gary Petrewski, PPL Generation, LLC, Two North Ninth Street, Allentown, PA 18101–1179, (610) 774–5996, *gpetrewski@pplweb.com*.

i. *FERC Contact:* Patrick K. Murphy (202) 502–8755, *patrick.murphy@ferc.gov*.

j. *Deadline for filing comments:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor 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.

k. *The existing Lake Wallenpaupack Project consists of:* (1) A dam, comprised of a gravity type concrete structure and earthen embankments, totaling about 1,300 feet long; (2) a 2.5-mile-long, 14-foot-diameter steel pipeline, connecting to a surge tank, and two penstocks; (2) a 5,700-acre reservoir; (3) a powerhouse with a total installed capacity of 44 megawatts; and (4) appurtenant facilities. The applicant estimates that the average annual generation is 80,500 megawatt hours.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 888 First Street, NE, Room 2-A, Washington, DC 20426, or by calling (202) 502–8371. The application may be viewed on the Web 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 1–866–208–3676, or send an e-mail to ferconline *support@ferc.gov*. A copy is also available for inspection and reproduction at the address in item h above.

m. *Relicensing procedures and final amendments:* The Commission staff proposes to issue a single Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA before final action is taken on the license application. If any person or organization objects to this staff proposed procedure, they should file comments as stipulated in item j above, explaining the basis for their objection. The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency or Acceptance Letter with request for additional information—November 2002

Notice soliciting final terms and conditions—March 2003

Notice of the availability of the EA—August 2003

Ready for Commission's decision on the application—January 2004

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice soliciting final terms and conditions.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25817 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12250–000.

c. *Date filed:* June 18, 2002.

d. *Applicant:* Wesley E. Seale Hydro, LLC.

e. *Name and Location of Project:* The Wesley E. Seale Dam Hydroelectric Project would be located on the Nueces River in Jim Wells County, Texas. The proposed project would be located on an existing dam owned by the City of Corpus Christi and would not occupy any federal lands or facilities.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, fax (208) 145–0835.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–12250–000) on any comments or motions filed.

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 Project*: The proposed project would consist of: (1) an existing 81-foot-high, 5,980-foot-long concrete dam, (2) an existing impoundment, Lake Corpus Christi, with a surface area of 19,521 acres and a storage capacity of 531,000 acre-feet at normal maximum water surface elevation 93 feet, (3) a proposed 200-foot-long, 6.5-foot-diameter steel penstock, (4) a proposed powerhouse containing one generating unit with an installed capacity of 1.3 megawatts, (5) a proposed 1-mile-long, 15-kv transmission line, and (6) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 3.9 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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 Wesley E. Seale Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''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 the original and the number of copies provided by the Commission's regulations to: The 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 notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25978 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12282–000.

c. *Date filed:* June 26, 2002.

d. *Applicant:* Rankin Hydro, LLC.

e. *Name and Location of Project:* The John Rankin Lock and Dam Hydroelectric Project would be located on the Tombigbee River in Itawamba County, Mississippi. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, Telephone (208) 745–0834.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–12282–000) on any comments or motions filed.

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 Project:* The proposed project, using the Corps' existing John Rankin Lock and Dam and Reservoir, would consist of: (1) a proposed 200-foot-long, 8-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 1.8 megawatts, (3) a proposed 1-mile-long, 15-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 13.2 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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, (202) 502–8659. A copy is also available for inspection and reproduction at Rankin Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''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 the original and the number of copies provided by the Commission's regulations to: The 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 notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25979 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing

October 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:*

b. *Project No.:* 12291–000.

c. *Date filed:* July 5, 2002.

d. *Applicant:* Beach City Hydro, LLC.

e. *Name and Location of Project:* The Beach City Dam Hydroelectric Project would be located on Sugar Creek in Tuscarawas County, Ohio. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers (Corps).

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, fax (208) 745–0835.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–12291–000) on any comments or motions filed.

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 Project:* The proposed project, using the Corps' existing Beach City Dam and Reservoir, would consist of: (1) a proposed 200-foot-long, 6-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 1 megawatt, (3) a proposed 1-mile-long, 15-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 6 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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 the address in item g.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''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 the original and the number of copies provided by the Commission's regulations to: The 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 notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25980 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12329–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Jennings Randolph Dam Hydroelectric Project would be located on the North Branch Potomac River in Garrett County, Maryland and Mineral County, West Virginia, at the existing Jennings Randolph Dam administered by the Army Corps of Engineers (Corps).

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, Telephone (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–12329–000) on any comments or motions filed.

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 Project:* The proposed project, using the Corps' existing Jennings Randolph Dam and Reservoir, would consist of: (1) a proposed 350-foot-long, 6-foot-diameter penstock, (2) a proposed powerhouse with an installed capacity of 2.6 megawatts, (3) a proposed 500-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 8.4 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website 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, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

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m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'',

''PROTEST'', or ''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 the original and the number of copies provided by the Commission's regulations to: The 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 notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25981 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–E60006–KY Rating EC2, Daniel Boone National Forest Land Exchange Project, Exchanging two Federal Tracts for 98.17 Acres of Privately Owned Land located in Owsley County, Federal Lands to be considered are Tract 107AB (52.15 acres) located on Langdon Branch in Leslie County and Tract 745 (39.96 acres) located on Spicer Fork in Perry County, KY.

Summary

EPA expressed environmental concerns with potential adverse impacts from the proposed land exchange and reasonably foreseeable surface mining activities on the long-term quality of headwater streams. The final EIS should describe how the water quality of Buckhorn Lake will be protected.

ERP No. D–AFS–F65032–MN Rating EC2, Holmes/Chipmunk Timber Sale Project, Implementation, Superior National Forest, LaCroix Ranger District, Saint Louis County, MN.

Summary

EPA expressed environmental concerns with potential impacts to 219 acres of wetlands under the preferred alternative. The final EIS should describe restoration methodologies and the details of contingency mitigation measures.

ERP No. D–BLM–G65083–NM Rating EC2, Farmington Resource Management Plan, Implementation, Managing Public Lands within the Farmington Field Office (FFO) Boundaries and Federal Oil and Gas Resources within the New Mexico Portion of San Juan Basin, San Juan, McKinley, Rio Arriba and Sandoval Counties, NM.

Summary

EPA expressed environmental concerns for potential impacts to water quality, riparian habitat and air quality. The final EIS should give more detail on mitigation measures and discuss contrasts between the various alternatives.

ERP No. D–FHW–E40320–NC Rating EO1, US 321 Highway Improvement Project (TIP), from NC–1500 (Blackberry Road) north to U.S. 221 in Blowing Rock, Funding and U.S. Army COE Section 404 Permit Issuance, Town of Blowing Rock, Caldwell and Watauga Counties, NC.

Summary

EPA expressed environmental objections to Alternative 4A due to impact to the Blue Ridge Escarpment and cut-and fill construction.

ERP No. D–FHW–E40795–NC Rating EC2, US–17 Interstate Corridor Improvements, south of NC–1127 (Possum Track Road) to north of NC–1418 (Roberson Road) Funding and Permit Issuance, City of Washington and Town of Chocowinity Vicinity, Beaufort and Pitt Counties, NC.

Summary

EPA had environmental concerns and requested more information regarding noise analysis, farmland losses, and mitigation of potential impacts.

ERP No. D–FHW–K40252–CA Rating EO2, Willits Freeway Bypass Project, Construction and Operation of a New Segment of U.S. 101, Funding, U.S. Army COE Section 404 Permit, NPDES Permit and Endangered Species Act Incidental Take Permit, City of Willits, Mendocino County, CA.

Summary

EPA expressed environmental objections to the magnitude of impact to waters of the U.S. from the proposed project. Additionally, sufficient information regarding feasibility and commitment to appropriate mitigation measures was not provided. EPA had concerns about the scope of analysis, indirect and cumulative impacts, and the avoidance and minimization of these impacts.

ERP No. D–NPS–K65365–AZ Rating LO, Navajo National Monument, General Management Plan and Development Concept Plan, Implementation, Navajo Counties, AZ.

Summary

EPA expressed lack of objections and supports protecting cultural and natural resources and providing improved visitor services by emphasizing partnerships with tribes and other stakeholders.

ERP No. D–USN–D52000–00 Rating EC1, Introduction of F/A 18 E/F (Super Hornet) Aircraft, Replacing the F–14 (TOMCAT) and F/A–18 C/D (Hornet) Aircraft, Homebasing and Operation, Possible Homebase sites include Naval Air Station (NAS) Oceana, VA; Marine Corps Air Station (MCAS) Beaufort, SC and MCAS Cherry Point.

Summary

EPA expressed environmental concern regarding noise impacts associated with the introduction of the Super Hornet aircraft. EPA believes that Alternative 6 would have lesser overall adverse consequences to the natural environment than Alternative 4A.

Final EISs

ERP No. F–AFS–F05123–00, Adoption—Bond Falls Hydroelectric Project, New License Issuance for an Existing Hydroelectric License (FECR No. 1864–005), Ontonagon River Basin, Ontonagon and Gogebic Counties, MI and Vilas County, WI.

Summary

EPA has no objections to this project. The project has not changed significantly since the Draft stage.

ERP No. F–BIA–K65237–CA, Agua Caliente Indian Reservation Project, Proposed Section 14 Specific Plan and Master Development Plan, Agua Caliente Band of Cahulla Indians, City of Palm Springs, Riverside County, CA.

Summary

EPA expressed continued environmental concerns about impacts to air quality and water sustainability. EPA requested that BIA address the applicability of the Clean Air Act's General Conformity Rule and discuss current regional water management efforts in the Record of Decision.

ERP No. F–BLM–J02011–00, Programmatic EIS—Southern Ute Indian Reservation Oil and Gas Development, Implementation, San Juan Basin, LaPlata, Archuleta, Montezuma Counties, CO and Rio Arriba and San Juan Counties, NM.

Summary

EPA continues to express environmental concerns about uncontrolled methane migration to the surface. The final EIS does include additional information on wetland impacts and avoidance and permitting procedures in response to EPA comments on the DEIS.

ERP No. F–FAA–K51040–CA, Santa Barbara Airport Improvements, Extension of Runway Safety Areas for Runway 7/25, Expansion of the Airline Terminal Building, Construction of New Cargo Building, New Taxiway M, New On-Airport Service Road and Additional T-Hangers and Pavement of Taxiway B, Funding and U.S. Army COE Section 404 and 10 Permits Issuance, Santa Barbara County, CA.

Summary

EPA had no objections to the proposed action. EPA did request that the Record of Decision address whether further air quality mitigation measures by the airport are feasible and available to reduce non-project-related emissions at the airport; and whether FAA can assist in the implementation of additional air quality-related mitigation measures.

ERP No. F–FHW–C40152–NJ, NJ–52(1) Causeway (known as MacArthur Boulevard) Construction Project, between NJ–9 in Somers Point, Atlantic County to Bay Avenue in Ocean City, Cape May County, Funding, U.S. Army COE Section 404 and 10 Permits and U.S. Coast Guard Permit Issuance, Atlantic and Cape May Counties, NJ.

Summary

EPA expressed no further concerns regarding the project as proposed.

Dated: October 8, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–26000 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6633–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed September 30, 2002 through October 04, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020407, Draft EIS, AFS, ID, North Kennedy-Cottonwood Stewardship Project, Proposal to Modify the Existing Transportation System and to Manage Vegetation through both Commercial and Non-Commercial methods to Improve the Forest Health, Boise National Forest, Emmett Ranger District, Gem and Valley Counties, ID, Comment Period Ends: November 25, 2002, Contact: Terry Hardy (208) 373–4235.

EIS No. 020408, Draft EIS, EPA, FL, Peace River/Manasota Regional Surface Water Supply Authority's Surface Water Supply, Storage, and Interconnect Project, Construction and Operation, To Increase Finished Water Delivery Capacity of 32.7 Million Gallon Per Day To Meet Year 2015 Potable Water Demand, DeSoto, Manatee, Sarasota and Charlotte Counties, Fl, Comment Period Ends: November 29, 2002, Contact: John Hamilton (404) 562–9617.

EIS No. 020409, Final EIS, NPS, GA, Fort Frederica National Monument General Management Plan, Implementation, Saint Simons Island, Glynn County, GA, Wait Period Ends: November 12, 2002, Contact: Mike Tennent (912) 638–3630.

EIS No. 020410, Final Supplement, FRC, WA, Irene Creek Hydroelectric Project, (FERC No.10100–002) and Anderson Creek Hydroelectric Project (FERC No. 10416–003), Construction and Operation, Issuance of Amended License Applications, Skagit and Whatcom Counties, WA, Wait Period Ends: November 12, 2002, Contact: Alan Mitchnick (202) 502–6074.

EIS No. 020411, Final EIS, BIA, CA, NV, Truckee River Water Quality Settlement Agreement—Federal Water Right Acquisition, Implementation, Truckee River, Placer County, CA and Washoe, Storey and Lyon Counties, NV, Wait Period Ends: November 12, 2002, Contact: Tom Strekal (775) 887–3500.

EIS No. 020412, Final EIS, COE, KS, Tuttle Creek Dam Safety Assurance Program, Proposal for Flood Control, Water Supply, Water Quality, Fish & Wildlife, Recreation and Navigation Support, Big Blue River, Riley and Potawatomie Counties, KS, Wait Period Ends: November 12, 2002, Contact: William B. Empson (816) 983–3556.

EIS No. 020413, Final EIS, FHW, LA, Louisiana 1 Improvements Project, Golden Meadow to Port Fourchon Highway Construction, Funding, U.S. Army COE Section 10 and 404, NPDES and Coast Guard Bridge Permits Issuance, Lafoufche Parish, LA, Wait Period Ends: November 20, 2002, Contact: William C. Farr (225) 757–7615.

EIS No. 020414, Final EIS, AFS, MT, Black Ant Salvage Project, Salvage of 739 Acres of Dead Merchantable Trees from the Lost Fork Fire of 2001, Lewis and Clark National Forest, Meagher Basin County, MT, Wait Period Ends: November 12, 2002, Contact: George Weldon (406) 791–7700.

EIS No. 020415, Final Supplement, COE, FL, Central and Southern Florida Project, Indian River Lagoon—South Feasibility Study, Additional Information, Selection of Plan, Alternative 6, Restoration of the Southern Indian River Lagoon and the St. Lucie Estuary Ecosystem, Martin, St. Lucie, Okeechobee Counties, FL, Wait Period Ends: November 12, 2002, Contact: Laura Mahoney (904) 232–2646.

EIS No. 020416, Final EIS, DOE, ID, Idaho High-Level Waste and Facilities Disposition, Alternatives for Managing High-Level Waste, Mixed Transuranic Waste/Sodium Bearing Waste and Associated Radioactive Wastes Evaluation, Bannock, Bingham, Bonneville, Butte, Madison, Clark, and Jefferson Counties, ID, Wait Period Ends: November 12, 2002, Contact: Richard Kimmel (208) 526–5583.

EIS No. 020417, Draft EIS, FTA, CA, Transbay Terminal/Caltrain Development Downtown Extension/Redevelopment Project, New Multi-Modal Terminal Construction, Peninsula Corridor Service Extension

and Establishment of a Redevelopment Plan, Funding, San Francisco, San Mateo and Santa Clara Counties, CA, Comment Period Ends: November 25, 2002, Contact: Jerome Wiggins (415) 744–3115.

EIS No. 020418, Draft EIS, USN, CA, Advanced Amphibious Assault Vehicle (AAAV) Development, Replacement and Establishment, Implementation, Del Mar Basin Area of Marine Base Corps (MCB) Camp Pendelton, San Diego County, CA, Comment Period Ends: November 25, 2002, Contact: Lisa Seneca (619) 532–4744.

Amended Notices

EIS No. 020343, Draft EIS, SFW, CA, Natomas Basin Habitat Conservation Plan, Issuance of Incidental Take Permit and the Adoption of an Implementing Agreement or Agreements, Natomas Basin, Sacramento and Sutter Counties, CA, Comment Period Ends: October 28, 2002, Contact: Vicki Campbell (916) 414–6600. Revision of FR Notice Published on 8/16/2002: CEQ Comment Period Ending 9/30/2002 has been Extended to 10/28/2002.

Dated: October 8, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–26001 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7393–8]

EPA Science Advisory Board; Emergency Notification of Public Advisory Committee Teleconference Meeting; Human Health Research Strategy Review Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a teleconference of the Human Health Research Strategy Review Panel (HHRS Review Panel) of the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB). The HHRS Review Panel will meet on October 23, 2002 via teleconference from 3 p.m. to 4 p.m. Eastern Time. This teleconference meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, but, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. For further information concerning the meeting or how to obtain the Teleconference phone number, please contact the individuals listed below.

The background for this review and the charge to the panel were published in 67 FR 41718–41721 on June 19, 2002. The notice also included a call for nominations for members of the panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the panel.

The draft document that is the subject of this SAB review, *Human Health Research Strategy,* May 2002, is available on the SAB Web site (*see* below). Any questions on the strategy should be directed to the program contact listed below.

Purpose of the Meeting—The purpose of this public teleconference meeting is for the HHRS Review Panel to: (a) Discuss the charge and the adequacy of the review materials provided to the HHRS Review Panel; (b) clarify any questions and issues relating to the charge and the review materials; (c) discuss specific charge assignments to the HHRS Review Panelists; and (d) clarify specific points of interest raised by the Panelists in preparation for the face-to-face meeting planned for November 2002.

FOR FURTHER INFORMATION CONTACT: To enquire about public participation in the meeting identified above please contact Sue Shallal, Ph.D., Designated Federal Officer, HHRS Review Panel, USEPA Science Advisory Board (1400A), Suite 6450DD, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4566; fax at (202) 501–0323; or via e-mail at *shallal.suhair@epa.gov.* Brief oral comments will be taken *only on the topics given above under Purpose of the Meeting* [a formal public comment period will be advertised for the planned November face-to-face meeting]. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Dr. Shallal no later than noon Eastern Time on October 18th. The SAB will have a brief period (no more than 10 minutes total) available during the teleconference meeting which will be divided among the speakers who register. Registration is on a first come basis. Those wishing to speak but who are unable to register in time may provide their comments in writing.

Members of the public desiring additional information about the meeting location or the call-in number for the teleconference, must contact Ms. Zisa Lubarov-Walton, Management Assistant, EPA Science Advisory Board (1400A), Suite 6450FF, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4537; fax at (202) 501–0582; or via e-mail at *lubarov-walton.zisa@epa.gov.* A copy of the draft agenda for the meeting will be posted on the SAB Web site *http://www.epa.gov/sab* (under the AGENDAS subheading) approximately a week before the meeting.

Availability of Review Material—There is one primary document that is the subject of the review. This draft review document is available electronically at the following site *http://www.epa.gov/sab/pdf/hhrs.pdf.* For questions and information pertaining to the review document, please contact Dr. Hugh Tilson, (Mail Code B30502), U.S. Environmental Protection Agency, National Health and Environmental Effects Research Laboratory, Research Triangle Park, NC 27711; tel. (919) 541–4607, Fax (919) 685–3252, *e-tilson.hugh@epa.gov.*

General Information on Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total (unless otherwise indicated above). Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 25 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with

original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Shallal at least five business days prior to the meeting so that appropriate arrangements can be made.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site *http://www.epa.gov/sab* and in the EPA Science Advisory Board FY2001 Annual Staff Report which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: October 8, 2002.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 02–26170 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0266; FRL–7276–1]

Methamidophos; Organophosphate Pesticide; Availability of Interim Risk Management Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the Interim Reregistration Eligibility Decision (IRED) document and technical support documents for the organophosphate (OP) pesticide, methamidophos. These documents have been developed using a public participation process designed by EPA and the U.S. Department of Agriculture to involve the public in the reassessment of pesticide tolerances under the Food Quality Protection Act and the reregistration of individual OPs under the Federal Insecticide, Fungicide, and Rodenticide Act.

FOR FURTHER INFORMATION CONTACT: Mark Hartman, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0734; fax number: (703) 308–8041; e-mail address: hartman.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will interest a widerange of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0266. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. Please note that technical supporting documents for methamidophos can be found under legacy docket number OPP–34166 and may not be available in EPA Dockets.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number. Please note that technical supporting documents for methamidophos can be found under legacy docket number OPP–34166 and may not be available in EPA Dockets.

II. Background

A. What Action is the Agency Taking?

For the OP pesticide methamidophos, the Agency is announcing the availability of the IRED document and supporting technical documents. EPA has assessed the risks associated with the use of methamidophos and reached an interim reregistration eligibility decision for methamidophos. The methamidophos IRED and supporting technical documents were developed using the OP public participation process, which was designed to increase transparency and maximize stakeholder involvement and to provide numerous opportunities for public comment. You can read more about the OP public participation process at http://www.epa.gov/pesticides/op/process.htm. Below is a brief summary of EPA's interim decision, which is fully described in the methamidophos IRED document.

EPA has determined that methamidophos is eligible for reregistration, pending a full reassessment of the cumulative risk from all OP pesticides, and provided that all the conditions identified in the IRED document are satisfied, including implementation of risk mitigation measures. Without implementation of the risk mitigation measures, the Agency has determined that methamidophos products may pose unreasonable adverse effects on human health and the environment. Therefore, EPA expects that registrant will implement the risk mitigation measures as soon as possible. The IRED document describes, in detail, what is necessary for implementing the risk mitigation measures, such as submission of label amendments for end-use products and submission of any required data. Mitigation measures for methamidophos include a phase out of methamidophos use on cotton by 2007. Should a registrant fail to implement any of the risk mitigation identified in the IRED document, the Agency may take regulatory action to address risk concerns from the use of methamidophos.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this action falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products, and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: September 24, 2002.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–25861 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0261; FRL–7275–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request on the **Federal Register.**

DATES: The deletions are effective on April 9, 2003, or on November 12, 2002, for products with registration numbers 007401–00267, 062719–00081, and 062719–84, unless the Agency receives a withdrawal request on or before April 9, 2003, or on before November 12, 2002, for products with registration numbers 007401–00267, 062719–00081, and 062719–00084.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before dates given above.

ADDRESSES: Withdrawal requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0261 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: *hollins.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0261. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name/active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration Number	Product Name	Active Ingredient	Delete from Label
006959–00092	Cesso Fire Ant Killer	Piperonyl butoxide; tetramethrin; permethrin, mixed cis, trans	Indoor uses and use on outside surfaces of buildings
007401–00267	Hi Yield 5% Malathion Dust	Malathion dust	Use on corn
062719–00081	Lontrel F Technical	Clopyralid	Residential turf
062719–00084	Lontrel 35A	Clopyralid	Residential turf

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration Number	Product Name	Active Ingredient	Delete from Label
062719–00330	Esteron 638	2,4-Dichlorophenoxyacetic acid, 2-butoxyethyl ester	Cereals underseeded with legumes, orchard floors and sugarcane

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before dates indicated in **DATES** section of this notice to discuss withdrawal of the application for amendment. This 180–day period, or 30–day where indicated, will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
006959	Cessco Inc. 3609A River Road Johns Island, SC 29455
007401	Brazos Associates, Inc. Agent For: Voluntary Purchasing Group Inc. 2001 Diamond Ridge Drive Carrollton, TX 75010
062719	Dow Agrosciences LLC. 9330 Zionsville Road 308/2E225 Indianapolis, IN 46268

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before April 9, 2003, or on or before November 12, 2002, for products with registration numbers 007401–00267, 062719–00081, and 062719–00084.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions. There is a 12–month existing stocks provision for Dow AgroSciences, EPA registration numbers 062719–00081, and 062719–00084, after approval of revised label.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 23, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 02–25423 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–S

OFFICE OF NATIONAL DRUG CONTROL POLICY

Appointment of Members of Senior Executive Services Performance Review Board

AGENCY: Office of National Drug Control Policy (ONDCP).

ACTION: Notice of Appointments.

SUMMARY: The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Dr. Albert E. Brandenstein; Mr. Robert Brown; Mr. Norman R. Deck; and Mr. Edward H. Jurith.

FOR FURTHER INFORMATION CONTACT: Please direct any questions to Linda V. Priebe, Assistant General Counsel (202) 395–6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 02–25933 Filed 10–10–02; 8:45 am]

BILLING CODE 3180–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1435–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1435–DR), dated September 27, 2002, and related determinations.

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Tropical Storm Isidore beginning on September 21, 2002, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

The parishes of Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany, Tangipahoa, and Terrebonne for Individual Assistance.

The parishes of East Baton Rouge, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, and Terrebonne for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

All parishes within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25964 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1434–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1434–DR), dated September 26, 2002, and related determinations.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 30, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25963 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the maximum amounts for Individual and Family Grants and Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2002.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or (e-mail) *magda.ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act) prescribes that we (FEMA) must adjust annually grants made under section 411, Individual and Family Grant Program, and Small Project Grants made under section 422, Simplified Procedure, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under section 411 of the Act, with respect to any single disaster, to $15,000 for all disasters declared on or after October 1, 2002.

We also give notice that we are increasing the amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, to $53,000 for all disasters declared on or after October 1, 2002.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 1.8 percent for the 12-month period ended in August 2002. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2002.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25965 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Statewide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2002.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or (e-mail) *magda.ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: 44 CFR 206.48 prescribes that we (FEMA) must adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the statewide per capita impact indicator to $1.09 for all disasters declared on or after October 1, 2002.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 1.8 percent for the 12-month period ended in August 2002. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2002.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25966 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Countywide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the countywide *per capita* impact indicator under the Public Assistance program for disasters declared on or after October 1, 2002.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or (email) *magda.ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Response and Recovery Directorate Policy No. 9122.1 prescribes that we (FEMA) will adjust the countywide *per capita* impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the countywide *per capita* impact indicator to $2.71 for all disasters declared on or after October 1, 2002.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 1.8 percent for the 12-month period ended in August 2002. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2002.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25967 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket Nos. CH–RP–01–0033 and WA–RP–00085]

Notice of Opportunity To Submit Amicus Curiae Briefs in Representation Proceedings Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in two proceedings before the Federal Labor Relations Authority in which the Authority is determining the bargaining unit eligibility of employees performing civilian personnel work in other than a purely clerical capacity for fellow agency employees in bargaining units other than the one at issue.

SUMMARY: The Federal Labor Relations Authority is providing an opportunity for all interested persons to file briefs as amici curiae on a significant issue in cases pending before the Authority. The Authority is considering the cases pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (2000) (the Statute) and its regulations, set forth at 5 CFR part 2422. The issue concerns the bargaining unit eligibility of employees performing civilian personnel work in other than a purely clerical capacity for fellow agency employees in bargaining units other than the one at issue.

DATES: Briefs submitted in response to this notice will be considered if received by mail, commercial delivery, or personal delivery in the Authority's Case Control Office by 5 p.m. on November 15, 2002. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

FORMAT: All briefs shall be captioned ''*United States Department of the Army, North Central Civilian Personnel Operations Center, Rock Island, Illinois,* Case No. CH–RP–01–0033 and *United States Department of Justice, Immigration and Naturalization Service, Washington, DC,* Case No. WA–RP–00085.'' Parties must submit five copies, one of which must contain an original signature, of each amicus brief, on 8½ by 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27(a) and (c).

The designated representatives in *United States Department of the Army, North Central Civilian Personnel Operations Center, Rock Island, Illinois,* Case No. CH–RP–01–0033 (*North Central Civilian Personnel Operations Center*) are: David A. Helmer, Labor Relations Officer, Policy and Program Development Division, Office of the Deputy Chief of Staff for Personnel (G–1), ATTN: DAPE–CP–PPL, 2461 Eisenhower Avenue (Hoffman 1, Room 152), Alexandria, VA 22331; Thomas R. Esparza, Union Representative, AFGE, Local 15, AFL–CIO, Rock Island Arsenal, Bldg. 350, Room 435, Rock Island, IL 61299–6000; William E. Washington, Regional Director, Federal Labor Relations Authority, 55 West Monroe, Suite 1150, Chicago, IL 60603–9729.

The designated representatives in *United States Department of Justice, Immigration and Naturalization Service, Washington, DC,* Case No. WA–RP–00085 (*INS*) are: Susan Dole, Agency Representative, Immigration and Naturalization Service, Human Resources Division, 800 K Street NW., Suite 5000, Washington, DC 20536; Linda Church, Union Representative, AFGE, Local 511, AFL–CIO, 7201 South Airport Road, Pembroke Pines, FL 33023; Marjorie K. Thompson, Regional Director, Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100, Denver, CO 80204–3581.

ADDRESSES: Mail or deliver briefs to Gail D. Reinhart, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street NW., Room 415, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Gail D. Reinhart, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: On August 9, 2002, in 58 FLRA No. 3, the Authority granted an application for review of the Regional Director's Decision and Order and Direction of Election in *North Central Civilian Personnel Operations Center.* In addition, on August 26, 2002, in 58 FLRA No. 4, the Authority granted, in part, an application for review of the Regional Director's Decision and Order on Petition for

Clarification of Unit in *INS.* Summaries of the cases follow. Copies of the Authority's complete decisions may be obtained by telephoning Gail D. Reinhart at the number listed above.

A. Background

1. North Central Civilian Personnel Operations Center

American Federation of Government Employees, Local 15, AFL–CIO (Union), filed a petition seeking an election for representation of certain employees of the Department of the Army, North Central Civilian Personnel Operations Center (Activity), located at the Rock Island, Illinois Arsenal. The Activity provides staffing and classification services to Department of the Army (Agency) employees in the Agency's North Central region. During the processing of this petition, the Activity asserted that employees who performed personnel work for Agency employees outside the proposed bargaining unit should be excluded from the proposed unit under 5 U.S.C. 7112(b)(3), which excludes employees engaged in personnel work in other than a purely clerical capacity from bargaining units.

2. INS

American Federation of Government Employees, Local 511, AFL–CIO (Union), filed a petition seeking to clarify the bargaining unit to include certain employees of the United States Department of Justice, Immigration and Naturalization Service, Washington, D.C. (Activity). During the processing of this petition, the Activity asserted that employees who performed personnel work for Activity employees outside the bargaining unit should be excluded from the bargaining unit under 5 U.S.C. 7112(b)(3).

B. The Regional Directors' Decisions

1. North Central Civilian Personnel Operations Center

The Regional Director (RD) determined that the disputed positions were not excluded from the proposed unit under 5 U.S.C. 7112(b)(3) because these employees were not directly involved in performing personnel work affecting the proposed unit. Accordingly, the RD found that the inclusion of the disputed positions in the proposed unit would not create a conflict of interest between union representation and their job duties. Therefore, the RD concluded that the employees in the disputed positions are not engaged in personnel work within the meaning of 5 U.S.C. 7112(b)(3) and thus were not excluded from the proposed bargaining unit.

2. INS

The RD determined that the disputed positions were excluded from the proposed unit under 5 U.S.C. 7122(b)(3). The RD found that the employees, who provide personnel services for Agency employees in bargaining units other than the unit in which the Union seeks to include them, perform internal personnel work that is directly related to the personnel operations of their Agency. Accordingly, the RD found that the inclusion of the disputed positions in the bargaining unit would create a conflict of interest between union representation and their job duties. Therefore, the RD concluded that the employees in the disputed positions are engaged in personnel work within the meaning of 5 U.S.C. 7112(b)(3) and thus were excluded from the bargaining unit.

C. The Applications for Review

1. North Central Civilian Personnel Operations Center

The Agency filed the application for review, contending that review of the RD's decision is warranted under 5 CFR 2422.31(c), because the decision raises an issue for which there is an absence of precedent and there is a genuine issue over whether the RD failed to apply established precedent.

2. INS

The Union filed the application for review, contending that review of the RD's decision is warranted under 5 CFR 2422.31(c), because the decision raises an issue for which there is an absence of precedent and there is a genuine issue over whether the RD failed to apply established precedent.

D. Questions on Which Briefs are Solicited

In each case, the Authority granted the application for review under 5 CFR 2422.31(c) and directed the parties to file briefs addressing the following questions:

Section 7112(b)(3) of the Statute provides that a bargaining unit is not appropriate if it includes ''an employee engaged in personnel work in other than a purely clerical capacity.'' Does section 7112(b)(3) operate to exclude employees who perform personnel work concerning other employees of the same agency who are not included in the bargaining unit at issue? In this regard, does the term ''personnel work'' refer to personnel work of the agency or only to work that concerns other employees of the same bargaining unit?

Because this issue is likely to be of concern to the federal sector labor-management relations community in general, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these questions.

Dated: October 8, 2002.

For the Authority.

Gail D. Reinhart,

Director, Case Control Office.

[FR Doc. 02–26036 Filed 10–10–02; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011828.

Title: Yangming Marine Transport Corporation/Wan Hai Lines Ltd. (YM/WHL) Asia/U.S. Pacific Coast Slot Allocation & Sailing Agreement.

Parties: Yangming Marine Transport Corporation Wan Hai Lines Ltd.

Synopsis: The agreement authorizes Yangming to charter space to Wan Hai in the trade from ports on the U.S. West Coast, on the one hand, to ports in Asia, on the other hand. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: October 8, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–26031 Filed 10–10–02; 8:45 am]

BILLING CODE 6730–01–P

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 October 25, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Lewis W. and Bonnie C. Donaghey, Trenton, Texas; to acquire additional voting shares of Trenton Bankshares, Inc., Trenton, Texas, and thereby indirectly acquire additional voting shares of First National Bank, Trenton, Texas.

Board of Governors of the Federal Reserve System, October 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25946 Filed 10–10–02; 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 website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Crystal Valley Financial Corporation, Middlebury, Indiana; to acquire a 19.79 percent limited partner interest in a partnership that will develop and own a low-income housing tax credit project containing 144 units, and thereby engage in community development activities, pursuant to § 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, October 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–25945 Filed 10–10–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Revision of SF 504, Medical Record—History—Part 1

AGENCY: Office of Communications, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR revised the SF 504, Medical Record—History—Part 1 to add sponsor information, update the patient identification information and make the form authorized for local reproduction. You can obtain the updated form in two ways: On the internet. Address: *http://www.gsa.gov/forms/* or; From GSA, Forms-CAP, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective October 11, 2002.

Dated: September 26, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–25918 Filed 10–10–02; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR)

Automation of Medical Standard Form 504

AGENCY: Office of Communications, GSA.

ACTION: Guideline on Automating Medical Standard Forms.

BACKGROUND: The Interagency Committee on Medical Records (ICMR) is aware of numerous activities using computer-generated medical forms, many of which are not mirror-like images of the genuine paper Standard/Optional Form. With GSA's approval the ICMR eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The committee proposes to set required fields standards and that activities developing computer-generated versions adhere to the required fields but not necessarily to the image. The ICMR plans to review medical Standard/Optional forms which are commonly used and/or commonly computer-generated. We will identify those fields which are required, those (if any) which are optional, and the required format (if necessary). Activities may not add or delete data elements that would change the meaning of the form. This would required written approval from the ICMR. Using the process by which overprints are approved for paper Standard/Optional forms, activities may add other data entry elements to those required by the committee. With this decision, activities at the local or headquarters level should be able to develop electronic versions which meet the committee's requirements. This guideline controls the ''image'' or required fields but not the actual data entered into the field.

SUMMARY: With GSA's approval, the Interagency Committee of Medical Records (ICMR) eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The following fields must appear on the electronic version of the following form:

ELECTRONIC ELEMENTS FOR SF 504

Item	Placement*
History—Part 1 (Title)	Top of form.
Standard Form 504 (Rev. 8/2001) (Form ID)	Bottom right corner of form.

ELECTRONIC ELEMENTS FOR SF 504

Item	Placement*
Data Entry Fields:	
Nature and Duration of Complaints (Include circumstances of admission)	
History of Present Illnesses	
Relationship to Sponsor	
Sponsor's Name—Last	
Sponsor's Name—First	
Sponsor's Name—MI	
Sponsor's ID Number (SSN or Other)	
Department/Service	
Hospital or Medical Facility	
Records Maintained At	
Register No.	
Ward No.	
Patient Information (Text)	Above below listed items.
Last Name	
First Name	
Middle Name	
ID No. or SSN	
Sex	
Date of Birth	
Rank/Grade	

*If no specific placement, data element may be in any order.

FOR FURTHER INFORMATION CONTACT: CDR Katherine Ciacco Palatianos, Indian Health Service, Department of Health and Human Services, 5600 Fishers Lane, Room 6A–55, Rockville, MD 20857 or E-Mail at *kciacco@hqe.ihs.gov.*

Dated: February 12, 2002.

Katherine Ciacco Palatianos,

Chairperson, Interagency Committee on Medical Records.

[FR Doc. 02–25919 Filed 10–10–02; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulations (HHSAR) part 342; Contract Administration—0990–0131—Extension/no change—HHSAR 342.7101 requires reporting information when a cost overrun is anticipated. The information is used to determine if the anticipated overrun is reasonable. Respondents: State or local governments, business or other for-profit, non-profit institutions, small businesses; Number of Annual Respondents: 110; Average Burden per Response: 20 hours; Total Burden: 2,200 hours.

2. HHS Acquisition Regulations (HHSAR) part 324; Protection of Privacy and Freedom of Information—0990–0136–Extension/no change—The confidentiality of information reporting requirements are needed to prevent the disclosure of confidential information. Respondents: State or local governments, business or other for-profit, non-profit institutions, small businesses; Annual Number of Respondents: 430; Average Burden per Response: 8 hours; Total Burden: 3,440 hours.

3. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—0990–0169–Extension/no change–Pre-award, post-award and subsequent reporting and recordkeeping requirements are necessary to award, monitor, close out and manage grant programs, assure minimal fiscal control and accountability for Federal funds and deter fraud, waste and abuse. Respondents: State or local governments; Annual Number of Respondents: 4,000; Average Burden per Respondent: 70 hours; Total Annual Burden: 280,000 hours. OMB Desk Officer: Allison Herron Eydt

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address:

Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC, 20201. Written comments should be received within 30 days of this notice.

Dated: September 30, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–25985 Filed 10–10–02; 8:45 am]

BILLING CODE 4151–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Population Affairs, HHS.

ACTION: Notice; correction.

SUMMARY: The Office of Population Affairs, OPHS, HHS published a notice in the **Federal Register** of July 5, 2002 announcing the anticipated availability of funds for family planning services grants. Table I of the document omitted

two eligible populations/areas to be served. These omissions caused the total amount of funding, as stated in Table 1, to be incorrect. This document corrects those items.

FOR FURTHER INFORMATION CONTACT: Kathleen Woodall, 301–594–0190; e-mail: *kwoodall@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION:

Correction

On page 45014, in the third column, correct the eighth line from the bottom of the page to read ''approximately $105.2 million will be.''

On page 45015, correct Table I to read:

Populations/areas to be served	Funding available	Application due date	Approx. grant funding date
Region I			
Massachusetts-Central/Southeast	$1,471,813	09–01–02	01–01–03
Region II			
New Jersey	7,974,484	09–01–02	01–01–03
New York, NY	3,522,462	03–01–03	07–01–03
Region III			
Delaware	1,009,643	12–01–02	04–01–03
Maryland	3,729,883	12–01–02	04–01–03
Pennsylvania	11,951,606	03–01–03	07–01–03
Virginia	4,299,203	12–01–02	04–01–03
West Virginia	2,008,201	12–01–02	04–01–03
Region IV			
Alabama	4,315,101	03–01–03	07–01–03
Florida	7,652,636	03–01–03	07–01–03
Georgia	7,080,259	03–01–03	07–01–03
Kentucky	4,759,359	03–01–03	07–01–03
Mississippi	4,508,789	03–01–03	07–01–03
North Carolina	6,076,410	03–01–03	07–01–03
Region V			
Minnesota	2,242,934	09–01–03	01–01–03
Minneapolis, Minnesota	187,945	05–29–03	09–29–03
Ohio	5,202,414	12–01–02	03–01–03
Portage, Summit & Medina Counties, Ohio	749,745	03–01–03	07–01–03
Region VI			
Louisiana	3,743,201	03–01–03	07–01–03
Region VII			
Iowa	2,206,340	03–01–03	07–01–03
Iowa	951,128	05–30–03	09–30–03
Region VIII			
Montana	1,707,000	03–01–03	07–01–03
Region IX			
Arizona	3,811,522	09–01–02	01–01–03
California	20,123,818	09–01–02	01–01–03
Washoe County, Nevada	613,415	03–01–03	07–01–03
Region X			
Idaho	949,660	03–01–03	07–01–03
Seattle, WA	163,438	05–30–03	09–30–03

Dated: October 3, 2002.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 02–25986 Filed 10–10–02; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Panel Discussion—Health Effects of Asbestos and Synthetic Vitreous Fibers: The Influence of Fiber Length

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: ATSDR is holding a panel discussion to review and discuss the current state-of-the-art understanding of health effects related to asbestos and synthetic vitreous fibers (SVFs), especially those of less than 5 microns in length. ATSDR has invited a cross-section of scientists with expertise in the fields of toxicology, epidemiology, pulmonology/pathology, and medicine to participate in 1½ days of discussions on a variety of topics, including depositional patterns of fibers in the lung and mechanisms of toxic action, the relationship of fiber size to toxicity, irritant effects of fibers, relationships

between measured fiber levels and observed adverse health outcomes, and data gaps/research needs. ATSDR will use the scientific input received from the discussions of each of the individuals to aid in developing scientifically defensible public health evaluations for human exposures to smaller-than-5-micron fibers and in the formulation of future research proposals.

DATES: The panel discussion will be held on October 29, 2002, from 1 p.m. to approximately 6 p.m., and October 30, 2002, from 8 a.m. to approximately 5:30 p.m.

Location: The panel discussion will be held at the Jacob K. Javitz Federal Building, 26 Federal Plaza, 6th Floor, New York, NY 10278. It is located on Broadway between Worth and Duane Streets. Participants must enter through the Broadway Street ''Federal Employees Entrance'' and show picture identification and a registration confirmation e-mail from ERG. To make hotel reservations at the nearby Holiday Inn Downtown/SoHo, please call the hotel directly at 212–966–8898. Reference the ''ATSDR Fibers Panel'' to receive the group rate of $195.00/night plus 13.25 percent tax and $2.00 occupancy tax. You must make your reservation before October 14, 2002. After this date, any remaining rooms will be released from our block and sold on a space- and rate-available basis.

Attending the Panel Discussion: The public is welcome to attend the panel discussions. There is no charge for attending the meeting; however, you must pre-register as seating is limited. To register, send your full contact information (name, affiliation, mailing address, phone, fax, and email) to ATSDR's contractor, Eastern Research Group, Inc. (ERG) by email (*meetings@erg.com*) or fax (781–674–2906), referencing the ''ATSDR Fibers Panel.'' If you have any questions about registration, please call ERG directly at 781–674–7374.

A limited amount of time will be set aside for members of the public to present brief oral comments regarding asbestos- and synthetic vitreous fiber-related scientific issues. Oral presentations will be limited to 5 minutes, and the number of people giving oral comments may be limited by the time available. Opportunity for making oral comment will be provided on a first-come, first-served basis; therefore, the public is encouraged to pre-register and sign-up to present oral comments by emailing (*meetings@erg.com*) or faxing (781–674–2906) ERG. After the meeting, ATSDR will prepare a summary report that will capture the salient points of each of the panel members and observers. The agency will consider the scientific information received during the meeting to aid in developing scientifically defensible public health evaluations for human exposures to smaller-than-5-micron fibers and in the formulation of future research proposals.

FOR FURTHER INFORMATION: For general questions about the asbestos and synthetic vitreous fibers panel discussion, contact Dr. Allan Susten, Assistant Director for Science, Division of Health Assessment and Consultation, ATSDR, at 404–498–0007.

For questions about logistics, contact ERG at 781–674–7374.

Background Information: ATSDR conducts public health assessments to evaluate possible public health implications of contaminants associated with hazardous waste sites and other environmental releases. A crucial part of this evaluation is the understanding of toxicological implications of exposure to substances that may be present. Recent events have highlighted a need to further explore the potential for health effects from exposure to biopersistent fibers, specifically asbestos and some SVFs. ATSDR is currently involved in several site assessments that address the potential for residential and community exposures to persistent fibers from past industrial operations (*e.g.*, vermiculite processing plants across the country), hazardous waste sites, and dust generated from the World Trade Center (WTC) collapses in lower Manhattan. These sites are unique in that contaminant materials are/may be present in people's homes and communities. Additionally, there are potential concerns surrounding smaller length fibers which may have been generated by each of these past activities, especially in relation to the materials found in lower Manhattan.

Smaller fibers and non-fibrous particles may be generated as fibrous materials are processed, disposed of, or damaged, as in the case of the WTC collapses. In these situations, traditional fiber counting techniques may not quantify all of the materials present. Standard assessment methodology addresses fibers greater than 5 microns in length, based on the relative risk of longer fibers being greater than that of shorter fibers. Significant toxicology and occupational health research has focused on asbestos fibers and SVF greater than 5 microns in length, however, it seems that much less is known about the potential health effects of smaller fibers. ATSDR has identified a need to understand the potential for fibers less than 5 microns in length to contribute to adverse health effects. ATSDR is convening this panel to gain a greater understanding of asbestos and SVF toxicity, especially as it relates to fibers less than 5 microns in length. Research needs identified during these deliberations may lead to the development of specific research projects.

ATSDR's overall goal is to receive individual expert opinions on the following three general questions related to asbestos and SVF toxicity. A number of specific questions related to these issues will also be discussed. (1) What is the physiological fate of asbestos and vitreous fibers less than 5 microns in length? (2) What are the potential health effects (cancer and non-cancer) of asbestos and vitreous fibers less than 5 microns in length? (3) What data gaps are evident when addressing the above questions? What research is needed to fill these data gaps?

Dated: October 4, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–25922 Filed 10–10–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02189]

The Safety of Measles-Mumps-Rubella (MMR) Vaccine; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for the Safety of Measles-Mumps-Rubella Vaccine. This program addresses the ''Healthy People 2010'' focus areas of Immunization and Infectious Diseases.

The purpose of the program is to ensure the safety of vaccines contained in the recommended childhood immunization schedule, specifically the safety of the measles-mumps-rubella vaccine (MMR) by performing the following:

1. Determine the presence of measles vaccine strain gene sequences in intestinal tissue obtained from children with autistic spectrum disorder (ASD).

2. Determine the presence of measles vaccine strain gene sequences in

intestinal tissue obtained from matched controls.

3. Compare results between the two groups.

4. Provide the results of these studies to practicing physicians and other health care professionals.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Immunization Program: (1) Reduce the number of indigenous cases of vaccine-preventable diseases, (2) ensure that two year olds are appropriately vaccinated, and (3) work with global partners to reduce the cumulative global measles related mortality rate.

B. Eligible Applicants

Assistance will be provided only to the American Academy of Pediatrics (AAP). No other applications are solicited. The potential role of the MMR vaccine as a cause of autism has divided segments of the medical, scientific and public communities and threatens to adversely effect the MMR immunization program in the United States as it has in the United Kingdom and Ireland, where MMR immunization rates have dropped sharply from above 95 percent to just over 70 percent. This sharp decrease came as a result of two published papers alleging an association between the MMR vaccine and Autism. To provide definitive data as to the potential link between measles antigen in the intestine and autistic disorder, groups and organizations which feel strongly that there either is or is not an association between MMR and autistic disorder must be involved in this study to ensure acceptance of the results. Groups that must be involved in this study include autism community representatives (MIND Institute, Cure Autism Now, Autism Society of America); research groups at Harvard University, Columbia University, Coombe Women's Hospital, Dublin, Ireland; CDC; other government representatives; and members of the general medical and scientific communities. AAP is the only organization that can ensure that these diverse groups, organizations and individuals come together to implement and complete this proposal. This is because AAP is the only major scientific and professional body with credibility among all of the groups with a stake in the outcome. AAP has made significant scientific contribution in the investigation of the possible association of MMR vaccine and Autism. AAP has been the only organization that has pulled these groups together in the past to evaluate MMR vaccine and autistic spectrum disorder. In June 2000, AAP convened a conference at which parents, practitioners, and scientists presented information on MMR and ASD. AAP then formed a multidisciplinary panel of experts who reviewed data on the pathogenesis, epidemiology, and genetics of ASD and the available data on the hypothesized associations with Intestinal Bowel Disease, measles, and MMR vaccine. AAP's findings were published in the May 2001 issue of Pediatrics. ['Measles-mumps-rubella vaccine and autistic spectrum disorder: report from the new challenges in childhood immunizations conference convened in Oak Beach, Illinois, June 12–13, 2000''. Pediatrics 2001; 107(5) *url:http//www.pediatrics.org/cgi.content/full/107/5/e84/].*

Additionally, because of AAP's broad scope of contacts, the organization's respect among pediatricians and other healthcare providers, data from this project can be facilitated and disseminated rapidly. The immunization recommendations and guidelines developed by AAP are considered among the most reliable and up-to-date information available to the pediatric community. When study findings are disseminated by AAP, immunization practices could be affected significantly.

C. Funds

Approximately $450,000 is being awarded FY 2002. It is expected that the award will begin on or about August 30, 2002 and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For business management technical assistance, contact: Ms. Peaches Brown, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number 770–488–2738. E-mail address: *prb0@cdc.gov.*

For program technical assistance, contact: Maureen Kolasa, Epidemiologist, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop E–52, Atlanta, Georgia 30333. Telephone number 404–639–8759. E-mail address: *mxk2@cdc.gov.*

Dated: October 4, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–25952 Filed 10–10–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02186]

Oral Vaccine Institute; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a grant for Oral Vaccine Institute (OVI) research on liposome-based delivery systems for oral or nasal vaccination. This program addresses the ''Healthy People 2010'' focus areas of Immunization and Infectious Diseases; Maternal, Infant and Child Health; Medical Product Safety; and Sexually Transmitted Diseases.

The purpose of the program is to develop a platform of liposome constructs containing vaccine antigens that can immunize through the oral or nasal routes, rather than via parenteral injection with conventional needle and syringes.

B. Eligible Applicant

This grant is to be awarded to the Oral Vaccine Institute, which is affiliated with Oral Vaccine Technologies, Inc. (OVT), a for-profit company based in Las Vegas, Nevada and incorporated in Nevada. OVT owns several patents currently issued by the U.S. Patent office. They have assembled a team of scientists with considerable expertise in the areas of liposome development, vaccine development and mucosal immunity. OVT has executed an agreement allowing the Oral Vaccine Institute the right to use its intellectual property that is set forth and described in its Executive Summary for certain research purposes.

BioMedical Research Models, Inc. (BRM) is under contract to provide certain laboratory facility capabilities and personnel to accomplish the mission of the Oral Vaccine Institute. The facility is fully prepared to

administer and assist the proposed animal-based studies.

Acting in concert with these three organizations (OVI, OVT and BRM), and their scientific staffs and consultants, the Institute will develop platform technologies that could significantly impact the response to a bioterrorism attack.

Justification: This grant is awarded sole source by virtue of Congressional earmark evidenced in the following records of Congress: Senate-House Conference Committee, Calendar No. 193, 107th Congress Report-Senate; assessable in pages 88–89 of 229 of pdf document: *http://frwebgate.access.gpo.gov/cgi-bin/grtdoc.cgi?dbname=107_cong_reports&docid=f:hr342.107.pdf*

Note: Title 2 United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Funds

Approximately $1.2 million is being awarded in FY 2002. It is expected that the award will begin on or before September 15, 2002, and will be made for a 12 month budget period within a project period of one year. The funding estimate may change.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For business management assistance contact: Peaches Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2738, e-mail address: *prb0@cdc.gov.*

For program technical assistance, contact: Dr. Bruce Weniger, Vaccine Safety and Development Activity, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road mailstop E–61, Atlanta, GA 30333, Telehone: 404–639–8779, e-mail *address: bgw2@cdc.gov.*

For program administrative assistance, contact: Sharon Holmes, Program Analyst, Vaccine Safety and Development Activity, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road mailstop E–61, Atlanta, GA 30333, Telephone: 404–639–8582, e-mail address: *sholmes@cdc.gov.*

Dated: October 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–25953 Filed 10–10–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–3109–N]

Medicare Program; Town Hall Meeting on the Hospital ''1-hour'' Rule Related to the Use of Restraint and Seclusion

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to obtain and discuss general comments from the public concerning the impact of the hospital ''1-hour'' rule related to the use of restraint and seclusion. Specifically, the meeting will attempt to solicit individual comments and experiences from providers, advocates, consumers, and other interested parties concerning the application of the ''1-hour'' rule requiring a physician or a licensed independent practitioner to make a face-to-face assessment within 1 hour of any patient being placed in restraint or seclusion for behavioral reasons. We are particularly interested in data that show how this requirement may be imposing burdens on patient care, including, but not limited to, financial burdens on hospitals and physicians. We would be happy to address/discuss other concerns related to the provision of hospital services to this population of patients.

Hospitals, provider representatives, advocacy groups, physicians, and other interested parties are invited to this meeting to present their views on this issue. The opinions and alternatives provided during this meeting will assist us as we evaluate our policy on the ''1-hour'' rule. The meeting is open to the public, but attendance is limited to space available.

DATES: *Meeting Date:* The town hall meeting announced in this notice will be held on Tuesday, October 29, 2002, from 10 a.m. to 1 p.m. (eastern standard time).

ADDRESSES: The town hall meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Nancy Archer (410) 786–0596. You may also send inquiries about this meeting via e-mail to *narcher@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 1999, we published an interim final rule with comment introducing a new Patients' Rights Condition of Participation (CoP) that hospitals must meet to be approved for, or to continue participation in, the Medicare and Medicaid programs (64 FR 36070). One of the requirements mandates that, for restraint or seclusion applied for behavioral reasons, a physician, or licensed independent practitioner (LIP), must make a face-to-face assessment of that patient within 1 hour of implementation of the intervention (64 FR 26088).

The ''1-hour'' requirement was subsequently challenged in the United States District Court for the District of Columbia. Although the Court ruled in the Secretary's favor with respect to this provision, hospitals and their provider groups have continued to inform us that requiring a physician or LIP to perform the 1-hour face-to-face assessment causes undue burden on hospitals, without specific evidence that the quality of care has improved.

II. Meeting Format

The meeting will begin with an overview of the goals of the meeting and an introduction of the meeting moderator, followed by remarks from Thomas A. Scully, Administrator, Centers for Medicare & Medicaid Services, and Charles G. Curie, Administrator, Substance Abuse and Mental Health Services Administration. The Acting Director, Office of Clinical Standards and Quality, will present the context for the discussion. Participants that have requested to speak will then be given time to present their information. The moderator will solicit comments and recommendations from the audience about issues concerning the implementation of the 1-hour rule, as time permits.

The information about the town hall meeting will be posted at the following website address: *http://www.cms.hhs.gov/opendoor/hospitals.asp.* At this address, interested parties will find an agenda for the meeting and instructions on how to call into the meeting if unable to attend in person.

We will limit the time for participants to make formal statements according to

the number of participants who have registered in advance to speak at the meeting. Individuals who wish to make formal statements must contact Nancy Archer at (410) 786–0596 or via e-mail, *narcher@cms.hhs.gov* as soon as possible. Those individuals must subsequently submit their formal statements in writing no later than 5 p.m., Thursday, October 24, 2002. Send written submissions to: Nancy Archer, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop S3–02–01, Baltimore, Maryland 21244 or *narcher@cms.hhs.gov.* Comments from individuals not registered to speak will be heard following individuals with scheduled statements, as time permits.

III. Registration Instructions

The Clinical Standards Group is coordinating registration for the meeting. While there is no registration fee, all individuals must register to attend. Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must call or e-mail Nancy Archer at (410) 786–0596 (*narcher@cms.hhs.gov*) to register at least 72 hours in advance. Attendees must show photographic identification to the Federal Protective Service or Guard Service personnel before they will be permitted to enter CMS grounds. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. Seating capacity is limited to the first 250 registrants. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Aileen Bullock at (410) 786–5637 (*abullock@cms.hhs.gov*) at least 10 days before the meeting. There will be a TTY system access number available.

Authority: 42 U.S.C 1395x(e) and (f).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 7, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. 02–25948 Filed 10–10–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–196.

OMB No.: 0970–0199.

Description: The form provides specific data regarding claims and provides a mechanism for States to request grant awards and certify the availability of state matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate Outlays and may be used to prepare ACF budget submissions to Congress. The following citations should be noted in regard to this collection: 405(c)(1); 409(a)(7); and 409(a)(1).

Respondents: State TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	54	4	8	1,728
Estimated Total Annual Burden Hours				1,728

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20508, Attn: Desk Officer for ACF.

Dated: October 7, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–25975 Filed 10–10–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: September 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of September 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.,* a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ADEKOLA, ADEMOLA J CHICAGO, IL	10/20/2002
ALEMAN, ALBERTO MIAMI, FL	10/20/2002
AMABILE, JOHN C WRIGHTSTOWN, NJ	10/20/2002
ANTONOV, ROMAN	10/20/2002

Subject, city, state	Effective date
LONG BEACH, CA	
ARUTYUNYAN, POGOS ..... MONTEBELLO, CA	10/20/2002
ATIKYAN, VAGINAK ..... PASADENA, CA	10/20/2002
AYNEHCHI, YAGHOUB ..... BEVERLY HILLS, CA	10/20/2002
BADGER, MILDRED ..... JACKSONVILLE, FL	10/20/2002
BAEZ, ELIAS ..... FT LAUDERDALE, FL	10/20/2002
BAEZ, ONELIO ..... MIAMI, FL	10/20/2002
BARRERA, PATTI KAY ..... HOUSTON, TX	10/20/2002
BARRISH, BRYAN G ..... NORTHBROOK, IL	06/10/2002
BELL, YNOLIA T ..... HOUSTON, TX	10/20/2002
BERNSTEIN, SCOTT EVAN .... MIAMI, FL	10/20/2002
BESHARA, LOUIS ..... LOXAHATCHEE, FL	10/20/2002
BRADLEY, TONIA M ..... FRANKLIN, VA	10/20/2002
BRITO, EVA ..... MIAMI, FL	10/20/2002
BROOKS, WILLIAM EDWARD EL RENO, OK	10/20/2002
BROWN, KENT BERKELEY .... FORT SMITH, AR	10/20/2002
BRUGGISSER, ARTHUR T ..... PLANTATION, FL	10/20/2002
BURTON, EMMA ..... MAUNELLE, AR	10/20/2002
BUTLER, LAURA A ..... SEARSPORT, ME	10/20/2002
CARPIO, LESLIE ..... MIAMI, FL	10/20/2002
CARRERA, MIRNA AMARILIS EL MONTE, CA	10/20/2002
CHHET, SAMNANG ..... TAFT, CA	10/20/2002
CHHET, SAMNANG ..... TAFT, CA	10/20/2002
CHUN, BYUNG W ..... MILLBROOK, AL	10/20/2002
CLOPTON, TOMMY RAY ..... SEAGOVILLE, TX	10/20/2002
COHEN, RONALD I ..... ROCKVILLE CENTRE, NY	10/20/2002
CUMMINGS, KEVIN JOHN ..... GARDNER, MA	10/20/2002
DANIEL, ALAN L ..... ANCORA, NJ	10/20/2002
DANIELS, SAMUEL RAY ..... MISSOURI CITY, TX	10/20/2002
DAVIS, LYDIA CALDWELL ..... LOS ANGELES, CA	10/20/2001
DIAZ, GUSTAVO ..... EL PASO, TX	10/20/2002
DOOLIN, ROBYN ..... PARAGONAH, UT	10/20/2002
EADEN, CHARGOIS JUAN ..... HOUSTON, TX	10/20/2002
EKPO, GENEVIEVE ..... HOUSTON, TX	10/20/2002
ELLIS, FELIX ..... NEW YORK, NY	10/20/2002
ELTAYEB, AZIZ IBRAHIM ..... WINTON, NC	10/20/2002
ESCARIZ, MARIA DEL CARMEN	10/20/2002
MIAMI BEACH, FL	
EXCEL CENTER, INC ..... CINNAMINSON, NJ	10/20/2002
FELICIANO-ARIETA, RAUL ..... RIO PIEDRAS, PR	10/20/2002
FORTE, ROBERT A ..... BILLERICA, MA	10/20/2002
FRAGA, ANNETTE ..... MIAMI, FL	10/20/2002
GARCIA, TERESA D ..... HIALEAH, FL	10/20/2002
GERMAN, MARIA ..... MIAMI, FL	10/20/2002
GIANNINI, MICHAEL RAYMOND ..... PALATINE, IL	06/10/2002
GIRARD, RENEE E ..... WAKEFIELD, RI	10/20/2002
GOINS, SHEILA ..... CONVOY, OH	10/20/2002
GOLDSTEIN, BARRY JAY ..... MIAMI, FL	10/20/2002
GOMEZ, JOSE MIGUEL ..... MIAMI, FL	10/20/2002
GOYINGS, CAROL L ..... PAULDING, OH	10/20/2002
GRIFFIN, DAVID L ..... LONG BEACH, CA	10/20/2002
GRIGORYAN, ARAM ..... GLENDALE, CA	10/20/2002
HALL, SANDRA RENITA ..... SAN BERNARDINO, CA	10/20/2002
HALL, JOHN WESLEY SR ..... N LITTLE ROCK, AR	10/20/2002
HALL, SUSANA ..... PHILADELPHIA, PA	10/20/2002
HARRINGTON, RICHARD ..... LEVITTOWN, NY	10/20/2002
HEDGEMON, CHARLENA RASHAY ..... TALULLAH, LA	10/20/2002
HEDGEMON WATKINS, SARAH ANN ..... SEATTLE, WA	10/20/2002
HERBERGER, PHYLLIS JEAN TEXARKANA, TX	10/20/2002
HERD, ERIN ..... UTICA, OH	10/20/2002
HERRING, JOHN M ..... BATON ROUGE, LA	10/20/2002
HICKMAN, JOYCE LEE ..... HOUSTON, TX	10/20/2002
HODGES, EDWARD ..... APPLE VALLEY, CA	10/20/2002
HOFSTETTER, DAVID ..... SARASOTA, FL	10/20/2002
HOUSE, WANDA G ..... CORAL SPRINGS, FL	10/20/2002
HUSSAIN, IFTIKHAR ..... NEW BRUNSWICK, NY	10/20/2002
JANES, SANDRA S ..... TOWNSEND, MT	10/20/2002
JONES, VENITA ..... FT LAUDERDALE, FL	10/20/2002
JONES, KIMBERLY RENEE .... CORPUS CHRISTI, TX	10/20/2002
KARAPETIAN, ALEXANDER ... REGO PARK, NY	10/20/2002
KATZ, IRA ..... MARIETTA, GA	10/20/2002
KEAGY, THERA M ..... CAVE JUNCTION, OR	10/20/2002
KEIGLEY, HOLLY VICTORIA ..	10/20/2002
AMES, IA	
KIRSCH, GARY A ..... AKRON, OH	10/20/2002
LAWRENCE, THOMAS RICHARD ..... LITTLETON, CO	10/20/2002
LEBRON-HUERTA, VILMA DEL CARME ..... SAN JUAN, PR	10/20/2002
LEE, ROBERT C ..... FAIRTON, NJ	10/20/2002
LOPEZ, JAIME ANTONIO MART ..... BELL, CA	10/20/2002
LOVE, MARY H ..... GRIFFIN, GA	10/20/2002
LUNDY, CARMETTA ..... DETRIOT, MI	10/20/2002
LUTZ, STEVEN A ..... LAKE WORTH, FL	10/20/2002
LUTZKER, STEVEN W ..... LOMPOC, CA	10/20/2002
MAIER, DAVID P ..... GLEN CARBON, IL	10/20/2002
MALIK, MOHAMMAD SALEEM MANHASSETT HILL, NY	10/20/2002
MANSELL, GRETCHEN ..... HYDE PARK, NY	10/20/2002
MCCOY, THEODORE J JR ..... SUGARCREEK, OH	10/20/2002
MELANIDIS, KONSTANTINOS MADISON, CT	10/20/2002
MIGNOLA, ANNE ..... NEW ROCHELLE, NY	10/20/2002
MILLER, ROBERT B ..... PETERSBURG, VA	10/20/2002
MILLIEN, JEAN MOISE ..... BROOKLYN, NY	10/20/2002
MIRANDA, MICHAEL V ..... ATLANTIC BEACH, NY	10/20/2002
MUBANG, THERESA S ..... ALDERSON, WV	10/20/2002
MURRY, TOMMIE JR ..... CINNAMINSON, NJ	10/20/2002
NAVARRO, LOURDES ..... GLENDALE, CA	10/20/2002
NAVARRO, LOURDES ..... GLENDALE, CA	10/20/2002
NAVARRO, LOURDES ..... GLENDALE, CA	10/20/2002
NAVARRO, LOURDES ..... GLENDALE, CA	10/20/2002
NEWBERRY, RONDA ..... DAYTON, OH	10/20/2002
NOEL-UYLOAN, CATHERINE LONG BEACH, CA	10/20/2002
OESTMANN, ROSS ERIC ..... RAPID CITY, SD	10/20/2002
OLIVER, MELANIE J ..... SPRINGFIELD, TN	10/20/2002
PEASLEE, GERALDINE ELIZABETH ..... HIGHLAND, CA	10/20/2002
PENN, MARYANN ELIZABETH PHOENIX, AZ	10/20/2002
PERRY, KEITH O'NEIL ..... LOS ANGELES, CA	10/20/2002
PIERNO, THOMAS ..... BAYVILLE, NY	10/20/2002
POARCH, GROVER FRANKLIN ..... ROWLETT, TX	10/20/2002
PONS, ROSA	10/20/2002

Subject, city, state	Effective date
MIAMI, FL	
QUIJADA, NANCY MICHELLE PUEBLO, CO	10/20/2002
RAJA, ABDUL HAFEEZ HOLBROOK, NY	10/20/2002
REVELS, ROBERT STEVEN ROCK HILL, SC	10/20/2002
ROSICH-BACHS, ROBERTO MIAMI, FL	10/20/2002
RYBAK, JOHN P HUNTINGTON, WV	10/20/2002
SAING, CHHAYLEE LOMPOC, CA	10/20/2002
SALZ, JOSEPH ALAN REDONDO BEACH, CA	10/20/2002
SCHREIDELL, JILL LYNN TALLAHASSEE, FL	10/20/2002
SEWELL, MARTHA HERRING BATON ROUGE, LA	10/20/2002
SHELBY, CRAIG T LITHONIA, GA	10/20/2002
SINGH, RAMPERSAUD HARDAT LONG BEACH, NY	10/20/2002
SOSA, MERCEDES M MIAMI, FL	10/20/2002
STUYVESANT HGTS MEDICAL GROUP BROOKLYN, NY	10/20/2002
SWEAT, JAMES DANIEL JR JACKSONVILLE, FL	10/20/2002
TKACHENKO, YELENA N WOODMERE, NY	10/20/2002
TOFANI, NANCY LEBANON, NJ	10/20/2002
VALENTINE, EUGENE ARNOLD, MD	10/20/2002
VELASCO, DELORES MIAMI, FL	10/20/2002
VEREGGE, CONSTANCE JANE KINGSTON, WA	10/20/2002
WAITES, REGINA MOUNT SAVAGE, MD	10/20/2002
WEITZMAN, WARREN BETHESDA, MD	10/20/2002
WHITE, DANIEL DEAN KENTWOOD, MI	10/20/2002
WILLIAMS, NICHOLE M CRESSON, PA	10/20/2002
YADEGARI, NOSRATOLAH ROSLYN, NY	10/20/2002
FELONY—CONVICTION FOR HEALTH CARE FRAUD	
BATES, ALLEN MONTGOMERY, AL	10/20/2002
BUCHHOLZ, CONNIE M PEKIN, IL	10/20/2002
CALHOUN, JIM OXFORD, WI	10/20/2002
CAMPA, JOHN A III SAN ANTONIO, TX	10/20/2002
COOPERSMITH, GLENNA MERYL OAKLAND PARK, FL	10/20/2002
FINCH, DONJA LOSHONE AUSTIN, TX	10/20/2002
GARSON, ALAN MIAMI, FL	10/20/2002
GOLDBERG, RICHARD J EL PASO, TX	10/20/2002
LUZE, KATHERINE E LEAD, SD	10/20/2002
MCCANNA, JANET BRONX, NY	10/20/2002
MOORE, LILLIE RUTH ORANGE, NJ	10/20/2002
PIROVOLOS, NICHOLAS G OCEAN, NJ	10/20/2002
POWELL, RICHARD BENNETT JR EGLIN AFB, FL	10/20/2002
RATNER, NEIL W FORT DIX, NJ	10/20/2002
ROBINSON, JEREMY PENSACOLA, FL	10/20/2002
SEIGEL, ARTHUR M OTISVILLE, NY	10/20/2002
STAVITSKI, MICHAEL D AVON BY THE SEA, NJ	10/20/2002
WHITE, COREY E C ORLANDO, FL	10/20/2002
WHITED, RUTH M LUZERNE, PA	10/20/2002
FELONY—CONTROL SUBSTANCE CONVICTION	
ANDREJIC, ANTHONY GRAFTON, OH	10/20/2002
BALDERAS, CHARLOTTE STAMPER WINCHESTER, KY	10/20/2002
BRODWIN, GORDON COLEMAN, FL	10/20/2002
BYRNE, MARIE ANN EL CAJON, CA	10/20/2002
CAPONERA, PAUL S E HAVEN, CT	10/20/2002
CLARK, FREEMAN LOWELL PENSACOLA, FL	10/20/2002
DAVIDIAN, MARGIE ANN CUTLER, CA	10/20/2002
FORWARD, LISA CAROL PEORIA, AZ	10/20/2002
HEDGECORTH, JULIA ANNE CHICAGO, IL	10/20/2002
HORDGE, DANIEL EUGENE HOUSTON, TX	10/20/2002
HUGHES, JANET LYNN GATESVILLE, TX	10/20/2002
KREMPEL, MARCO TORONTO, CANADA,	10/20/2002
LITTLE, PAUL MICHAEL JR ORO VALLEY, AZ	10/20/2002
LOPEZ, JOHN LEE GREELEY, CO	10/20/2002
MILLER, NANCY L AKRON, OH	10/20/2002
NICHOLS, STUART ALAN CASTRO VALLEY, CA	10/20/2002
PAIVA, MICHELLE ANTIOCH, CA	10/20/2002
ROJAS, HUMBERTO OWOSSO, MI	10/20/2002
SESAY, CHERYL SOMERDALE, NJ	10/20/2002
SMITH, LINDA JO VANDALIA, MO	10/20/2002
SMUTEK, MICHELLE M HAZLET, NJ	10/20/2002
SOSA, ISMAEL FORT DIX, NJ	10/20/2002
SUTHERLAND, FRANKLIN J ASHLAND, KY	10/20/2002
WINOKUR, LEWIS SOMERSET, PA	10/20/2002
PATIENT ABUSE/NEGLECT CONVICTIONS	
ALLEN, LINDA PINE BLUFF, AR	10/20/2002
ASANTE, TONY DENVER, CO	10/20/2002
BANKS, PEARL M ROCHESTER, NY	10/20/2002
BROWN, AUDRIE BRONSON, FL	10/20/2002
CHOW, ALBERT C SOMERVILLE, MA	10/20/2002
CHUNG, PAULINE MONICA YUCCA VALLEY, CA	10/20/2002
COLE, SCOTT L PINACLE, NC	10/20/2002
CULP, LOUIS MAX ELLSWORTH, KS	10/20/2002
CUNNINGHAM, TINA MARIE HOWARD, SD	10/20/2002
EDINGS, CHARIETT KAY PRAGUE, OK	10/20/2002
EDWARDS, INEZ AGRASSIE TACOMA, WA	10/20/2002
FELLOWS, DASHAWN MICHELLE PRESCOTT, AR	10/20/2002
HARTWELL, HORACE MERIDIAN, MS	10/20/2002
HIBLER, DONNIE L JR BOWLING GREEN, MO	10/20/2002
HUNTER, SANDRA KAY HENRYETTA, OK	10/20/2002
HUNTSBERRY, GERALDINE ANN BOB LAFAYETTE, LA	10/20/2002
JAMES, TANGELYN FT WALTON BEACH, FL	10/20/2002
JOHNSON, JAMES GUTHRIE, OK	10/20/2002
LUDER, JOAN N COLLINS, NY	10/20/2002
MARCUS, ALAN L WOODBRIDGE, NJ	10/20/2002
MARTINEZ, AGUSTIN BRONX, NY	10/20/2002
MASON, ARTHUR RALPH III SOLIDAD, CA	10/20/2002
MILLS, THOMASENA ROCK HILL, SC	10/20/2002
MITCHELL, RENEE CROTON-ON-HUDSON, NY	10/20/2002
NATO, JOHN A CASTLETON, NY	10/20/2002
PEREZ, ROMAN DENVER, CO	10/20/2002
PHILLIPS, REGINALD CARL CENTURY, FL	10/20/2002
POWERS, WILL SANTA MARIA, CA	10/20/2002
SANCHO, CHIMESE A BROOKLYN, NY	10/20/2002
SWANGO, MICHAEL FLORENCE, CO	10/20/2002
WOODS, VIOLA ALBION, NY	10/20/2002
CONVICTION FOR HEALTH CARE FRAUD	
GREEN, DAVID LOREN II POSTVILLE, IA	10/20/2002
JACKSON, PAULETTE WHITE	10/20/2002

Subject, city, state	Effective date
BATON ROUGE, LA	
SOLES, BETTY MAY ..... LONE TREE, IA	10/20/2002
CONVICTION—OBSTRUCTION OF AN INVESTIGATION	
CORUM, B H ..... SAN ANTONIO, TX	10/20/2002
THOMASON, PATSY JANE ..... BEAUMONT, TX	10/20/2002
CONTROLLED SUBSTANCE CONVICTIONS	
DUFOE, DONALD L. BARRE, VT	
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ADAMS, CHERE A HOLMAN .. DEMOPOLIS, AL	10/20/2002
AHTES, RENEE S ..... ROCK HILL, SC	10/20/2002
ALLEN, RHONDA DIANE ..... CLARKSVILLE, IN	10/20/2002
ANDERSON, DAVID E ..... E HOLDEN, ME	10/20/2002
ANDERSON, SHERRI LYNN ... ATCHISON, KS	10/20/2002
ANDRADE, BARBARA J ..... NEW BEDFORD, MA	10/20/2002
BECERRA, FRANK GALVEZ ... ORO VALLEY, AZ	10/20/2002
BENAVIDEZ, LINDA ..... RATON, NM	10/20/2002
BENNETT, JACLYN ..... DENVER, CO	10/20/2002
BETHEA, ALFREDA ..... TRENTON, NJ	10/20/2002
BJORK, JACKIE APPERSON .. OMAHA, NE	10/20/2002
BLAKE, CYNTHIA M ..... TUCSON, AZ	10/20/2002
BOSLEY, MATTHEW MERRILL ..... LINCOLN, NE	10/20/2002
BOUFFARD, ANNE B ..... OXFORD, ME	10/20/2002
BRATTON, DONNA LUCIA ..... KANSAS CITY, KS	10/20/2002
BROWN, SAMUEL SCOTT ..... NEWVILLE, AL	10/20/2002
BYERS, LISA BROOKS ..... DE WITT, AR	10/20/2002
CAHILL, ROXANE M ..... MOORHEAD, MN	10/20/2002
CALDER, ELIZABETH B ..... PORTLAND, ME	10/20/2002
CALKINS, BONNIE F ..... PITTSFIELD, MA	10/20/2002
CAMERON, JANICE GAYLE ... TWIN FALLS, ID	10/20/2002
CARLSON, MORRIS E ..... KANSAS CITY, MO	10/20/2002
CASH, JOHN LYNN ..... STOCKTON, CA	10/20/2002
CASPOLI, NICHOLAS III ..... WEST WARWICK, RI	10/20/2002
CASSELL, RAYMOND A ..... WELLINGTON, KS	10/20/2002
CASSES, FERNANDO ..... QUESNEL, BC V2J2K7, AZ	10/20/2002
CASSIDY, VICTOR A ..... BELFAST, NY	10/20/2002
CATLETT, THERESA A ..... UPPER DARBY, PA	10/20/2002
CHELATION CTR OF NAPLES-BONITA ..... NAPLES, FL	10/20/2002
CHRISTOPHERSON, JULIE ANN ..... MEMPHIS, TN	10/20/2002
CLIFFORD, RALPH A JR ..... TELFORD, TN	10/20/2002
COMFORT, CHRISTOPHER A PITTSFIELD, ME	10/20/2002
COPPA, GEORGE ..... STATEN ISLAND, NY	10/20/2002
CORNELL, LINDA ELEANOR .. OMAHA, NE	10/20/2002
COUNTRYMAN, CAROL J (ROBINETT) ..... MESA, CO	10/20/2002
COURTLEY, CHRISTINE H ..... WESTFIELD, MA	10/20/2002
COUSE, LORRI J ..... CATSKILL, NY	10/20/2002
COYNER MADDEN, WANDA GAIL ..... OKLAHOMA CITY, OK	10/20/2002
CRAIG, JOSEPH A ..... BROOKLYN, NY	10/20/2002
CROUTHAMEL, SUSAN L ..... LEESBURG, VA	10/20/2002
CRUZ, ANTHONY H ..... BRIDGEPORT, CT	10/20/2002
DAHLKE, SHARON ..... MERIDIAN, MS	10/20/2002
DALRYMPLE, SHARON M ..... ANDOVER, MA	10/20/2002
DAVIS, KARIN B ..... WILDWOOD, NJ	10/20/2002
DAVIS, LISA R ..... CHARLESTON, SC	10/20/2002
DICKENS, CHARLES E ..... GRAND BAY, AL	10/20/2002
DOUGLAS, CHRISTOPHER .... JACKSON, MS	10/20/2002
DUYCK, WAKENDA LEE ..... SCOTTSBLUFF, NE	10/20/2002
EDDLEMAN SIRMONS, SHIRLEY ..... MCALLEN, TX	10/20/2002
EFFLER, ELIZABETH ..... PICAYUNE, MS	10/20/2002
ELLER, THOMAS EDWARD .... BLOOMINGTON, IN	10/20/2002
ESTRADA, ROBERT ANTHONY ..... SANTA ANA, CA	10/20/2002
EVERETT, SPAULDING FRED FARGO, ND	10/20/2002
FAHRNEY, MARQUITA RENEE ..... HILLSBORO, KS	10/20/2002
FARRELL, WALTER MICHAEL UKIAH, CA	10/20/2002
FEAZELL, KATRESCA ANNETTE ..... ALEXANDRIA, AL	10/20/2002
FELDER, JAMES P ..... ST CHARLES, MO	10/20/2002
FINK, WILLIAM ..... OPELOUSAS, LA	10/20/2002
FONTENOT, MICHELLE ..... LAKE JACKSON, TX	10/20/2002
FOWLER, ROBERT LEON ..... BOUNTIFUL, UT	10/20/2002
FULLER, CATHY ..... DENISON, TX	10/20/2002
FULTZ, JEAN M ..... THERESA, NY	10/20/2002
FUSCHETTI, BARBARA L ..... NASHUA, NH	10/20/2002
GADDIS, THOMAS D ..... E MACHIAS, ME	10/20/2002
GANDLEY, DREW S ..... MONTAUK, NY	10/20/2002
GERMANI, EILEEN L ..... DOYLESTOWN, PA	10/20/2002
GIBBONS, LISA ANN ..... MYRTLE BEACH, SC	10/20/2002
GILL, SHENNA ..... PICAYUNE, MS	10/20/2002
GOOCH, JOSETTE ..... KAPLAN, LA	10/20/2002
GRANT, MELODY A ..... BRISTOL, CT	10/20/2002
GRASSER, JENNIFER B ..... WALL, NJ	10/20/2002
GRIFFIN, KAREN LYNN COVETTS ..... HAWESVILLE, KY	10/20/2002
GUFFY, DEBORAH C ..... DES MOINES, IA	10/20/2002
HARDBECK, CHRISTOPHER D ..... SUWANEE, GA	10/20/2002
HAROLD, MICHAEL DUANE ... VICTORVILLE, CA	10/20/2002
HART, RICHARD E ..... HAMILTON, OH	10/20/2002
HASSAN, MOHAMED A ..... NASHVILLE, TN	10/20/2002
HICKS, GINA RENEE ..... WHITLEY CITY, KY	10/20/2002
HIGGINS, GARY W ..... NEPTUNE, NJ	10/20/2002
HOLLY, SUSANNE M ..... PAWCATUCK, CT	10/20/2002
INGRAO, FRANK ..... POUGHKEEPSIE, NY	10/20/2002
JARRETT, CINDY LOU ..... WAGONER, OK	10/20/2002
JOHNSTON, TONI DIANE ..... HOUSTON, TX	10/20/2002
JUDGE, TONYA LEE WILCOXSON ..... EWING, KY	10/20/2002
JUSTICE, CRYSTAL ..... LONGVIEW, TX	10/20/2002
KAMARA, HELEN H ..... PALMYRA, NJ	10/20/2002
KELSO, JESSIE ..... PHOENIX, AZ	10/20/2002
KESTER, MARCIA ..... DEPEW, NY	10/20/2002
KOZIUPA, HELENE ANN ..... TRENTON, NJ	10/20/2002
KURIAN, LISSYAMMA ..... UNION, NJ	10/20/2002
KWAK, CHOON JA ..... SOUTH GATE, CA	10/20/2002
LANDRY, MELISSA ..... YOUNGSVILLE, LA	10/20/2002
LANG, DEBRA A ..... TEANECK, NJ	10/20/2002
LANGE, JUDITH GRAVES	10/20/2002

Subject, city, state	Effective date
KINGMAN, AZ	
LARASON, LINDA LEE ..... INDIANAPOLIS, IN	10/20/2002
LATHAM, SHEILA JANE ..... DECATUR, AL	10/20/2002
LEE, BRIAN L ..... CAMDEN, NJ	10/20/2002
LEE, JUDITH A ..... LEXINGTON, MA	10/20/2002
LEONARD, JACQUELINE DENISE ..... LAGRANGE, GA	10/20/2002
LEWIS, AMANDA GALE ..... NAVASOTA, TX	10/20/2002
LIN, TSU-CHUN ..... MILLERSVILLE, MD	10/20/2002
LUCERO, RICHARD THORVALD ..... SAN JOSE, CA	10/20/2002
MAHONEY, LISA A ..... FRANKLIN, MA	10/20/2002
MARFORI, CARLO ROBERTO SAN DIEGO, CA	10/20/2002
MARSH, RAYMOND GLENN ... WICHITA, KS	10/20/2002
MARTIN, SCOTT ALAN ..... CITRUS HGTS, CA	10/20/2002
MARTIN, TIFFANY LYNNE ..... GRACEVILLE, FL	10/20/2002
MCALLISTER, KRISTINE JOYCE ALL ..... SAN DIEGO, CA	10/20/2002
MELDROM, CAROLE J ..... CROWNSVILLE, MD	10/20/2002
MIER, MISTY ..... CROWLEY, LA	10/20/2002
MIS, KIM ANDRE ..... REED CITY, MI	10/20/2002
MOFFIE, CALVIN A ..... WALLINGFORD, CT	10/20/2002
MOORE, BONNIE ..... WHEELER, MS	10/20/2002
MUNDO, GLADYS ..... BRONX, NY	10/20/2002
NARDUCCI, BARBARA LEE ... TWAIN HARTE, CA	10/20/2002
NELSON, TERESA ELAINE .... GREENVILLE, AL	10/20/2002
NEWTON, CHERYL L ..... WATERBURY, VT	10/20/2002
NICHOLS, BERNADETTE CARROLL ..... TUCSON, AZ	10/20/2002
NUSSRALLAH, STEPHANIE ANN ..... HOCKESSIN, DE	10/20/2002
O'BRIEN, DENNIS FRANCIS .. BETHANY, MO	10/20/2002
O'CALLAGHAN, TERESE M .... PENSAUKEN, NJ	10/20/2002
O'TOOLE, JULIE A ..... RANDOLPH, MA	10/20/2002
OLIVERA, SMIRNA ..... NEW BRUNSWICK, NJ	10/20/2002
OLIVERI, JOYCE MARIE ..... ROCKFORD, IL	10/20/2002
OMARRAH, JO ANNE ..... OAK LAWN, IL	10/20/2002
OSLAY, RUSSELL C ..... DEKALB, IL	10/20/2002
PAGE, CATHERINE M ..... BIG STONE GAP, VA	10/20/2002
PARCO, MARY LYNN	10/20/2002
ORLANDO, FL	
PARKS, SHEILA CALLAHAN .. ABINGDON, VA	10/20/2002
PEARSON, JACKIE MERLE .... OLATHE, KS	10/20/2002
PERALTA, LEE ANN ..... LIVERMORE, CA	10/20/2002
PERILLO, DAVID J ..... GOWANDA, NY	10/20/2002
PETTERSEN, LINDA A ..... CHERRY HILL, NJ	10/20/2002
PHILLIPS, DENISE R ..... FESTUS, MO	10/20/2002
POPE, LINDA S ..... CARTHAGE, MS	10/20/2002
PRUITT, LOIS A ..... PAWNEE, IL	10/20/2002
PURCELL, ANNE P ..... LYMAN, ME	10/20/2002
RAYBURN, ALMA ..... BATON ROUGE, LA	10/20/2002
RAYMOND, NATALIE ..... WEST MONROE, LA	10/20/2002
REDNER, NANCY CLAUSEN .. BENSALEM, PA	10/20/2002
REED, KATHY ..... PHOENIX, AZ	10/20/2002
REYNOLDS, PAUL DAVID ..... BLOOMINGTON, IL	10/20/2002
RHONE, PATRICIA ..... MANDAN, ND	10/20/2002
RICHARDS, JENNIFER ..... BALCH SPRINGS, TX	10/20/2002
RIGSBEE, STEPHEN TRENT RALEIGH, NC	10/20/2002
RIVERA, MARCO ANTONIO ... OMAHA, NE	10/20/2002
RODEKAMP, RUTH ELAINE ... STERLING, IL	10/20/2002
ROSANE, LORI DILON ..... ALLIANCE, NE	10/20/2002
ROSE, SUSAN ELIZABETH .... LAWRENCE, KS	10/20/2002
ROSEMOND, HELLEN DORIS HOUSTON, TX	10/20/2002
ROWE, JAMES K ..... NEBRASKA CITY, NE	10/20/2002
RUSSELL-TAILLEFER, DEBO-RAH ANN ..... SPARKS, NV	10/20/2002
SANDERS, EDWIN ..... VICKSBURG, MS	10/20/2002
SAVAGE, SANDRA L ..... GOOSE CREEK, SC	10/20/2002
SCHANCK, FRED J III ..... NEPTUNE, NJ	10/20/2002
SCHNURER, CHARLES IRWIN WHITE OAK, PA	10/20/2002
SCOTT, GERALDINE L ..... NEWPORT NEWS, VA	10/20/2002
SEFTON, BARBARA ..... HOLDERNESS, NH	10/20/2002
SENINI, MARY ELIZABETH .... DE MAR, CA	10/20/2002
SESSOMS, MARK DESMOND VALLEJO, CA	10/20/2002
SHARP, ROBBIE ..... INDIANAPOLIS, IN	10/20/2002
SHROPSHIRE, JAMES B ..... OMAHA, NE	10/20/2002
SISSON, MISTY MAXSON ..... SHINGLEHOUSE, PA	10/20/2002
SLUSZKA, KATHRYN J	10/20/2002
SEAFORD, NY	
SMITH, JIMMY D ..... AMARILLO, TX	10/20/2002
SPERRY, KATHLEEN ..... JACKSONVILLE, FL	10/20/2002
SPINETO, COLLEEN ..... BLOOMFIELD, NJ	10/20/2002
SPRAGUE, ROSEMARY ..... NORTHFIELD, VT	10/20/2002
STEELE, ROBYN ..... PRICE, UT	10/20/2002
STEIN, HAZEL R CHILD ..... BURNET, TX	10/20/2002
STERK, SAM ..... SCOTTSDALE, AZ	10/20/2002
STEVENS, SEAN KARL ..... LIBERAL, KS	10/20/2002
STILLMAN, VILETTA L ..... ATCHISON, KS	10/20/2002
STRASSER, JENNIFER J ..... HOBOKEN, NJ	10/20/2002
TAYLOR, JUDITH F ..... WEAVERVILLE, NC	10/20/2002
TEEGARDEN, LISA ..... BATON ROUGE, LA	10/20/2002
TEFFT, GREGORY H ..... LAGUNA HILLS, CA	10/20/2002
THOMAS, PAUL R ..... KING OF PRUSSIA, PA	10/20/2002
TROXELL, JEAN A ..... ATCHISON, KS	10/20/2002
TRUMBULL, JENNIFER MARIE ..... ST PETERSBURG, FL	10/20/2002
VALDISERRI, LAURIE A ..... BELLE VERNON, PA	10/20/2002
VANHORN, CHERYL C HOW-ARD ..... LOUISA, KY	10/20/2002
VRANESCU, AURELIA ..... HOLLYWOOD, FL	10/20/2002
WALKER, BRETTA ..... BRUSLY, LA	10/20/2002
WALLACE BALL, RACHEL LYNN ..... SAN ANGELO, TX	10/20/2002
WALLENDA, WILLIAM L ..... CHICAGO, IL	10/20/2002
WALP, BETH ..... ISLAND PARK, NY	10/20/2002
WALZAK, BERNARD D ..... MORRISVILLE, VT	10/20/2002
WEISER, ROBERT GERALD .. SAN ANTONIO, TX	10/20/2002
WEISS, JANET C ..... ANTIOCH, IL	10/20/2002
WESHNAK, NADIA K ..... LAKEWOOD, NJ	10/20/2002
WESLEY, JOSEPH W ..... WOODCLIFF LAKE, NJ	10/20/2002
WHITE, GAIL LEE ..... STOCKTON, CA	10/20/2002
WIGTON, CLETIS MAHONEY BISMARCK, ND	10/20/2002
WILSON, DONNA M ..... PORT JEFFERSON STA, NY	10/20/2002
WINTERS, KENNETH B ..... LONG BEACH, CA	10/20/2002
WISNER, LLOYD ARTHUR ..... TOPEKA, KS	10/20/2002
WRIGHT, KIMBERLY ANN ..... SUMMIT, NJ	10/20/2002
WRIGHT, TIMOTHY C	10/20/2002

Subject, city, state	Effective date
BRADENTON, FL	
WRIGHT, JUDITH A ..... LYNDONVILLE, VT	10/20/2002
ZAGALA, ROBERTO N ..... ARLINGTON HGTS, IL	10/20/2002
FEDERAL/STATE EXCLUSION/ SUSPENSION	
ASSAD, HANY YOUSSEF ..... SAN RAMON, CA	10/20/2002
BEHAR, NISSIN ..... SKOKIE, IL	10/20/2002
CAL'S MEDICAL MANAGEMENT INC ..... OXFORD, WI	10/20/2002
KRITCHEVSKAYA, MARINA YURI ..... STUDIO CITY, CA	10/20/2002
PIERCE, LINDA ANN ..... VALLEY CENTER, KS	10/20/2002
FRAUD/KICKBACKS	
CARDIOTEL, INC ..... GAITHERSBURG, MD	06/20/2002
FRALEY, ALAN R ..... COLUMBIA, SC	07/18/2002
GERSHONI, DANIEL ..... FT LAUDERDALE, FL	06/20/2002
MILLER, ROBERT B ..... PETERSBURG, VA.	04/14/2000
OWNED/CONTROLLED BY CONVICTED ENTITIES	
A LOVING TOUCH ..... STONE MOUNTAIN, GA	10/20/2002
ALOSTA FAMILY DENTAL ..... GLENDORA, CA	10/20/2002
BALAU CARE, INC ..... MIAMI, FL	10/20/2002
BRUCE B FIGOTEN, DC, PC .. WOODLAND HILLS, CA	10/20/2002
FARMACIA CAPARRA HEIGHTS, INC ..... PORT SAINT, FL	10/20/2002
HOMETOWN HOMECARE ..... FOLEY, AL	10/20/2002
LITTLE FIVE POINTS PHARMACY ..... ATLANTA, GA	10/20/2002
MED PAY, INC ..... METAIRIE, LA	10/20/2002
MEDICAL EMPORIUM CORP MIAMI, FL	10/20/2002
MEDICAL OUTLET, INC ..... LARGO, FL	10/20/2002
NANY'S MEDICAL SUPPLY, INC ..... MIAMI, FL	10/20/2002
NATIONAL PHARMACEUTICALS, INC	10/20/2002
BOCA RATON, FL	
OBATA CHIROPRACTIC CLINCI, P C ..... COLLEGE PARK, GA	09/11/2002
PEDIAPLUS MEDICAL CENTER ..... MONROE, GA	10/20/2002
S A L WHOLESALE, INC ..... BOCA RATON, FL	10/20/2002
SOUTH FLORIDA ORTHOTICS ..... GARDNER, MA	10/20/2002
SPA ACUPUNCTURE/ ACUPRESSURE ..... INGLEWOOD, CA	10/20/2002
VERO BEACH COMMUNITY CARE CTR ..... VERO BEACH, FL	10/20/2002
FAILURE TO PROVIDE PAYMENT INFORMATION	
BUEGEL, DALE M. SHOREWOOD, WI	10/20/2002
DEFAULT ON HEAL LOAN	
BERRY, SHELLIE J ..... DALLAS, TX	09/11/2002
NEWSOME, RAYMOND E ..... DE SOTO, TX	09/11/2002
OBATA, NWAEBUNI M ..... RIVERDALE, GA	09/11/2002
ROBINSON, KENNETH E ..... AMERICUS, GA	09/16/2002
TUEL, MARC A ..... FARMINGTON, CT	09/12/2002

Dated: September 3, 2002.

Kathi Petrowski,

Acting Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–25936 Filed 10–10–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

GPRA Client Outcomes for the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930–0208, revision)—The mission of the Substance Abuse and Mental Health Services Administration (SAMHSA) is to improve the effectiveness and efficiency of substance abuse and mental health treatment and prevention services across the United States. All of SAMHSA's activities are designed to ultimately reduce the gap in the availability of substance abuse and mental health services and to improve their effectiveness and efficiency.

Data are collected from all SAMHSA knowledge application and targeted capacity expansion grants and contracts where client outcomes are to be assessed at intake and post-treatment.

SAMHSA-funded projects are required to submit this data as a contingency for their award. The analysis of the data will also help determine whether the goal of reducing health and social costs of drug use to the public is being achieved.

The primary purpose of this data collection activity is to meet the reporting requirements of the Government Performance and Results Act (GPRA) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA programs. In addition, the data will be useful in addressing goals and objectives outlined in ONDCP's *Performance Measures of Effectiveness*. Following is the estimated annual response burden for this effort.

Center/number of annual clients-participants	Data collections per client/participant	Hours per data collection	Total hours	Added burden prop.	Total hour burden
CMHS:					
3,750	3	.33	3,713	0.70	2,599
CSAP:					
12,150	3	.33	12,029	0.72	8,661
CSAT:					
26,031 [1]	3	.33	25,771	0.47	12,112

Center/number of annual clients-participants	Data collections per client/participant	Hours per data collection	Total hours	Added burden prop.	Total hour burden
3,500 [2]	[3] 4	.33	4,620	0.47	2,171
Total: 45,431					25,543

[1] Adults.
[2] Adolescents.
[3] Four data collections for adolescents.

Note: This is the maximum additional burden if all clients/participants complete three sets of items. CSAP and CSAT adolescent clients/participants do not usually receive all four data collections. Added burden proportion is an adjustment reflecting the extent to which programs typically already collect the data items.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 7, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–25957 Filed 10–10–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 3, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–25636 Filed 10–10–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No FR–4463–N–11]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the ''Act''). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning July 1, 2002, is 6⅝ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2002, is 5¾ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 6164, Washington, DC 20410. Telephone (202) 708–3944, extension 2612, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a satisfactory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 2002, is 5¾ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 5¾ percent for the 6-month period beginning July 1, 2002. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or

endorsement date (as applicable) within the second 6 months of 2002.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8-to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning July 1, 2002, is 6⅝ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 2003.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715*l*, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: August 29, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–25943 Filed 10–10–02; 8:45 am].

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Approved Recovery Plan for the Illinois Cave Amphipod (*Gammarus acherondytes*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of the approved recovery plan for the Illinois cave amphipod (*Gammarus acherondytes*.) The endangered Illinois cave amphipod is known only to occur in Monroe and St. Clair Counties in southwestern Illinois. It is a groundwater dwelling invertebrate found in gravel or cobble sections of cave streams. The quality and condition of groundwater in the amphipod's habitats are tied to land use practices within cave recharge areas. The plan proposes to develop partnerships with Federal and state agencies, organizations, and private landowners that will provide mechanisms for protecting Illinois cave amphipod populations through voluntary and incentive-driven stewardship efforts.

ADDRESSES: U.S. Fish and Wildlife Service's approved recovery plans are available from:

1. Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (the fee for the plan varies depending on the number of pages of the plan).

2. Field Supervisor, U.S. Fish and Wildlife Service, Rock Island Ecological Services Field Office, 4469–48th Avenue Court, Rock Island, Illinois 61201

3. The World Wide Web at: *http://endangered.fws.gov/RECOVERY/RECPLANS/Index.htm*

FOR FURTHER INFORMATION CONTACT: Ms. Jody Gustitus Millar (see **ADDRESSES** section No. 2 above) or telephone at (309) 793–5800. The Fish and Wildlife Reference Service may be reached at (301) 492–6403 or (800) 582–3421. TTY users may contact Ms. Millar and the Fish and Wildlife Reference Service through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals or plants is a primary goal of the Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification to threatened status or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq*.) requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. Information presented during the comment period has been considered in the preparation of the approved recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal Agencies and other entities so that they can take these comments into account during the course of implementing recovery actions.

The Illinois cave amphipod was listed as an endangered species under the Act on September 3, 1998 (63 *FR* 46900). It is a groundwater dwelling invertebrate

found in gravel or cobble sections of cave streams. The principle threats to the existence of the species are degradation of karst terrain habitat through groundwater contamination (resulting from urbanization, agricultural activities, and human and animal waste from residential septic systems and livestock feedlots), inadequate protection of water quality in a sensitive geological formation (such as karst) through current state and local regulations, and natural events (*i.e.*, a heavy spring snowmelt or rainstorm) that could cause a flushing of all systems at one time.

Historically, the Illinois cave amphipod was known to occur in six cave systems in Monroe and St. Clair Counties, Illinois. Its presence has not been confirmed in Madonnaville Cave, Monroe County and it appears to be extirpated from Stemler Cave, St. Clair County. Additional populations have been found within the known range of the species in eight additional groundwater systems in Monroe County.

The quality and condition of groundwater in the amphipod's habitats are tied to land use practices within cave recharge areas. The plan proposes to develop partnerships with Federal and state agencies, organizations, and private landowners that will provide mechanisms for protecting Illinois cave amphipod populations through voluntary and incentive-driven stewardship efforts.

The objective of this plan is to provide a framework for the recovery of the Illinois cave amphipod so that protection by the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and it will be considered for removal from the List of Endangered and Threatened Wildlife and Plants (50 CFR part 17). The Illinois cave amphipod will be considered for reclassification to threatened when five viable, stable populations in five separate groundwater basins with distribution in two of three sub-regions remain extant, and when there is a significant increase in the use of best management practices in the groundwater recharge areas in each of the five groundwater basins. The subregions are Columbia, Waterloo, and Renault Sub-regions of the Illinois Salem Plateau. The cave amphipod may be considered for delisting when five viable, stable populations in five separate groundwater basins with distribution in two of three sub-regions remain extant and are supported by persistent use of best management practices substantially protecting the groundwater recharge areas of the five groundwater basins. The subregions are Columbia, Waterloo, and Renault Sub-regions of the Illinois Salem Plateau.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 19, 2002.

Lynn M. Lewis,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–25954 Filed 10–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Approved Recovery Plan for the Pitcher's Thistle (*Cirsium pitcheri*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of the approved recovery plan for the Pitcher's thistle (*Cirsium pitcheri*), a species that is federally listed as threatened under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). This species occurs on the shoreline dunes of Lakes Michigan, Huron and Superior. Actions needed for recovery of the Pitcher's thistle include managing and protecting its current highest quality and extirpated historic sites.

ADDRESSES: U.S. Fish and Wildlife Service's approved recovery plans are available from:

1. Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (the fee for the plan varies depending on the number of pages of the plan).
2. Field Supervisor, U.S. Fish and Wildlife Service, East Lansing Ecological Services Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823
3. The World Wide Web at *http://endangered.fws.gov/RECOVERY/RECPLANS/Index.htm*

FOR FURTHER INFORMATION CONTACT: Mr. Mike DeCapita, East Lansing Ecological Services Field Office (see **ADDRESSES** section No. 2 above); telephone (517) 351–2555. The Fish and Wildlife Reference Service may be reached at (301) 492–6403 or (800) 582–3421. TTY users may contact Mr. DeCapita and the Fish and Wildlife Reference Service through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals or plants is a primary goal of the Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification to threatened status or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended, requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. Information presented during the comment period has been considered in the preparation of the approved recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal Agencies and other entities so that they can take these comments into account during the course of implementing recovery actions.

The Pitcher's thistle, a rare, distinctive, perennial plant, was listed as a threatened species under the Act in July 1988 (53 *FR* 27137). It is endemic to the shoreline dune systems of Lakes Michigan, Huron and Superior. The species ranges from the north shore of Lake Superior south to Indiana, and formerly occurred in northern Illinois. Pitcher's thistle occurs only on dynamic open sand dunes subject to natural processes that maintain habitat in early successional stages. It is currently threatened by human recreational activities and development that obliterate habitat, stabilize sand dune areas, and directly harm individual plants. Introduction of biological agents to control noxious weeds may also threaten this plant.

The objective of this plan is to provide a framework for the recovery of the Pitcher's thistle so that protection by the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and it will be considered for removal from the List of Endangered and Threatened Wildlife

and Plants (50 CFR part 17). The Pitcher's thistle will be considered for delisting when: (1) The essential habitat associated with a total of 115 priority occurrences representing each biogeographic region and dune type is protected and managed under a management plan for each management unit; (2) regular field surveys to verify occurrences and record new occurrences have been established; (3) landowner contacts have been initiated and protection has been investigated for the remaining (rank<BC) public and private occurrences; (4) monitoring of known sites shows a stable or increasing trend toward recovery, and that protective plans are being implemented; (5) restoration of two occurrences from among historical sites where sufficient habitat remains in Illinois, Indiana, Wisconsin, and southern Lower Michigan has been completed; and (6) research necessary to protect, manage and restore Pitcher's thistle has been conducted.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 19, 2002.

Lynn M. Lewis,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–25955 Filed 10–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Gosnell Habitat Conservation Plan, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Robert C. and Holly R. Gosnell (Applicants), have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) incidental to otherwise lawful activities. Such take would occur as a result of development of one single-family residence within a 27,273-square-foot parcel owned by the Applicants and located in Los Osos, San Luis Obispo County, California. Development will result in the loss of 12,245 square feet of degraded coastal sage scrub habitat. The parcel is known to support the Morro shoulderband snail.

We request comments from the public on the permit application, which is available for review. The application includes a Low-Effect Habitat Conservation Plan (HCP). The HCP describes the proposed project and the measures that the Applicants would undertake to minimize and mitigate take of the Morro shoulderband snail, as required in section 10 (a)(2)(B) of the Act.

We also request comments on our preliminary determination that the HCP qualifies as a ''low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments should be received on or before November 12, 2002.

ADDRESSES: Send written comments to Ms. Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, 2493 Portola Road Suite B, Ventura, California 93003. Comments may be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Kirkland, Fish and Wildlife Biologist, at the above address or call (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, HCP, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The Gosnell single-family residence project site is located at 1194 Al Sereno Lane (APN 74–323–057), Los Osos, San Luis Obispo County. The Applicants are requesting a 25-year incidental take permit for the Morro shoulderband snail.

The proposed project is development of a single-family residence on a 27,273-square-foot parcel. The project would disturb a 12,245-square-foot area (development area) (44.9 percent of the lot) dominated by non-native veldt grass (*Ehrharta calycina*). The Applicants have submitted an HCP to minimize and mitigate for impacts to the Morro shoulderband snail. The project site also contains the federally threatened Morro Manzanita (*Arctostaphylos morroensis*). However, no Morro Manzanita plants will be impacted by the proposed project. No critical habitat for any listed species occurs on the project site. Approximately 15,022 square feet of the 27,273-square-foot parcel is characterized by the coastal sage scrub plant community, which is habitat for the Morro shoulderband snail.

Under the HCP, the Applicants propose to implement measures to minimize and mitigate for the removal of habitat for the Morro shoulderband snail. Specifically, they propose to (1) dedicate a conservation easement for the 15,022 square feet of coastal sage scrub habitat (55.1 percent of the lot) to the County of San Luis Obispo; and (2) enhance and maintain the coastal sage scrub habitat by removing at least 95 percent of the veldt grass prior to any ground disturbing activities and by maintaining the plant cover at no more than 5 percent veldt grass. Furthermore, the Applicants propose to donate $15,325 (equal to 17,820 square feet) toward the purchase of the 40-acre Powell II property, which contains Morro shoulderband snail habitat and is adjacent to protected lands within the Northeast Los Osos conservation planning area identified in the Recovery Plan for the snail.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize and mitigate impacts of the project on the Morro shoulderband snail. Two alternatives to the taking of a listed species under the Proposed Action are considered in the HCP. Under the No-Action Alternative, the project site would not be developed and no permit would be issued. Without the HCP, conservation measures for the Morro shoulderband snail, such as exotic weed eradication, would not be implemented, resulting in further degradation of habitat on the site for the snail. This alternative would also result in unnecessary economic burden on the Gosnell family.

Under the Redesigned Project alternative, the development footprint for the project would be reduced or located to another portion of the parcel.

However, the configuration and location of the development area was selected to minimize impacts to the portion of the property that is dominated by native species and which offers the best habitat for Morro shoulderband snails. Relocation of the development area would result in a greater disturbance to intact, coastal sage scrub habitat resulting in greater impacts to Morro shoulderband snails. A reduction in the size of the development area is not economically feasible because the proposed project has already been designed to meet the minimum needs of the Applicants. The Applicants also consider the proposed development area more desirable than elsewhere on the property.

The Service has made a preliminary determination that the HCP qualifies as a ''low-effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, the Habitat Conservation Plan for the Gosnell Project Site qualifies as a ''low-effect'' plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Morro shoulderband snail and its habitat. The Service does not anticipate significant direct or cumulative effects to the Morro shoulderband snail resulting from development of the Gosnell single-family residence project.

2. Approval of the HCP would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to the Applicants for the incidental take of the Morro shoulderband snail from development of the Gosnell Project site. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: October 4, 2002.

Miel R. Corbett,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–25921 Filed 10–10–02; 8:45 am]

BILLING CODE 4130–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Final Environmental Impact Statement for the Truckee River Water Quality Settlement Agreement, Federal Water Rights Acquisition Program for Washoe, Storey, and Lyon Counties, NV

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to file with the U.S. Environmental Protection Agency a Final Environmental Impact Statement (FEIS) for a proposed water rights acquisition program to fulfill federal obligations identified in the Truckee River Water Quality Settlement Agreement, and that the FEIS is available for final public review. Details of the proposed action, alternatives and areas of environmental concern addressed in the FEIS are provided in the **SUPPLEMENTARY INFORMATION** section.

DATES: Written comments must arrive by November 8, 2002. The Record of Decision will be issued on or after November 12, 2002.

ADDRESSES: You may mail, hand carry or telefax comments to Tom Strekal, Bureau of Indian Affairs, Western Nevada Agency, 1677 Hot Springs Road, Carson City, Nevada 89706, telefax (775) 887–3531.

Copies of the FEIS have been mailed to interested agencies, to local libraries, to individuals who participated in the scoping process and public hearings and to parties who requested a copy of the document. To obtain a copy of the FEIS, contact Tom Strekal at (775) 887–3500. Please specify whether you wish a paper or CD–ROM version of the document.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Strekal at (775) 887–3500.

SUPPLEMENTARY INFORMATION: The BIA has completed a FEIS for a proposal to initiate a federal water rights acquisition program to acquire Truckee River water rights. The Truckee River Water Quality Settlement Agreement (WQSA), signed on October 10, 1996, establishes a joint program to improve Truckee River water quality by increasing flows in the river through the purchase and dedication of Truckee River water rights for instream flow. The acquisition program would fulfill federal obligations identified in the WQSA.

The FEIS evaluates the proposed action, two action alternatives, and a no action alternative. It describes the existing environment and potential environmental consequences of a water rights acquisition program. The FEIS considers the following issues: air quality, groundwater and surface water supply, river flow, water quality, biological resources including desert vegetation, riparian vegetation, fish, threatened and endangered species, and socio-economic resources including cultural resources, recreation, and land use.

The BIA's proposed action is the preferred alternative. This is an acquisition strategy that would allow water rights to be acquired from willing sellers located in any portion of the study area. The proposed action presumes most water rights would be acquired from the Truckee Division of the Newlands Project, due to the greater potential availability of water rights and

the lower cost per acre-foot. Additional water rights would be acquired from the Reno-Sparks metropolitan area and from lands located within the Truckee River corridor from Vista downstream to Wadsworth, Nevada. Water associated with acquired rights would be stored, whenever possible, in Truckee River reservoirs owned and operated by the Bureau of Reclamation. Stored WQSA water would be released from storage to enhance Truckee River flow during periods of low flow (primarily June–September) according to a schedule prepared by the parties acquiring water rights under WQSA and the Pyramid Lake Tribe (Joint Program Parties).

Other alternatives considered in the FEIS evaluate strategies that would focus acquisition efforts in the Reno-Sparks metropolitan area or in the Truckee Division. Acquiring water rights exclusively from the Reno-Sparks metropolitan area would likely result in acquisition of the least amount of water rights due to the high cost per acre-foot. A strategy focused on water rights in the Truckee Division would result in the acquisition of the greatest amount of water rights.

The Draft EIS (DEIS) was released for public review on October 5, 2001. Public hearings were held on November 27, 28, 29, and 30, 2001, in Fernley, Nixon, Fallon, and Sparks, Nevada, respectively. At those public hearings, formal comments were received from seven individuals. The DEIS was available for public review from October 5 through December 5, 2001. Responses to comments received on the DEIS are addressed in the FEIS.

Public Comment Availability

Comments, including names and home addresses of respondents, will be available for public review at the location shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish the BIA to withhold your name and/or address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. The BIA will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirely.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: September 26, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–26034 Filed 10–10–02; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1430–EU; N–75369]

Notice of Realty Action: Competitive Sale of Public Land and Partial Termination of Recreation and Public Purposes Classifications in Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: In accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, the described lands are classified for disposal by sale. The following public land has been examined and found suitable for disposal by method of competitive sale pursuant to section 203 and section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian

T. 14 N., R. 20 E.,
Sec. 5, NE¼NW¼W½ of lot 1 of NW¼, W½NW¼W½ of lot 1 of NW¼, NE¼SW¼W½ of lot 1 of NW¼, W½SW¼W½ of lot 1 of NW¼, lots 5–8, 13 and 16, and NW¼NW¼SW¼, N½SW¼NW¼SW¼, and SW¼SW¼NW¼SW¼;
Sec. 6, N½NE¼E½ of lot 1 of NE¼, SE¼NE¼E½ of lot 1 of NE¼, NE¼NW¼E½ of lot 1 of NE¼, SE¼SW¼E½ of lot 1 of NE¼, SE¼E½ of lot 1 of NE¼, lots 3 and 4, 9–13, 16–18, and 20, and E½NE¼SE¼, SE¼NW¼NE¼SE¼, S½SW¼NE¼SE¼, NE¼SE¼SE¼, S½NW¼SE¼SE¼, and N½SW¼SE¼SE¼.

Comprising 146 acres, more or less.

Upon publication of this notice the land described is hereby segregated from appropriation under the public land laws, including the mining laws, but not from disposal by sale under the above cited statutes for 270 days from publication of this notice in the **Federal Register**, or until title transfer is completed, whichever occurs first. On April 16, 2002, this land was segregated from appropriation under the public land laws for exchange. The exchange segregation is herein terminated, affecting the described land, and is replaced by the sale segregation in this notice as published. The public land will remain closed to appropriation under the public land laws. The subject land meets sale criteria under Section 203 of FLPMA and is identified for disposal from federal ownership in the Carson City Consolidated Resource Management Plan and the North Douglas Specific Area Plan Amendment. Previous classifications for Recreation and Public Purposes under case numbers N–3742, N–3743 and N–12656, as they affect the described land, are no longer appropriate and are hereby terminated. In addition, the subject land is relieved of the segregative effect of those classifications. Proceeds from the sale will be deposited and expended in accordance with the Federal Land Transaction Facilitation Act, Pub. L. 106–248.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for sale have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the mineral interests.

Patent (title document), will be issued with a reservation for a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945), and will be subject to valid existing rights, including rights to Douglas County for Topsy Lane and the following encumbrances of record:

(1) Those rights for highway purposes which have been granted to Nevada Department of Transportation by Right-of-Way CC–018400, and its assigns, under the Act of November 9, 1921 (42 Stat. 216).

(2) Those rights for gas pipeline purposes which have been granted to Paiute Pipeline Company, and its assigns, by Right-of-Way Nev-064632 and N–17001 under the Act of February

25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

(3) Those rights for communication line purposes which have been granted to Verizon California, Inc., and its assigns, by Right-of-Way N–353 under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961) and Rights-of-Way N–16649, N–32152 and N–40377 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(4) Those rights for electric line purposes which have been granted to Sierra Pacific Power Company, and its assigns, by Rights-of-Way N–7836 and N–11602 under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

(5) Those rights for access road purposes which have been granted to Hilltop Community Church, and its assigns, by Right-of-Way N–39139 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(6) Those rights for access road, utility line and gas line purposes which have been granted to Richard and Hazel Wheaton, and their assigns, by Right-of-Way N–56235 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and Right-of-Way N–75420 under the Act of February 25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

(7) Those rights for access road and utility line purposes which have been granted to Douglas County, and its assigns, by Right-of-Way N–56768 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(8) Those rights for access road purposes which have been granted to Norman and Betty Metcalf and Anne Sullivan, and their assigns, by Right-of-Way N–56867 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(9) Those rights for gas line purposes which have been granted to Southwest Gas Corporation, and its assigns, by Right-of-Way N–59816 under the Act of February 25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

The purchaser/patentee, by accepting a patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

The land will be offered by method of competitive sale through sealed bid and at oral auction. All sealed bids must be received at the BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, no later than 4:15 p.m., PST, December 6, 2002. Sealed bid envelopes must be marked on the lower front left corner, ''Bid for Land Sale N–75369, December 10, 2002''. Bids must be for not less than the appraised FMV of $6,500,000.00. Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid. The highest qualified sealed bid will become the starting bid for oral bidding. If no sealed bids are received, oral bidding will begin at the appraised FMV. The land will be offered for competitive sale by oral auction beginning at 10:00 a.m., PST, December 10, 2002, at the Douglas County Administration Building, 1616 8th Street, Minden, Nevada 89423. Registration for oral bidding will begin at 8:30 a.m. the day of sale and will continue throughout the auction. All oral bidders are required to register. The highest qualifying bid, whether sealed or oral, will be declared the high bid. The apparent high bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, certified check, cashier's check, money order or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid. The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the sale date. Failure to submit sufficient funds for the bid deposit or failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. The land will then be offered to the next highest bidder that meets sale qualifications. If that offer is declined, the land may be offered for sale on the Internet at a later date. Contact the Carson City BLM Field Office for Internet auction procedures.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit. The BLM may not issue a patent or deed to a person other than the declared successful bidder and qualified conveyee or patentee in a disposal action.

In order to determine the fair market value of the subject public land through appraisal, certain assumptions have been made of the attributes and limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the land offered for sale, and conveyance of the subject land will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject land. It is also the buyers' responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the land will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Portions of the land are adjacent to U.S.

Highway 395 and the land is accessible from Topsy Lane and North Sunridge Drive.

Detailed information concerning the sale, including reservations, sale procedures and conditions, and planning and environmental documents, is available for review at the Bureau of Land Management, Carson City Office, 5665 Morgan Mill Road, Carson City, NV 89701, or by calling (775) 885–6115. For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined to not be in the public interest. Any comments received during this process, as well as the commentator's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address be made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentator's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: September 18, 2002.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 02–26171 Filed 10–9–02; 1:36 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare a Resource Management Plan (RMP) for the King Range National Conservation Area

AGENCY: Bureau of Land Management; Arcata Field Office.

ACTION: Notice of Intent to Prepare a Resource Management Plan (RMP) for the King Range National Conservation Area and associated Environmental Impact Statement (EIS).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an RMP with an associated EIS for the King Range National Conservation Area (KRNCA), managed by the Arcata Field Office. The planning area is located in Humboldt and Mendocino Counties, California. This planning activity encompasses approximately 63,000 acres of land within the National Conservation Area (NCA) boundary. The plan will fulfill the obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the King Range Act, and BLM management policies. The plan will serve to update the 1974 King Range Management Program (KRMP) and associated amendments. Decisions in the original plan and amendments that are still current will be carried forward in the new plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues, develop planning criteria, and outline a vision for area management that reflects the needs and interests of the public and protection of the areas resource values as called for by the King Range Act.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below. All public meetings will be announced through the local news media, newsletters, and the BLM web site (*www.ca.blm.gov/arcata/*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

PUBLIC PARTICIPATION: Public meetings will be held throughout the plan scoping and preparation period. Participation is encouraged and will help determine the future management of the KRNCA public lands. In addition to the ongoing public participation process, formal opportunities for public input will be provided through comment on the alternatives and upon publication of the BLM draft RMP/EIS.

ADDRESSES: Written comments should be sent to, Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521. Fax (707) 825–2301. Email comments to *CAweb330@ca.blm.gov.* Documents pertinent to this proposal may be examined at the Arcata Field Office located in Arcata, California. Comments, including names and street addresses of respondents, will be available for public review at the Arcata Field Office located in Arcata, CA during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, call (707) 825–2300.

SUPPLEMENTARY INFORMATION: The creation of the KRNCA along with the changing needs and interests of the public necessitates a revision to the KRMP, which was completed in 1974. Various supplementary plans, amendments, and implementation of new laws have served to update the 27 year old plan. Decisions in these existing plans that are still current will be carried forward in the new plan. However, changing uses, public interests, and resource conditions indicate that it is timely to update the plan in a comprehensive manner.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in discussions with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the plan effort include: Management and protection of natural/cultural resources and primitive values; recreation/visitor use and safety; and

integrating planning and management with community, tribal, and other agency needs.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

Preliminary planning criteria have also been identified to guide development of the plan decisions and selection of a preferred alternative. Some key criteria are as follows. The plan decisions will: 1. Be completed in compliance with FLPMA, NEPA, King Range Act and other applicable laws and policies; 2. Recognize lifestyles and concerns of area residents; 3. Be consistent with NW Forest Plan; and 4. Carry forward the zoning concept of the original KRMP, and existing relevant decisions from the original plan and amendments/supplements. The public will have an opportunity to provide comments and update planning criteria as part of the scoping process.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified.

Background Information

On October 21, 1970, Congress passed the King Range Act (Pub. L. 91–476) creating the KRNCA. The area encompasses approximately 63,000 acres in Humboldt and Mendocino Counties, California. The KRNCA includes 35 miles of Pacific coastline backed by peaks climbing to 4,000 feet. The area is bordered on the north and east by a mixture of public and private lands, and on the south by the Sinkyone Wilderness State Park.

The KRMP was completed in 1974 and has been amended a number of times to reflect changing public needs, new laws, and executive orders. Several significant multi-discipline and activity plans have also been completed, including the KRNCA Extension Plan (1981), Allotment Management Plan (1984), Transportation Plan (1986), Cultural Resources Management Plan (1988), Wilderness Recommendations/EIS (1988), and Northwest Forest Plan (1994). Information and decisions from these existing plans may be incorporated into this plan revision.

The King Range Act requires that the ''plan will be reviewed and reevaluated periodically''. To date, updates have been completed on an as-needed basis to respond to changing public demands, resource needs or public policies affecting a specific aspect of the management program. This effort will serve as the first comprehensive plan update since the original KRMP was completed in 1974.

Lynda Roush,

Arcata Field Manager.

[FR Doc. 02–25924 Filed 10–10–02; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–450]

Certain Integrated Circuits, Processes for Making Same, and Products Containing Same; Notice of Final Determination and Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as to one claim of one patent and has issued a limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Copies of the Commission order, the Commission opinion in support thereof, and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation by notice published in the **Federal Register** on March 6, 2001. 66 FR 13567 (2001). The complainants were United Microelectronics Corporation, Hsinchu City, Taiwan; UMC Group (USA), Sunnyvale, CA; and United Foundry Service, Inc., Hopewell Junction, NY. *Id.* The Commission named two respondents, Silicon Integrated Systems Corp., Hsinchu City, Taiwan, and Silicon Integrated Systems Corporation, Sunnyvale, CA (collectively, ''SiS''). *Id.* The complaint, as supplemented, alleged violations of section 337 in the importation, the sale for importation, and the sale within the United States after importation of certain integrated circuits and products containing same by reason of infringement of claims 1, 2, and 8 of U.S. Letters Patent 5,559,352 (''the '352 patent'') and claims 1, 3–16, and 19–21 of U.S. Letters Patent 6,117,345 (''the '345 patent''). *Id.* On November 2, 2001, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID'') (ALJ Order No. 15) granting complainants'' motion for summary determination on the issue of importation and denying respondents' motion for summary determination of lack of importation. That ID was not reviewed by the Commission. A tutorial session was held on November 5, 2001, and an evidentiary hearing was held from November 7, 2001, through November 16, 2001, and from December 10, 2001, through December 12, 2001. The ALJ issued his final ID on May 6, 2002, concluding that there was no violation of section 337. With respect to the '352 patent, the ALJ found that: Complainants have not established that the domestic industry requirement is met; none of respondents' accused devices infringe any asserted claim of the '352 patent literally or under the doctrine of equivalents; and claims 1 and 2 of the '352 patent are invalid as anticipated under 35 U.S.C. 102 and claim 8 of the '352 patent is invalid for obviousness under 35 U.S.C. 103. With respect to the '345 patent, the ALJ found each of the claims listed in the notice of investigation, *i.e.*, claims 1, 3–16, 19–20, and 21, invalid as anticipated by and made obvious by certain prior art. The ALJ stated that, in their post-hearing filings, complainants asserted only claims 1, 3–5, 9, 11–13, and 20–21 of the '345 patent against respondents. He found that, if valid, each of the asserted claims of the '345 patent, *i.e.*, claims 1, 3–5, 9, 11–13, and 20–21, is literally infringed by SiS's existing (or old) SiON manufacturing process, but that respondents' new N_2O process does not infringe any asserted claim of the '345 patent. The ALJ further found that a

domestic industry exists with respect to the '345 patent. On May 13, 2002, the ALJ issued his recommended determination on remedy and bonding. On May 20, 2002, complainants and the Commission investigative attorney (''IA'') petitioned for review of the subject ID, and respondents filed a contingent petition for review of the ALJ's final ID. On June 21, 2002, the Commission determined to review the ID in part. Specifically, the Commission determined to review and clarify that the ALJ found claim 13 of the '345 patent made obvious, but not anticipated, by the Tobben patent. The Commission also determined to review: (1) the ALJ's findings and conclusions of law regarding the '352 patent with respect to infringement of the asserted claims and domestic industry under the doctrine of equivalents; (2) the ALJ's finding that respondents' old E5 model ESD transistor does not infringe any asserted claim of the '352 patent, either literally or equivalently; (3) the ALJ's claim construction of the limitations ''an ESD protection device'' (claims 1, 2, and 8 of the '352 patent), ''a gate'' (claims 1 and 2), ''gates'' (claim 8), and ''source/drain regions * * * with each source/drain region comprising'' (claims 1, 2, and 8), and the ALJ's invalidity, domestic industry, and infringement findings and conclusions of law with respect to those limitations; (4) the ALJ's finding that claim 8 of the '352 patent is invalid as made obvious by a combination of prior art references; (5) whether the economic prong of the domestic industry requirement is met with respect to the '352 patent; (6) the ALJ's findings that the ''second antireflective coating'' (claim 1 and asserted dependent claims 3–8 of the '345 patent) and ''cap layer'' (claims 9–16, 19–20, and 21 of the '345 patent) are disclosed in the Tobben patent, and consequently (a) the ALJ's findings with respect to etching the second antireflective coating or cap layer (claims 4 and 12), (b) the ALJ's ultimate finding that the Tobben patent anticipates claims 1, 3–16, 19–20, and 21 of the '345 patent, and (c) the ALJ's conclusion that claim 13 is made obvious by the Tobben patent and other prior art; (7) the ALJ's conclusion that claim 13 of the '345 patent is invalid as obvious in light of the Tobben patent; and (8) the ALJ's conclusion that claims 1, 3–16, 19–20, and 21 of the '345 patent are invalid as made obvious by the Abernathey patent in combination with the Pan, Yagi, and/or Yota publications. The Commission determined not to review the remainder of the ID, including the ID's conclusions and findings of fact with respect to whether the Tobben patent is prior art to the '345 patent, infringement of the asserted claims of the '345 patent, domestic industry concerning the '345 patent, and failure to disclose the best mode of practicing the invention of the '345 patent. The Commission requested briefs on the issues under review, and posed briefing questions for the parties to answer. The Commission also requested written submissions on the issues of remedy, the public interest, and bonding. 67 FR 43338. Initial briefs were filed on July 9, 2002, and reply briefs were filed on July 16, 2002, and July 17, 2002. Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined that there is a violation of section 337 as to claim 13 of the '345 patent, but no violation of the statute as to the remaining claims in issue of the '345 patent (*viz.,* claims 1, 3–5, 9, 11–12, 20, and 21) and no violation as to the claims in issue of the '352 patent (viz., claims 1, 2, and 8). With respect to the '352 patent, the Commission determined to modify the ALJ's construction of certain limitations in the asserted claims of the '352 patent, and to affirm the ALJ's findings and conclusions that (a) the asserted claims are not infringed, and (b) complainants failed to establish the technical prong of the domestic industry requirement under the revised claim construction. The Commission also determined to affirm the ALJ's finding that claims 1 and 2 of the '352 patent are invalid as anticipated, to reverse the ALJ's finding that claim 8 of the '352 patent is invalid as made obvious, and to take no position as to whether complainants established the economic prong of the domestic industry requirement with respect to the '352 patent. With respect to the '345 patent, the Commission determined to vacate the ALJ's findings and conclusions as to invalidity with respect to claims 6–8, 10, 14–16, and 19; to reverse the ALJ's finding that claims 1, 3–5, 9, 11–12, 20, and 21 are invalid as anticipated; to affirm the ALJ's conclusion that claims 1, 3–5, 9, 11–12, 20, and 21 of the '345 patent are invalid as obvious; and to clarify that claim 13 is not anticipated and reverse the ALJ's conclusion that claim 13 is invalid as obvious. The Commission also made determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of integrated circuits, including chipsets and graphics chips, that are made by a process covered by claim 13 of U.S. Letters Patent 6,117,345 and manufactured by or on behalf of respondents, and motherboards containing such integrated circuits. The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337(d) do not preclude the issuance of the limited exclusion order, and that the bond during the Presidential review period should be set at 100 percent of the entered value of integrated circuits subject to the Commission's order and 39 percent of the entered value of motherboards containing such integrated circuits. The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45–210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45–210.51).

By order of the Commission.
Issued: October 7, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–25997 Filed 10–10–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–029]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: October 16, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–423–425 and 731–TA–964, 966–970, 973–978, 980, and 982–983 (Final)(Certain Cold-Rolled Steel Products from Argentina, Belgium, Brazil, China, France, Germany, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Taiwan, Turkey, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before October 28, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 8, 2002.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26072 Filed 10–9–02; 10:52 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations is these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume II

Delaware
DE020011 (Oct. 11, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Delaware
DE020001 (Mar. 1, 2002)
DE020002 (Mar. 1, 2002)
DE020006 (Mar. 1, 2002)
DE020008 (Mar. 1, 2002)
DE020009 (Mar. 1, 2002)
DE020010 (Mar. 1, 2002)
Pennsylvania
PA020006 (Mar. 1, 2002)

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage

determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3d day of October 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–25699 Filed 10–10–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–122]

NASA Advisory Council, Advanced Space Transportation Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC), Advanced Space Transportation Subcommittee (ASTS).

DATES: Monday, November 18, 2002, 12:30 p.m. to 4:45 p.m.; and Tuesday, November 19, 2002, 9 a.m. to 1:45 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of Space Launch Initiative (SLI) Since Last Meeting
—Integrated Space Transportation Plan (ISTP) Update
—How SLI is Using Lessons Learned
—Review of SLI Partnerships and their Structure
—SLI Development Technology Readiness Level Progression
—Composite vs. Metallic Fuel Tanks
—3rd Generation Space Transportation Update
—Panel Member Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–26028 Filed 10–10–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Wednesday, October 30, 2002 from 9 a.m. to 12 p.m. The meeting will be held at 701 South Court House Road, Arlington, VA in the NCS conference room on the 2nd floor.

—TSP/WPS Program Update
—TSP Sponsorship Policies
—OSS Concept

Anyone interested in attending or presenting additional information to the Committee, please contact Deborah Bea, Office of Priority Telecommunications, (703) 607–4933.

Peter M. Fonash,

Certifying Officer, National Communications System.

[FR Doc. 02–26012 Filed 10–10–02; 8:45 am]

BILLING CODE 5001–08–M

NATIONAL CREDIT UNION ADMINISTRATION

Guidelines for Ensuring the Quality of Disseminated Information

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final guidelines.

SUMMARY: NCUA is issuing final guidelines for ensuring the quality of disseminated information. The guidelines are in response to Office of Management and Budget (OMB) issued government-wide guidelines. The goal of the guidelines is to ensure that information disseminated by NCUA is: Useful to the intended user of the information; presented in an accurate, clear, complete and unbiased manner; and protected from unauthorized access or revision. The guidelines also provide an administrative mechanism for an affected person to request correction of information disseminated by NCUA.

DATES: Effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: The final guidelines are available at *www.ncua.gov.* For additional information contact Neil McNamara, Deputy Chief Information Officer, Office of the Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428 or telephone number: (703) 518–6440 or Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone number: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Section 515 of the Treasury and General Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, 114 Stat. 2763) directs each agency subject to the Paperwork Reduction Act (44 U.S.C. chapter 35) to issue customized guidelines for ensuring the quality of the information it disseminates. The agencies were to base their guidelines on final guidelines issued by OMB and to post proposed guidelines by May 1, 2002. 67 FR 8452 (February 22, 2002).

NCUA posted proposed guidelines on its Web site on May 1, 2002, and they were published in the **Federal Register** on May 8, 2002. 67 FR 30976 (May 8, 2002). NCUA received no comments specific to its guidelines. It received two, generic comment letters sent to all federal agencies. Based on those comments, NCUA has amended its guidelines to address specifically whether administrative correction methods in rulemaking proceedings.

The goal of these guidelines is to ensure that information disseminated by the NCUA Board is: useful to the intended users of the information; presented in an accurate, clear, complete and unbiased manner; and protected from unauthorized access or revision. Section 515 also requires the agencies to include in their guidelines ''administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency.''

Guidelines

Policy

NCUA will undertake to ensure that the information it disseminates to the public is objective (accurate, clear, complete, and unbiased), useful and has integrity. Most information disseminated by NCUA is subject to the basic standard described in these guidelines. Additional levels of quality standards are adopted as appropriate for specific categories of disseminated information. The OMB guidelines

require ''influential scientific, financial or statistical information'' to meet a higher standard of quality. OMB defines ''influential'' to mean, ''the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.'' *Id.* at 8455. Influential information disseminated by NCUA is subject to a level higher than the basic standard. The NCUA's Chief Information Officer (CIO) serves as the agency official charged with overseeing the agency's compliance with OMB guidelines for the quality of information disseminated by NCUA.

Scope

NCUA will review all information disseminated for its quality before it is disseminated. The agency's pre-dissemination review and the guidelines in this document will apply to information that the agency first disseminates on or after October 1, 2002. The agency's administrative mechanism for correcting information will apply to information that the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

These guidelines apply to NCUA information dissemination in all media and formats, including print, electronic, audio/visual, or some other form. Information includes books, papers, CD–ROMs, electronic documents, or other documentary material disseminated to the public by NCUA. The guidelines apply to information disseminated by NCUA from a web page, but they do not apply to hyperlinks from NCUA's Web site to information that others disseminate. Nor do the guidelines apply to opinions if it is clear that what is being offered is someone's opinion, rather than fact or the agency's views. The guidelines do not apply to distribution limited to correspondence with individuals or persons, press releases, archival records, library holdings, public filings, subpoena, or adjudicative processes. Documents and information disseminated but neither authored by NCUA nor adopted as representing NCUA's views are not covered by these guidelines.

Dissemination means agency initiated or sponsored distribution of information to the public. Dissemination does not include: distribution limited to government employees or agency contractors or grantees; intra-agency or inter-agency use or sharing of governmental information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.

Process for Ensuring Quality of Information at the Basic Standard

The Section 515 guidelines issued by OMB focus primarily on the dissemination of substantive information, for example, reports, studies and summaries, rather than information pertaining to basic agency operations. NCUA reviews all information before dissemination to assure that it meets the basic quality standard. Most information disseminated by NCUA does not require the higher standard of review associated with influential information.

As stated in the Policy section of these guidelines, NCUA's basic quality standard for information involves objectivity, utility, and integrity. Objectivity involves two distinct elements: presentation and substance. Objective presentation means the information is presented within a proper context to ensure an accurate, clear, complete and unbiased presentation. Objective substance means the data, the analytical process, and the resulting reports are accurate, reliable and unbiased. To the extent possible, and consistent with confidentiality protections, NCUA will identify the source of disseminated information so the public can assess whether the information is objective. The utility of information refers to its usefulness to its intended users, including the public. Integrity refers to the security of information, in other words, the protection of information from unauthorized access or revision.

NCUA's CIO is charged with primary oversight responsibility for assuring that all disseminated information meets the basic quality standard. The CIO relies on the Office Director with primary responsibility for the disseminated information to ensure that the pre-dissemination review process is performed and documented at a level appropriate for the type of information disseminated. The OfficeDirectors will use internal peer reviews and other review mechanisms to ensure that disseminated information is objective, unbiased, and accurate in both presentation and substance. The approval of information before dissemination will be documented. This documentation may include routing slips, clearance forms, e-mails and other approval mechanisms currently used to assure the quality of disseminated information.

The Office Director with primary responsibility is also responsible for ensuring the utility and integrity of the information disseminated by his or her office. Information is useful only if it can be retrieved. Therefore, the Office Director should ensure that information published on the NCUA's Web site is retrievable by the public.

For all proposed collections of information under the Paperwork Reduction Act (PRA), NCUA should demonstrate in its PRA clearance submissions to OMB that the proposed collection of information will result in information that will be collected, maintained and used in a way consistent with OMB and NCUA information quality guidelines.

The security and integrity of agency information is addressed in NCUA Instruction No. 13500.04, ''Agency-Wide Information Security Policy & Procedures'' and the NCUA agency-wide electronic systems records retention schedule. Office Directors are responsible for ensuring that information is protected from unauthorized revision, falsification, corruption, and intentional or inadvertent destruction. In particular, the originating Office Director is responsible for ensuring that the record copy of information products is filed in the appropriate official record keeping system and included in an approved records retention schedule. All NCUA employees are responsible for following security procedures intended to safeguard sensitive information. The originating Office Directors are required to review and update the security plans for their systems each year. The CIO provides an ongoing security-training program for agency staff. NCUA also has a comprehensive internal control program, including management, operational and technical controls, designed to protect the integrity of agency systems and information. The CIO, the Information Security Officer, and the Records Officer of NCUA advise the Office Directors and other employees, as needed on the implementation of appropriate security and records management procedures.

The originating Office Director is to review disseminated information on a regular basis, including information on the NCUA Web site, to ensure that information is current, timely, and correct.

Process for Ensuring Quality of Information at a Level Higher Than the Basic Standard

Some of the information disseminated by NCUA is influential, meaning that the ''information will have or does have a clear and substantial impact on

important public policies or important private sector decisions.'' *Id.* at 8455.

OMB has instructed the agencies to take into account their missions in determining whether the information they disseminate is influential. NCUA's primary mission is to ensure the safety and soundness of federally insured credit unions. NCUA collects financial data from credit unions and produces statistical reports based on that data. This information is potentially influential. Both the individual credit union data and the statistical reports are made available to the public. These reports assist the NCUA in its functions as regulator and insurer, as well as credit unions and the public in their financial decisions. The information is considered influential if important public policies or important private sector decisions are made based on it. To ensure the accuracy of the original data, NCUA staff or the appropriate state regulator reviews it for accuracy. The data is then collected by NCUA's Office of Examination and Insurance (E&I) and reviewed for discrepancies. E&I then prepares summary statistical and trend reports for distribution to the general public. The original data on which these statistical and trend reports are based is available to the public, making the statistical and trend reports reproducible. Every possible step is taken to ensure the accuracy of the underlying data. The computer program used by credit unions for their initial submission of the call report data is designed to detect errors before submission. Next, the credit union's examiner or the appropriate state regulator reviews the call report to assure that the information is accurate. Finally, the summary information for federally-insured credit unions is reviewed by E&I to detect any errors. With these steps in place, NCUA is assuring the accuracy and reproducibility of information that is potentially influential.

Administrative Correction Methods

Background

NCUA has developed a procedure to seek correction of information under Section 515. These procedures are designed to be flexible, appropriate to the nature and timeliness of the information disseminated and incorporated into NCUA's information resources management and administrative practices. An affected person may request correction of information disseminated by NCUA. An affected person means anyone who may benefit or be harmed by the disseminated information. Documents and information disseminated but neither authored by NCUA nor adopted as representing NCUA's views are not covered by these guidelines.

Certain disseminations of information include a comprehensive public comment process, *e.g.*, notices of proposed rulemaking. The administrative correction method described in these guidelines does not apply to such documents. Persons questioning information disseminated in such a document must submit comments as directed in that document. In cases where NCUA disseminates a study, analysis, or other information prior to the final agency action, request for correction will be considered prior to the final agency action if NCUA has determined that an earlier response would not unduly delay issuance of the agency action and the complainant has shown a reasonable likelihood of suffering actual harm from NCUA's dissemination if NCUA does not resolve the complaint prior to the final agency action.

Procedure

An affected person may submit his or her request to NCUA's CIO, and the CIO will forward it to the appropriate NCUA Office Director for a determination. All requests should be addressed to: Chief Information Officer, Office of Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

The request should state that the correction of information is submitted under section 515 of Public Law 106–554 and include the requester's name and mailing address. The request should describe the information asserted to be incorrect, including the name of the report or data product where the information is located, the date of issuance, and a detailed description of the information to be corrected. The request should also state specifically why the information does not comply with NCUA or OMB guidelines and should be corrected, and, if possible, recommend specifically how it should be corrected, and provide any supporting documentary evidence, such as comparable data or research results on the same topic to help in the review of the request.

If the Office Director determines that a request does not reasonably describe the disseminated information the requester asserts to be incorrect, the Office Director will either advise the requester what additional information is needed to identify the particular information or otherwise state why the request is insufficient.

The Office Director will coordinate with the appropriate NCUA officials to determine whether or not to correct information. The nature, influence, and timeliness of the information involved, the significance of the correction on the use of the information, and the magnitude of the correction will determine the level of review and the degree and manner of any corrective action.

The Office Director will respond to a request within 60 calendar days. The response will explain the findings of the review and the actions NCUA will take. If NCUA denies the request, the response will explain the right to an appeal and how to apply for it. The Office Director may extend the 60 days for up to 30 more business days. If extended, the Office Director will send an interim response that states why more time is needed and when a response may be expected. The 60-day response period begins on the day the request is received by the CIO.

A denial of a request to correct a record may be appealed to the CIO within 30 calendar days of the date of the denial letter. Appeals must be in writing, state the basis for the appeal, and provide any supporting documentation. Appeals must be addressed to the Chief Information Officer, Office of the Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Appeals must be decided within 60 calendar days unless the CIO, for good cause, extends the period for an additional 30 calendar days. If extended, the CIO will send an interim response that states why more time is needed and when a response may be expected. The CIO will notify the appellant whether his or her request was granted or denied and what corrective action, if any, the NCUA will take.

These procedures for correcting information will apply to information that NCUA disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

Annual Reports to OMB

NCUA will submit an annual fiscal year report to OMB providing information, both quantitative and qualitative, on the number, nature and resolution of complaints received by the agency regarding the accuracy of information it disseminates. The report is to be submitted on an annual fiscal year basis no later than January 1 of the following year. The first report will cover fiscal year 2003 and will be submitted to OMB by January 1, 2004.

Definitions

1. *Dissemination* means NCUA initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra-agency or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.

2. *Influential* means that NCUA can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.

3. *Information* means any communication or representation of knowledge such as fact or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative or audiovisual forms, whether on paper, film or electronic media and whether disseminated via fax, recording, machine readable data or Web site. This definition includes information from NCUA's web page, but does not include the provision of hyperlinks to information that others disseminate. It also does not include distribution limited to correspondence with individuals or persons, press releases that announce or give public notice of information that the NCUA has disseminated elsewhere, archival records, public filings, subpoenas, adjudicative processes or opinions, unless that opinion is the NCUA's official point of view.

4. *Integrity* refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. *Objectivity* involves two distinct elements, presentation and substance. Objectivity in presentation requires NCUA to present disseminated information in an accurate, clear, complete, and unbiased manner. To accomplish this, NCUA must assure that the information is presented within a proper context. NCUA will identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a financial or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data will have full, accurate, transparent documentation, and error sources affecting data quality will be identified and disclosed to users.

Objectivity in substance requires NCUA to disseminate accurate, reliable and unbiased information. To accomplish this, in a financial or statistical context, NCUA must assure that sound statistical and research methods are used to generate the original and supporting data and the conclusions that flow from the data. If NCUA disseminates influential information, it must assure that its conclusions are capable of being substantially reproduced.

6. *Quality* is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four terms collectively, as ''quality.''

7. *Reproducibility* means that information is capable of being substantially reproduced subject to an acceptable degree of imprecision.

8. *Utility* refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that NCUA disseminates to the public, NCUA will consider the uses of the information not only from the perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, NCUA will take care to ensure that transparency has been addressed in its review of the information. Transparency refers to a clear description of the methods, data sources, assumptions, outcomes and related information that will allow a data user to understand how information was produced.

Authorities: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the Office of Management and Budget Final Guidelines, 67 FR 8452 February 22, 2002.

By the National Credit Union Administration Board on October 4, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–25932 Filed 10–10–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed 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 discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* October 22, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

2. *Date:* October 25, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

3. *Date:* October 29, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival

Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 02–26035 Filed 10–10–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supercedes all previous notices of the PRB membership of the Agency.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Maxine C. Jefferson, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5405.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts: Eileen B. Mason, Senior Deputy Chairman, Laurence M. Baden, Deputy Chairman for Management and Budget, Alfred B. Spellman, Jr., Deputy Chairman for Guidelines, Panel, and Council Operations, Ann G. Hingston, Congressional and White House Liaison, Michael R. Burke, Chief Information Officer.

Murray R. Welsh,

Director of Administrative Services, National Endowment for the Arts.

[FR Doc. 02–25968 Filed 10–10–02; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 5, 2002. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation,as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

[Permit Application No. 2003–013]

1. *Applicant:* Arthur L. DeVries, 524 Burrill Hall, Department of Animal Biology, University of Illinois, Urbana, IL 61801.

Activity for Which Permit is Requested: Introduce non-indigenous species into Antarctica. The applicant plans to bring approximately 5 million frozen brine shrimp (Artemia franciscana) egg cysts to Antarctica to be used as food for Antarctic larval fishes. The brine shrimp will be hatched in +20°C seawater in incubators in the Crary Science and Engineering Center at McMurdo Station. The hatched larva will be concentrated to the consistency of a thick soup, frozen into 2 cubic centimeter cubes at −80°C and fed to Dragon fish larva (Gymonodraco acuticeps). The larva will be held in small running seawater aquaria with the outlet screened with a mesh sufficiently small to prevent escape of the dead brine shrimp, as well as the fish larva. Residual dead brine shrimp will be retrieved from the aquaria, autoclaved and disposed of as biological waste.

Location: Crary Science and Engineering Center, McCrudo Station, Antarctica.

Dates: November 5, 2002 to February 28, 2003.

[Permit Application No. 2033–014]

2. *Applicant:* Gary D. Miller, Biology Department, University of New Mexico, Albuquerque, NM 87131.

Activity for Which Permit is Requested: Take and Import into the United States. The applicant plans to continue analysis of the phylogenetic relationships, population genetics, and diseases of Antarctic seabirds. The applicant will embark on a circumnavigation cruise of the Antarctic this season and plans to collect small tissue samples from fresh or frozen carcasses of various seabirds, with a main focus on collecting samples from Emperor penguin carcasses. The cruise will allow access to a number of Emperor penguin rookeries, as well as other sites. No more than fifteen samples will be collected from a single site. Tissue samples will be homogenized and put into a buffer solution to stabilize the DNA. As part of this collaborative work, chick carcasses will be inspected for the presence of Bursa of Fabricius, which will be excised and preserved for PCR testing for the presence of viruses. The Bursa samples will be returned to Dr. Geoff Shellam's lab in Perth, Australia, whereas all other samples will be imported to the U.S. and processed at the University of New Mexico.

Location: Balleny Islands, Shirley Island, Haswell Island, Vestfold Hills, Larsemann Hills, Scullin and Murray Monoliths, Cape Darnley, Auster Rookery, Kloa Point, Proclamation Island, Lazarev Ice Shelf, Atka Bay, Elephant Island, Pourquoi Pas Island, Cape Hallett, and Cape Adare.

Dates: November 15, 2002 to November 15, 2003.

[Permit Application No. 2003–014]

3. *Applicant:* Joan Miller, P.O. Box 237, Tesuque, NM 87574.

Activity for Which Permit is Requested: Enter Antarctica Specially Protected Areas. The applicant proposes to enter several ASPA's on Ross Island to photograph the exterior and interior of the historic huts. The photographs will be used to illustrate the efforts to preserve historic materials from attack by fungi and bacteria. In addition, images will be used in a book documenting the history of human habitation in Antarctica, and will chronicle the use of various materials used for structures, clothing, transport, and communication from the early 1900's through the present.

Location:

ASPA #154—Cape Evans Historic Site
ASPA #156—Hut and Associated artifacts, Backdoor Bay, Cape Royds, Ross Island
ASPA #157—Discovery Hut, Hut Point, Ross Island

Dates: October 7, 2002 to January 23, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 02–26029 Filed 10–10–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–188]

Notice of License Renewal Application for Facility Operating License; Kansas State University

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received a license renewal application from the Kansas State University dated September 12, 2002, filed pursuant to section 104c of the Atomic Energy Act of 1954, as amended (the Act), for the necessary license to operate a TRIGA nuclear reactor for an additional 20-year period. The reactor is located at the Kansas State University, Manhattan, Kansas. It is also proposed for operation for educational training and research at a steady state power level of 500 kilowatts, an increase of 250 kilowatts from its previous steady state power level of 250 kilowatts, and with pulse maximum reactivity insertions of $3.00, an increase of $1.00 from its previous limit of $2.00. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible from the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.*

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, please 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.

Dated in Rockville, Maryland, this 4th day of October 2002.

For the Nuclear Regulatory Commission.

Robert L. Dennig,

Acting Program Director, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25992 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40–08155]

Notice of Consideration of Amendment Request for H.C. Starck, Inc., Coldwater, MI, Site and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. STB–1161 to authorize decommissioning of the H.C. Starck, Inc. facilities in Coldwater, Michigan. This license issued to H.C. Starck, Inc., authorizes the possession of a maximum of 44 kilograms of natural thorium for the processing of thorium oxide in the form of a thorium-nickel powder into ingots and sheets. As a result of conducting these licensed operations, the H.C. Starck site is radiologically contaminated with loose and fixed surface contamination on some interior building surfaces and equipment.

On June 4, 2002, the licensee submitted a site decommissioning plan (SDP) to NRC for review. The SDP indicates that long-term doses from the contaminated material at current levels are in excess of the requirements of the Radiological Criteria for License Termination rule (10 CFR part 20, Subpart E). Therefore, the licensee proposes to decontaminate the site to levels that will meet the requirements of the Radiological Criteria for License Termination rule and allow the site to be released for unrestricted use.

If the NRC approves this request, the approval will be documented in a license amendment to NRC License STB–1161. However, prior to the approval and issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to Sec. 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Sec. 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary by mail or facsimile (301–415–1101) addressed to: The Rulemaking and Adjudications Staff of the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemaking and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally, or by mail, to:

1. The applicant, H.C. Starck, Inc., 460 Jay Street, Coldwater, MI 49036, Attention Dave Meendering, Plant Manager, and,

2. The NRC staff, General Counsel, by mail, addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

a. The interest of the requester in the proceeding;

b. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in Sec. 2.1205(h);

c. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and,

3. The circumstances establishing that the request for a hearing is timely in accordance with Sec. 2.1205(d).

For Further Information: The application for the license amendment and supporting documentation are available for review at NRC's Public Electronic Reading Room, at *http://www.nrc.gov/reading-rm/adams.html.* The accession [file] number for this document is ML022550372. Any questions with respect to this action should be referred to Mr. William Snell, Decommissioning Branch, Region III, U.S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, IL 60532–4351. Telephone: (630) 829–9871.

Dated at Lisle, Illinois, this 4th day of October 2002.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Material Safety, Region III.

[FR Doc. 02–25993 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–17]

Portland General Electric Company; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Amendment to Materials License No. SNM–2509

The U. S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an amendment, pursuant to 10 CFR 72.56, to Special Nuclear Material License No. 2509 (SNM–2509) held by Portland General Electric Company (PGE) for the Trojan independent spent fuel storage installation (ISFSI). The requested amendment would revise the ISFSI license (SNM–2509) and the Technical Specifications (TS) of SNM–2509 to specifically permit the use of portions of the Holtec International dry storage cask system to store spent fuel at the Trojan ISFSI.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated October 26, 2001, as supplemented, PGE requested an amendment to revise the license (SNM–2509) and the TS of SNM–2509 for the Trojan ISFSI. The changes would specifically permit the use of the Holtec International Multi-Purpose Canister (MPC) to store spent fuel. The Holtec International MPC is proposed to be compatible, with minor modification, to the pre-existing TranStor concrete cask design at the Trojan ISFSI currently designed for use with the TranStor pressurized water reactor fuel (PWR) basket. This amendment requests the TranStor PWR basket design be supplanted with the Holtec International MPC design. No changes to the specifications for the fuel to be stored at the Trojan ISFSI were requested.

Need for the Proposed Action: The proposed action is necessary to allow for storage of spent fuel in dry casks. PGE was licensed to use the TranStor Storage System for SNF comprised of the concrete cask and PWR basket. The PWR basket design was subsequently determined to be unusable. Without this amendment PGE will be unable to load spent nuclear fuel (SNF) at the Trojan site. If unable to store SNF, PGE will not be able to continue decommissioning of the Trojan site unless an alternative means for storing SNF is found.

Environmental Impacts of the Proposed Action: In 1999 the NRC issued a license to PGE to construct and operate the Trojan ISFSI. Prior to this action the NRC examined the environmental impacts of constructing and operating the Trojan ISFSI and issued an environmental assessment and finding of no significant impact. See 61 FR 64378, December 4, 1996. The NRC has completed its evaluation of the proposed action and concludes that granting the request for amendment to allow the storage of spent fuel assemblies using the TranStor concrete cask and Holtec International MPC, will not increase the probability or consequence of accidents beyond that bounded by previous analysis. No changes are being made in the types of any effluents that may be released offsite. With regard to radiological impacts, the change from the TranStor PWR basket design to the Holtec International MPC design will yield an increase in neutron and gamma dose rates at the cask surface. However, the dose rates remain below regulatory limits for occupational exposures and public radiation exposures. Moreover, the dose rates comply with the applicable regulatory criteria specified in 10 CFR part 20, and 10 CFR 72.104 and 72.106. As a result, there are no significant radiological environmental impacts associated with the proposed action.

The amendment only affects the requirements associated with the design of the fuel basket and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: The alternative to the proposed action would be to deny the request for amendment (*i.e.*, the ''no-action'' alternative). Denial of the proposed action would result in PGE continuing to store SNF in the Trojan spent fuel storage pool. Without dry cask storage, PGE would be unable to continue with decommissioning of the Trojan site. The Trojan Nuclear Power Plant has been permanently shut down. Delaying decommissioning of the Trojan site and maintaining the SNF in the spent fuel storage pool could potentially lead to greater occupational exposure than dry cask storage due to the proximity of workers to the fuel. The environmental impacts of the alternative action could be greater than the proposed action.

Given that the alternative action of denying the approval for amendment has no lesser environmental impacts associated with it, and considering that the proposed action would result in storage of fuel at the Trojan ISFSI, which has already been approved under a site specific license, the Commission concludes that the preferred alternative is to grant this amendment.

Agencies and Persons Consulted: On September 17, 2002, Mr. Adam Bless of the Oregon Office of Energy, Energy Resources Division, was contacted regarding the proposed action and had no concerns.

Finding Of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an amendment to permit the use of the Holtec International MPC and the TranStor concrete cask to store SNF at the Trojan ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this amendment, see the application dated October 26, 2001, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publically available records component of NRC's Agencywide Documents

Access and Management System (ADAMS) under Accession No. ML013060075. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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 email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 4th day of October, 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–25991 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW advises the NRC on technical issues related to nuclear materials and waste management. The bases of ACNW review include 10 CFR parts 20, 60, 61, 63, 70, 71, and 72 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act and amendments, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the internet at *http://www.nrc.gov/ACRSACNW.* There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend the meeting may contact the Designated Federal Official specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 3:30 p.m., Eastern Time.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 3:30 p.m., Eastern Time.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. ACRS meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/.* A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

(f) Video teleconferencing service is available for observing open sessions of some ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:30 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACNW Working Group Meetings

ACNW Working Group meetings will also be conducted in accordance with these procedures, as appropriate. When Working Group meetings are held at

locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: October 7, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–25987 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Designated Federal Official specified in the **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 3:30 p.m., Eastern Time.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the Designated Federal Official prior to the meeting to allow time for reproduction and distribution. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 3:30 p.m., Eastern Time.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. ACRS meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/*. A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:30 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the above procedures, as appropriate, to facilitate public participation and to provide a forum to stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: October 7, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–25988 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information that is not contained in a regulation (OMB control number 1212–0030; expires January 31, 2003). This voluntary collection of information is a quarterly survey of insurance company rates for pricing annuity contracts. The survey is conducted by the American Council of Life Insurers for the PBGC. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 10, 2002.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address during normal business hours.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR part 4044) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 4281). Each month the PBGC publishes the interest rates to be used under those regulations for plans terminating or undergoing mass withdrawal during the next month.

The interest rates are intended to reflect current conditions in the investment and annuity markets. To determine these interest rates, the PBGC gathers pricing data from insurance companies that are providing annuity contracts to terminating pension plans through a quarterly ''Survey of Nonparticipating Single Premium Group Annuity Rates.'' The survey is distributed by the American Council of Life Insurers and provides the PBGC with ''blind'' data (*i.e.*, is conducted in such a way that the PBGC is unable to match responses with the companies that submitted them).

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurers. The survey is conducted quarterly and will be sent to approximately 22 insurance companies. Based on experience under the current approval, the PBGC estimates that 11 insurance companies will complete and return the survey. The PBGC further estimates that the average annual burden of this collection of information is 41 hours and $88.

The collection of information under the regulation has been approved by OMB under control number 1212–0030 through January 31, 2003. The PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC is soliciting public comments to—

- Evaluate whether the 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 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.

Issued in Washington, DC, this 8th day of October, 2002.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 02–26010 Filed 10–10–02; 8:45 am]

BILLING CODE 7708–01–P

POSTAL RATE COMMISSION

Briefing on the Domestic Mail Manual

ACTION: Notice of briefing.

SUMMARY: The Commission will host a briefing by Postal Service representatives on Thursday, October 24, 2002 at 10 a.m. The topic is revisions to the Domestic Mail Manual. Chapter One, which describes various postal retail products, is intended for use by individual mailers. Subsequent chapters are intended to be used by various categories of business mailers. The briefing which is open to the public, will be held in the Commission's hearing room.

DATES: October 24, 2002.

ADDRESSES: Postal Rate Commission (hearing room), 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 202–789–6815.

Steven W. Williams,

Secretary.

[FR Doc. 02–25937 Filed 10–10–02; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Gross Earnings Report; OMB 3220–0132.

In order to carry out the financial interchange provisions of section 7(c)(2) of the Railroad Retirement Act (RRA), the RRB obtains annually from railroad employer's the gross earnings for their employees on a one-percent basis, *i.e.*, 1% of each employer's railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits ''30.'' The gross earnings are used to compute payroll taxes under the financial interchange.

The gross earnings information is essential in determining the tax amounts involved in the financial interchange with the Social Security Administration and Centers for Medicare and Medicaid Services. Besides being necessary for current financial interchange calculations, the gross earnings file tabulations are also an integral part of the data needed to estimate future tax income and corresponding financial interchange amounts. These estimates are made for internal use and to satisfy requests from other government agencies and interested groups. In addition, cash flow projections of the social security equivalent benefit account, railroad retirement account and cost estimates made for proposed amendments to laws administered by the RRB are dependent on input developed from the information collection.

The RRB utilizes Form BA–11 or its electronic equivalent to obtain gross earnings information from railroad employers. One response is requested of each railroad employer. Completion is mandatory. No changes are proposed to Form BA–11.

Estimate of Annual Respondent Burden

Gross earnings reports are required annually from all employers reporting railroad service and compensation. There are approximately 637 railroad employers who currently report gross earnings to the RRB. Most large railroad employers include their railroad subsidiaries in their gross earnings reports. This results in the RRB collecting *less* than 637 earnings reports. Also, there are a large number of railroad employers having work forces so small that they do not have employees with social security numbers ending in ''30.'' Currently, there are 373 such employers in this category who file ''negative'' BA–11 responses to the RRB. Overall, on an annual basis, the RRB receives 54 reports consisting of computer prepared tapes or diskettes and 100 by means of manually prepared Form BA–11. The RRB estimates an average preparation time of 5 hours for each gross earnings report submitted by computer tape or diskette and 30 minutes for each manually prepared BA–11.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–25934 Filed 10–10–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulations 13D and 13G; Schedules 13D and 13G, SEC File No. 270–137, OMB Control No. 3235–0145.

Form F–6, SEC File No. 270–270, OMB Control No. 3235–0292.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Schedules 13D and 13G are filed pursuant to sections 13(d) and 13(g) of the Securities Exchange Act of 1934

(''Exchange Act'') and Regulation 13D and 13G thereunder are intended to report beneficial ownership of equity securities registered under Section 12 of the Exchange Act. Regulations 13D and 13G are intended to provide investors and the subject issuers with information about accumulations of securities that may have the potential to change or influence control of the issuer. Schedule 13G and Schedule 13D are used by persons including small entities to report their ownership of more than 5% of a class of equity securities registered under Section 12. Schedule 13D takes approximately 43,500 total burden hours and is filed by 3,000 respondents. The filer prepares 25% of the 43,500 annual burden hours for a total reporting burden of 10,875 hours. Schedule 13G takes approximately 98,800 total burden hours and is filed by 9,500 respondents. The filer prepares 25% of the 98,800 annual burden hours for a total reporting burden of 24,700 hours. Therefore, the reporting burden for both Schedules is 35,575 and they are prepared by a total of 12,500 respondents. Respondents file either Schedule 13D or Schedule 13G only when necessary.

The information provided by respondents is mandatory. All information provided to the Commission is public. However, Rules 0–6 and 24b-2 under the Exchange Act permits reporting persons to request confidential treatment for certain sensitive information concerning national security, trade secrets, or privileged commercial or financial information.

The Commission under section 19 of the Securities Act of 1933 established Form F–6 for registration of American Depositary Receipts (ADRs) of foreign companies. Form F–6 requires disclosure of information regarding the terms of depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one, which periodically furnishes information to the Commission. Such information is available to the public for inspection. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and foreign company. Approximately 150 respondents file Form F–6 and it take .9 hours to prepare for a total of 135 annual burden hours. It is estimated that 25% of the 135 total burden hours (33.75 hours) is prepared by the company. The information provided on Form F–6 is mandatory to best ensure full disclosure of ADRs being issued in the U.S. All information provided to the Commission is available for public review upon request.

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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26020 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 10b–17, SEC File No. 270–427, OMB Control No. 3235–0476

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 10b–17, Untimely announcements of record dates (17 CFR 240.10b–17)

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following actions relating to such class of securities: (1) A dividend; (2) a stock split; or (3) a rights or other subscription offering. Notice shall be (1) given to the National Association of Securities Dealers, Inc.; (2) in accordance with the procedures of the national securities exchange upon which the securities are registered; or (3) may be waived by the Commission.

The information required by Rule 10b–17 is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. The consequence of not requiring the information collection pursuant to Rule 10b–17 is that sellers who have received distributions as recordholders may dispose of the cash or stock dividends or other rights received as recordholders without knowledge of possible claims of purchasers.

It is estimated that, on an annual basis, there are approximately 29,430 respondents and that each response takes about 10 minutes to complete, thus imposing approximately 4,905 burden hours annually (29,430 × 10 minutes). It is believed that the average hourly cost to produce and file a response under the rule is about $50. Therefore, the annual reporting cost burden for complying with this rule is about $245,250 (4,905 × $50).

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. Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26022 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 27574; File No. 3–10909]

Public Utility Holding Company Act of 1935; Administrative Proceeding; Applications of Enron Corp. for Exemptions Under the Public Utility Holding Company Act of 1935, (Nos. 70–9661 and 70–10056)

October 7, 2002.

Order Scheduling Hearing Pursuant to Section 19 of the Public Utility Holding Company Act of 1935

Enron Corp. (''Enron''), an Oregon corporation with headquarters at 1400 Smith Street, Houston, Texas 77002–7361, has filed two applications with the Securities and Exchange Commission (''Commission'') seeking orders exempting Enron from all provisions of the Public Utility Holding Company Act of 1935 (the ''Act'') except section 9(a)(2). Enron represents that it is a public utility holding company by reason of its ownership of all of the outstanding voting securities of Portland General Electric Company (''Portland General''). In one application, Enron requests exemption under section 3(a)(1) of the Act.[1] In the other application, Enron requests exemption under sections 3(a)(3) and 3(a)(5) of the Act.[2]

We have reviewed the applications. For the reasons described below, we conclude that it is appropriate to hold a hearing on Enron's applications before ruling on them.

An exemption under section 3(a)(1) is available to a public-utility holding company if—

such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company thereof are organized.[3]

We cannot, from the face of Enron's application for an exemption under section 3(a)(1), determine facts sufficient to conclude that Enron meets the statutory criteria. Among other things, we must determine whether Portland General is predominantly intrastate in character and carries on its business substantially in a single state.[4] That issue is clouded by representations in the application that raise questions concerning (1) Portland General's 20% ownership stake in the Pacific Northwest Intertie,[5] (2) the extent to which Portland General uses its stake in the Pacific Northwest Intertie to facilitate sales of electricity outside of Oregon delivered at the Mid-Columbia trading hub, and (3) the percentage of Portland General's revenue that is generated through its ownership of a station in Colstrip, Montana.

An exemption under section 3(a)(3) is available to a public-utility holding company if—

such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company.[6]

We cannot, from the face of Enron's application for an exemption under section 3(a)(3), determine facts sufficient to conclude that Enron meets the statutory criteria. To find that these criteria are satisfied, we must determine, among other things, that Enron's ownership of Portland General bears a necessary functional relationship to, and primarily serves the needs of, Enron's nonutility operations.[7] We must also make determinations concerning, among other things, Enron's income derived through Portland General in comparison with Enron's other income.[8] Because Enron is currently being reorganized under the supervision of the United States Bankruptcy Court for the Southern District of New York, and because of related disruptions to its business and financial affairs,[9] the record must be more fully developed before we can determine whether Enron satisfies the 3(a)(3) criteria.

An exemption under section 3(a)(5) is available to a public-utility holding company if—

such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.[10]

We cannot, from the face of Enron's application for an exemption under section 3(a)(5), determine facts sufficient to conclude that Enron meets the statutory criteria. An application for exemption under section 3(a)(5) requires us to make some of the same determinations as are required for an exemption under section 3(a)(3), including determinations about relationships between Enron's income derived from Portland General and Enron's other income.[11] For the reasons described above, a more fully developed record is required to make that determination. In addition, determining

[1] SEC File No. 70–10056 (filed Feb. 28, 2002; Amendment No. 1 filed May 31, 2002). Enron had previously been exempt under section 3(a)(1) by virtue of making certain representations on Form U–3A–2, pursuant to Rule 2 under the Act (17 CFR § 250.2). Enron states that it ''is presently unable to collect and produce the information required by Form U–3A–2,'' and it therefore seeks an order of exemption rather than exemption by operation of Rule 2.

[2] SEC File No. 70–9661 (filed Apr. 12, 2000). At the time that Enron filed this application for exemption under sections 3(a)(3) and 3(a)(5), Enron was already exempt under section 3(a)(1) by operation of Rule 2. Enron nevertheless requested exemption under sections 3(a)(3) and 3(a)(5) because an exemption under those provisions (unlike an exemption under section 3(a)(1)) would have the effect of affording Enron relief from the ''qualifying facility'' (or ''QF'') ownership restrictions under the Public Utility Regulatory Policies Act of 1978 and the rules of the Federal Energy Regulatory Commission thereunder.

[3] 15 U.S.C. § 79c(a)(1).

[4] See NIPSCO Industries, Inc., Holding Co. Act Release No. 26975 (Feb. 10, 1999).

[5] According to Enron's application, the Pacific Northwest Intertie is a 4,800 MW transmission facility between the towns of John Day in Northern Oregon, and Malin, in Southern Oregon which is near the California border. Enron represents that this line is primarily used for interstate sales and purchases of electric energy among the Bonneville Power Administration (a federal agency that markets electric energy generated by federal hydroelectric dams located on the Columbia River in Oregon and Washington), utilities in the Pacific Northwest, and certain California utilities.

[6] 15 U.S.C. § 79c(a)(3).

[7] See generally Electric Bond and Share Company, 33 S.E.C. 21, 41–43 (1952); Standard Oil Company, 10 S.E.C. 1122, 1125–28 (1942); Manufacturer's Trust Company, 9 S.E.C. 283, 288 note 5 (1941); Cities Service Co., 8 S.E.C. 318, 329–32 (1940). In its application, Enron asserts that it is ''only incidentally'' a holding company in that its affiliation with Portland General has given Enron ''insight and access to new business opportunities in the broader energy industry,'' and that Portland General has provided Enron with ''valuable expertise in evaluating regional electric distribution assets that complement Enron's strategy.''

[8] See, *e.g.*, Cities Service Co., 8 S.E.C. 318 (1940). We must also consider whether Portland General is small other than in relation to Enron, which requires us to consider Portland General's size in relation to the state, regional and national electricity markets in which it operates. Id.

[9] In its application for exemption under section 3(a)(1), Enron has acknowledged this disruption, stating that ''[a]s a consequence of the bankruptcy, the loss of a substantial portion of its staff, and the dismissal of its auditor Arthur Andersen LLP, Enron is presently unable to collect and produce the information required by Form U–3A–2, including the consolidating financial statements of Enron and its subsidiaries for the year ended December 31, 2001.''

[10] 15 U.S.C. § 79c(a)(5).

[11] See, *e.g.*, AES Corporation, Holding Co. Act Release No. 27063 (Aug. 20, 1999); Cities Service Co., 8 S.E.C. 318 (1940).

whether to grant an exemption pursuant to section 3(a)(5) requires us to determine whether Enron is the type of holding company to which section 3(a)(5) was intended to apply.

Finally, if a more fully developed record shows that Enron satisfies the more specific statutory criteria for any one of the three exemptions discussed above, we must nevertheless decline to grant the exemption if we find that the exemption would be ''detrimental to the public interest or the interest of investors or consumers.''[12] In this particular matter, in light of the acknowledged disruptions to Enron's business and financial affairs,[13] we believe that the question of whether an exemption would be detrimental to the public interest or the interest of investors and consumers is itself a question that should be the subject of a hearing before any exemption is granted.

We also recognize, however, that the question of whether an exemption would be detrimental to the public interest or the interest of investors and consumers is a question that we need reach only if it first appears that Enron satisfies any of the specific statutory criteria for an exemption. We therefore conclude that the most efficient way to proceed with a hearing on Enron's applications is in two phases. Phase I will be for the limited purpose of determining whether Enron satisfies any of the particular statutory criteria for an exemption under section 3(a)(1), section 3(a)(3), or section 3(a)(5) of the Act, and evidence and arguments presented shall be limited to those specific questions. Phase II, if the hearing officer determines it to be necessary, will be for the purpose of determining whether granting an exemption to Enron would be detrimental to the public interest or the interest of investors or consumers.

For the foregoing reasons,

It Is Ordered that a hearing shall be commenced, pursuant to section 19 of the Act and in accordance with the Commission's Rules of Practice,[14] at a time and place to be fixed by further order, for the purpose of determining whether Enron satisfies the statutory criteria for an exemption under section 3(a)(1), section 3(a)(3), or section 3(a)(5) of the Act and, if so, whether granting such an exemption would be detrimental to the public interest or the interest of investors or consumers;

It Is Further Ordered that Commissioner Roel C. Campos shall preside as hearing officer at the hearing, shall exercise the authority described in Commission Rule of Practice 111,[15] and shall, pursuant to Commission Rule of Practice 360,[16] prepare an initial decision;

It Is Further Ordered that Enron and the Division of Investment Management shall be parties to the proceeding and that Enron, as the proponent of the exemptive orders it seeks, shall, pursuant to 5 U.S.C. § 556(d), bear the burden of proving that it is entitled to such exemptive orders;

It Is Further Ordered that any person who seeks to intervene as a party pursuant to Rule of Practice 210(b)[17] shall file a motion to intervene with the Secretary of the Commission no later than October 21, 2002, and any person who seeks to participate on a limited basis pursuant to Rule of Practice 210(c)[18] shall file a motion for leave to participate with the Secretary of the Commission no later than 20 days prior to the date fixed for the Phase I hearing. A movant shall serve a copy of any such motion upon Enron at the address noted above in accordance with Rule 150(c) of the Commission's Rules of Practice, and proof of such service shall be filed with the Secretary of the Commission contemporaneously with the motion. Any such motion shall state whether the movant seeks to intervene or participate for purposes of Phase I only, Phase II only, or both Phases, and shall describe the nature and extent of the movant's interest with respect to each such Phase. Such motions as have already been received concerning Enron's applications shall be considered as timely filed in this matter,[19] although movants may supplement those motions in light of this Order if such supplements are received no later than October 21, 2002;

It Is Further Ordered that, without prejudice to the ability of the hearing officer to decide that additional factual or legal issues should be considered as part of the hearing in this matter, particular attention should be given at the hearing to the questions described above; and

It Is Further Ordered that the Secretary of the Commission shall give notice of the hearing by sending copies of this Order by certified mail to Enron at the address noted above; that the Secretary of the Commission shall mail a copy of this Order to each of the persons that have sought to intervene concerning Enron's applications; and that notice to all other persons shall be given by publication of this Order in the **Federal Register**.

By the Commission.

Margaret H. McFarland

Deputy Secretary.

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[12] 15 U.S.C. § 79c(a).

[13] See note 9, *supra.*

[14] 17 CFR Part 201.

[15] 17 CFR § 201.111.

[16] 17 CFR § 201.360.

[17] 17 CFR § 201.210(b).

[18] 17 CFR § 201.210(c).

[19] Motions to intervene have been received from Southern California Edison Company (received March 27, 2002), Sithe/Independence Power Partners, L.P. (received April 16, 2002), and the Electric Power Supply Association (received April 16, 2002).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27573]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 4, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to 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 October 29, 2002, 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 October 29, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy East Corporation, et al. (70–9609)

Energy East Corporation (''Energy East''), P.O. Box 12904, Albany, New York 12212–2904, a registered holding company under the Act, along with its direct and indirect subsidiaries listed below, has filed a post-effective

amendment to its previously filed Application/Declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and Rules 45, 46, 54 and 80–92 under the Act. The other applicants are (i) Energy East Enterprises, Inc. (''Energy East Enterprises''), a Maine corporation that is a wholly-owned subsidiary of Energy East and a public utility holding company exempt from registration by order under section 3(a)(1); (ii) Maine Natural Gas Corporation (''Maine Natural Gas''), a Maine corporation and a wholly-owned subsidiary of Energy East; (iii) Energy East Capital Trust 1, a wholly-owned subsidiary of Energy East, all of P.O. Box 12904, Albany, New York 12212–2904; (iv) RGS Energy Group, Inc. (''RGS''), a New York corporation that is a wholly-owned subsidiary of Energy East and a public utility holding company exempt from registration by order under section 3(a)(1); (v) RGS's wholly-owned subsidiary, New York State Electric & Gas Corporation (''NYSEG''), a New York corporation; (vi) RGS's wholly-owned subsidiary, Rochester Gas and Electric Corporation (''RG&E''), a New York corporation, all of 89 East Avenue, Rochester New York 14649–0001; (vii) CMP Group, Inc. (''CMP''), a Maine corporation that is a wholly-owned subsidiary of Energy East and is a public utility holding company exempt from registration by order under section 3(a)(1); (viii) CMP's wholly-owned subsidiary, Central Maine Power Company (''Central Maine Power''), a Maine corporation and a public utility holding company exempt by order under section 3(a)(2); (ix) Maine Electric Power Company, Inc., (''MEPCo''), a Maine corporation in which CMP has a 78.3% voting interest;[1] (x) Central Maine Power's wholly-owned subsidiary, NORVARCO,[2] a Maine corporation, all of 83 Edison Drive, Augusta, Maine 04336; (xi) Energy East's wholly-owned subsidiary, Connecticut Energy Corporation (''Connecticut Energy''), 855 Main Street, Bridgeport, Connecticut 06604, a Connecticut corporation and a public utility holding company exempt from registration by order under section 3(a)(1) of the Act; (xii) The Southern Connecticut Gas Company (''SCG''), a Connecticut corporation and wholly-owned subsidiary of Connecticut Energy at the same address as Connecticut Energy; (xiii) Energy East's wholly-owned subsidiary, CTG Resources, Inc. (''CTG''), 10 State House Square, Hartford, Connecticut 06144–1500, a public utility holding company exempt from registration by order under section 3(a)(1); (xiv) CTG's wholly-owned subsidiary, Connecticut Natural Gas Corporation (''CNG''), a Connecticut corporation at the same address as CTG; (xv) Energy East's wholly-owned subsidiary, Berkshire Energy Resources (''Berkshire Energy''), 115 Cheshire Road, Pittsfield, Massachusetts 01201, a Massachusetts corporation and a public utility holding company exempt from registration by order under section 3(a)(1); and (xvi) Berkshire Energy's wholly-owned subsidiary, The Berkshire Gas Company (''Berkshire Gas''), a Massachusetts corporation, at the same address as Berkshire Energy. Connecticut Energy, RGS, CMP, CTG Resources, and Berkshire Energy are referred to as the ''Intermediate Holding Companies.'' NYSEG, Southern Connecticut Gas, Maine Natural Gas, Central Maine Power, MEPCo, NOVARCO, Connecticut Natural Gas, Berkshire Gas and RG&E are referred to as the ''Utility Subsidiaries.'' Energy East also owns other subsidiary companies that are not public-utility companies under the Act (collectively, ''Nonutility Subsidiaries'').

On August 31, 2000, the Commission issued an order (Holding Company Act Release No. 27224) (''First Merger Order'') authorizing Energy East's acquisition of CMP, CTG, and Berkshire Energy (''First Merger'').

On September 12, 2000, the Commission issued an order (Holding Company Act Release No. 27228) (''Financing Order'') authorizing (i) ongoing financing activities of Energy East and its subsidiaries; (ii) intrasystem extensions of credit; (iii) the creation, acquisition or sale of Nonutility Subsidiaries; (iv) the payment of dividends out of capital and unearned surplus; and (v) other related matters pertaining to Energy East and its subsidiaries.

On June 27, 2002, the Commission issued an order authorizing the acquisition of RGS by Energy East (Holding Company Act Release No. 27546) (''RGS Merger Order''), by which RGS became a direct subsidiary of Energy East (''RGS Merger'').

The amended application seeks several modifications of the authorizations granted in the Financing Order with respect to the ongoing financing activities of Energy East and its subsidiaries and other related matters. The proposed modifications are required in order to reflect the acquisition of RGS and the inclusion of RGS and its subsidiaries as new direct and indirect subsidiaries of Energy East.

In the Financing Order, the following authorizations, among others, were granted for the authorization period beginning September 12, 2000, and ending March 21, 2003:

1. Energy East was granted authorization to issue and sell common stock, preferred stock, and unsecured debentures having maturities of up to 50 years (''Debentures'') in an aggregate amount not to exceed $2.5 billion, and unsecured short-term indebtedness having maturities of one year or less (''Short-Term Debt'') in an aggregate principal amount at any time outstanding not to exceed $750 million, provided that the aggregate principal amount of all indebtedness of Energy East at any time outstanding (including Short-Term Debt, Debentures, and debt incurred to finance the First Merger and the RGS Merger) would not exceed $1.5 billion (''Energy East Debt Limitation'').

2. The Nonutility Subsidiaries were authorized to enter into guaranties, obtain letters of credit, enter into expense agreements and otherwise provide credit support to or on behalf of other Nonutility Subsidiaries in an aggregate principal amount not to exceed $700 million outstanding at any one time, exclusive of any guaranties and other forms of credit support that are exempt under rule 45(b) and rule 52, provided that the amount of any Nonutility Subsidiary guaranties with respect to obligations of any rule 58 subsidiary shall also be subject to the limitations of rule 58(a)(1). The Nonutility Subsidiaries providing this credit support were also authorized to charge each subsidiary a fee for each guaranty provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guaranty.

3. The Nonutility Subsidiaries were authorized to acquire or construct Nonutility energy assets in the United States (''Energy-Related Assets'') that would be incidental to their energy marketing, brokering and trading operations in an amount up to $500 million.

Financings authorized in the Financing Order were subject to the following limitations: (1) The effective cost of money on Energy East short-term debt will not exceed the competitive market rates available at the time of issuance to companies with comparable credit ratings with respect to debt having similar maturities; the effective

[1] The remaining interests are owned by two other Marine utilities. MEPCo owns and operates a 345kV transmission interconneciton between the Maine-New Brunswick, Canada, international border at Orient, Maine.

[2] NORVASRCO holds a 50% general partnership interest in Chester SVC Partnership, a general partnership that owns a static var compensator located in Chester, Maine, adjacent to MEPCo's transmission interconnection.

cost of money on all short-term financing with respect to Utility Subsidiaries will not at the time of issuance exceed 300 basis points over the comparable term London Interbank Offered Rate (''LIBOR''); (2) maturity of long-term indebtedness will not exceed 50 years; (3) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale, or distribution of a security are estimated not to exceed 5% of the principal amount of the financing; and (4) Energy East's common equity, as reflected on its most recent From 10–K or Form 10–Q and as adjusted to reflect subsequent events that affect capitalization, will be at least 30% of its pro forma consolidated capitalization throughout the authorization period. Similarly, the common stock equity of each Intermediate Holding Company and each Utility Subsidiary will be at least 30% of total capitalization throughout the authorization period. The Financing Order stated that proceeds from the financings would be used for general corporate purposes, including: (1) Financing, in part, investments by and capital expenditures of Energy East and its subsidiaries, including the funding of future investments in exempt wholesale generators, as defined in section 32 of the Act, foreign utility companies, as defined in section 33 of the Act, companies engaged or formed to engage in activities permitted by rule 58 (''Rule 58 Subsidiaries''), and exempt telecommunications companies; (2) the repayment, redemption, refunding or purchase by Energy East or any subsidiary of any of its own securities under rule 42 under the Act; and (3) financing working capital requirements of Energy East and its subsidiaries.

Energy East and its subsidiaries request approval of the following modifications to the authorizations granted by the Commission in the Financing Order:

1. Energy East requests authority to extend the authorization period (currently ending March 31, 2003) so that the new authorization period will end on September 30, 2005 (''Authorization Period'').

2. Energy East requests authority to increase, from $2.5 billion to $3.9 billion, Energy East's authority to issue and sell from time to time during the Authorization Period common stock, preferred stock, and unsecured debentures having maturities of up to 50 years (''Debentures''), subject to the sublimit on outstanding indebtedness in paragraph 3 below.[3]

3. Energy East requests authority to increase the Energy East Debt Limitation from $1.5 billion to $2.3 billion, and to increase to $2.3 billion the aggregate principal amount of Debentures it is authorized to issue and sell.

4. Energy East requests authority for RG&E to issue, sell and have outstanding at any one time during the Authorization Period debt securities, to the extent not otherwise exempt in accordance with Rule 52(a), with maturities of one year or less in the aggregate principal amount of $200 million. This short-term financing could include, without limitation, commercial paper sold in established commercial paper markets, bank lines and debt securities issued under RG&E's respective indentures and note programs.

5. Energy East requests authority for RGS to issue, sell and have outstanding at any one time during the Authorization Period debt securities with maturities of one year or less in the aggregate principal amount of $100 million. This short-term financing could include, without limitation, commercial paper sold in established commercial paper markets, bank lines and debt securities issued under RGS's respective indentures and note programs. In addition, RGS will not issue any indebtedness in contravention of any pre-existing orders of any state utility commission.

6. Energy East requests authority for RGS during the Authorization Period to provide guaranties and other forms of credit support with respect to the securities or other obligations of subsidiaries of RGS (''RGS Guaranties'') in an aggregate principal amount not to exceed $100 million, provided that the amount of any RGS Guaranties in respect of any Rule 58 Subsidiary shall also be subject to the limitations of Rule 58(a)(1). RGS may charge its subsidiaries a fee for each guaranty provided on its behalf that is not greater than the cost, if any, of providing the liquidity necessary to perform the guaranty (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses). RGS will not issue any guaranties in contravention of any orders of any state utility commission.

7. Energy East requests authority to increase from $700 million to $750 million Energy East's Nonutility Subsidiaries' authority during the Authorization Period to provide guaranties and other forms of credit support with respect to obligations of other Nonutility Subsidiaries, exclusive of any guaranties that are exempt in accordance with rule 45(b) and rule 52 (''Nonutility Subsidiary Guaranties''). Nonutility Subsidiary Guaranties would be subject to the terms and conditions of the Financing Order.

8. Energy East requests authority to increase from $500 million to $750 million the authority of Energy East's Nonutility Subsidiaries during the Authorization Period to invest in certain types of nonutility energy-related assets (''Energy-Related Assets'') that are incidental to the energy marketing activities of those companies or the capital stock of companies substantially all of whose physical assets consist of Energy-Related Assets, in accordance with the terms and conditions of the Financing Order. Energy East intends to file a post-effective amendment in this proceeding which will describe the general terms and amounts of each non-exempt security and request a supplemental order of the Commission authorizing the issuance of those securities.

In order to be exempt under rule 52(b), any loans by Energy East to a Nonutility Subsidiary or by one Nonutility Subsidiary to another must have interest rates and maturities that are designed to parallel the lending company's effective cost of capital. Applicants request that in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly-owned by Energy East, directly or indirectly,[4] that Energy East or a Nonutility Subsidiary, as the case may be, be authorized to make loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. Applicants state that if these loans are made to a Nonutility Subsidiary, that company will not sell any services to any associate Nonutility Subsidiary unless that company falls within one of the categories of companies to which goods and services may be sold on a basis other than ''at cost.'' [5] Furthermore, in

[3] Energy East proposes to leave the amount of Short-Term Debt authorized in the Financing Order unchanged at $750 million.

[4] Energy East's current, less-than-wholly-owned Nonutility Subsidiaries are: Downtown Cogeneration Associates, LP, South Jersey Energy Solutions, LLC, PEI Power II, LLC, and South Glens Falls Energy, LLC.

[5] These companies include:

(i) A FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG which sells electricity at market-based rates which have been approved by the

Continued

the event any of these loans are made, Energy East will include in the next certificate filed under rule 24 in this matter substantially the same information as that required on Form U–6B–2 with respect to each transaction.

9. As a result of the accounting treatment of the RGS Merger, the retained earnings of RGS were greatly reduced. For this reason RGS requests authorization to pay dividends out of capital and unearned surplus in an amount up to its retained earnings prior to the Merger. In addition, RGS and its subsidiaries seek authorization to pay dividends out of earnings before any amortization of intangibles recognized as a result of the Merger and any impairment of either goodwill or other intangibles recognized as a result of the Merger.[6]

Applicants state that the transactions authorized under the requested supplemental order would be undertaken in accordance with the terms and conditions set forth in the Financing Order and in the amended Application. To the extent that the following listed general terms and conditions set forth in the amended Application and recited below conflict with any general terms and conditions set forth in the Financing Order, the general terms and conditions set forth in the Financing Order would be deemed to be modified:

The effective cost of money on long-term debt borrowings in accordance with authorizations granted under the Application will not exceed the greater of (a) 500 basis points over the comparable-term U.S. Treasury securities or (b) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt borrowings in accordance with the authorizations granted in the Application will not exceed the greater of (a) 500 points over the comparable-term LIBOR or (b) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The dividend rate on any series of Preferred Stock will not exceed the greater of (a) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of that series of Preferred Stock or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The maturity of indebtedness will not exceed 50 years. Preferred Stock may not have any mandatory redemption provisions. The underwriting fees, commissions, or other similar remuneration paid in connection with the non-competitive issue, sale, or distribution of a security in a accordance with the Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

All outstanding Debentures issued by Energy East under the Financing Order were at the time of issuance, and will continue to be, rated at least investment grade by a nationally recognized statistical rating organization. In addition, Energy East undertakes that it will not issue any Debentures that are not at the time of original issuance rated at least investment grade by a nationally recognized statistical rating organization. NYSEG, RG&E and Central Maine Power commit to maintain at least investment grade senior secured and senior unsecured debt ratings by at least one nationally recognized rating agency.

Energy East also requests that the Commission release jurisdiction over the Tax Allocation Agreement previously filed as Exhibit B in Pre-effective Amendment No. 1 to the Application. Energy East seeks to retain the benefit (in the form of the reduction in consolidated tax) that is attributable to its interest expense associated with the Debentures issued to help finance the cash portions of the consideration paid in the RGS Merger and the unsecured debt issued to help finance the cash portions of the consideration in the First Merger.

In all other respects, Energy East proposes that the Financing Order remain unchanged as a result of the amended Application and any supplemental order issued by the Commission in response, except that the new Authorization Period shall also apply to all other authorizations in the Financing Order that are not modified in any supplemental order.

National Fuel Gas Company, et al. (70–10074)

National Fuel Gas Company (NFG), a registered holding company; National Fuel Gas Distribution Corporation (''Distribution''); National Fuel Gas Supply Corporation; Horizon Energy Development Inc. and its subsidiaries; Highland Forest Resources Inc.; Leidy Hub Inc.; Data-Track Account Services Inc.; Seneca Independence Pipeline Company, all of 10 Lafayette Square, Buffalo, New York 14203; Seneca Resources Corporation and its subsidiaries; Upstate Energy Inc.; Niagara Independence Marketing Company, all of 1201 Louisiana Street, Suite 400, Houston, Texas 77002; National Fuel Resources Inc. and Horizon Power Inc. (''Horizon Power''), both of 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221, (collectively, ''Applicants''), have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(e) and 12(f) of the Act and rules 43, 45, 46, 62, and 65 under the Act.

The Applicants include one utility subsidiary, which is Distribution. The remaining Applicants, excluding NFG, are nonutility subsidiaries (''Nonutility Subsidiaries''). Distribution and the

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Federal Energy Regulatory Commission (''FERC''), provided that the purchaser is not one of the Utility Subsidiaries;

(iii) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), that sells electricity exclusively (a) at rates negotiated at arms'-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (ii) to an electric utility company (other than a Utility Subsidiary) at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(iv) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not one of the Utility Subsidiaries; or

(v) A Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially-owned by Energy East, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary or EE Management (or any other entity that Energy East may form whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries or EE Management), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (i) through (iv) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

[6] As a result of the Merger, RGS recognized approximately $634 million of goodwill and $12 million of intangible assets. Statement of Financial Accounting Standards No. 142 requires that goodwill no longer be amortized, but instead be tested at least annually for impairment. Statement 142 also requires an intangible asset with an indefinite life that is not amortized to be tested for impairment annually, or more frequently if circumstances indicate it might be impaired. Approximately $4 million of the intangible assets recognized as a result of the Merger are being amortized. The annual amortization expense is $1.4 million.

In the Financing Order, the Commission authorized the companies Energy East previously acquired to pay dividends out of earnings before amortization of goodwill. Because goodwill and certain intangible assets recognized as a result of the RGS' Merger with Energy East are not amortized, any decrease in the value of those assets is recognized as an impairment instead of amortization expense. Therefore, RGS is requesting authorization to pay dividends out of earnings before any impairment of goodwill and any impairment or amortization of intangible assets recognized as a result of the Merger.

Nonutility Subsidiaries are collectively referred to as ''Subsidiaries.''

In summary, the Applicants request approval to: (a) Carry out a program of external financing, credit support arrangements, and intrasystem financing; (b) acquire financing subsidiaries (''Financing Subsidiaries'') and special purpose subsidiaries (''Special Purpose Subsidiaries''); (c) continue the NFG money pool; (d) enter into hedging transactions; (f) make changes in the capital structure of majority-owned Subsidiaries; and (g) reorganize Nonutility Subsidiaries. Authority for the various requests is sought for the period through December 31, 2005 (''Authorization Period''). The financing authority sought in this proceeding will replace the current financing order for NFG (''Current Financing Order'') (HCAR No. 26847, March 20, 1998, as modified by HCAR No. 27170, April 21, 2000).

External Financing by NFG

NFG requests authority to increase its equity and long-term debt capitalization during the Authorization Period in an aggregate amount of up to an additional $1.5 billion through the issuance and sale from time to time, directly or indirectly through one or more Financing Subsidiaries or Special Purpose Subsidiaries, of any combination of common stock, preferred securities, unsecured long-term debt, stock purchase contracts and/or stock purchase units, excluding any shares of common stock that may be issued under NFG's shareholder rights plan.

Except in accordance with a further order of the Commission, NFG will not publicly issue any long-term debt or preferred securities (or to the extent they are rated, stock purchase contracts and/or stock purchase units) unless these securities are rated at the time of issuance at the investment grade level as established by at least one ''nationally recognized statistical rating organization,'' as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the issuance by NFG of any securities that are rated below investment grade.

NFG proposes to use the proceeds of the financings authorized by the this Application, together with other available funds, to (i) make investments in Subsidiaries so they can finance capital expenditures, (ii) fund short-term loans to certain Subsidiaries either directly or through the NFG money pool as described below, (iii) finance future investments in ''exempt wholesale generators'' (''EWGs'') and ''foreign utility companies'' (''FUCOs''), subject to the limitations of rule 53 or other order of the Commission, and ''energy-related'' and ''gas-related'' companies, subject to the limitations of rule 58, (iv) acquire, retire or redeem securities issued by NFG or any Financing Subsidiary or Special Purpose Subsidiary as described below, and (v) provide working capital and other general corporate needs of NFG and its Subsidiaries. Distribution proposes to utilize the proceeds of authorized money pool borrowings temporarily to fund capital projects, to finance inventories, and for other general corporate purposes.

The terms of inter-company loans by NFG to its Subsidiaries will be designed to parallel the effective cost of NFG's long-term debt or short-term debt, as applicable, and the terms will reflect an equitable allocation of placement fees, commitment fees, underwriting or selling fees and commissions and discounts, if any, as well as any associated rating agency fees paid or incurred by NFG in connection with the issuance of long-term debt or short-term debt.

The Applicants represent that no financing proceeds will be used to acquire the equity securities of any new company unless this acquisition has been approved by the Commission or is in accordance with an available exemption under the Act. NFG further represents that it will not undertake any transaction otherwise authorized by the Commission during the Authorization Period that would cause the common equity of NFG, as a percentage of its consolidated capitalization (inclusive of short-term debt), to fall below 30%, and will not undertake any transaction otherwise authorized by the Commission during the Authorization Period that would cause the common equity of Distribution, as a percentage of capitalization of Distribution, to fall below 30%. NFG's forecasted cash flow analysis and capitalization forecast for the calendar years 2002 through 2005, which assumes that NFG will issue $351 million of common stock out of the $1.5 billion overall long-term financing authority requested, indicate that NFG's common equity will remain above 30% of its consolidated capitalization for the period.

Common Stock: NFG seeks authority to issue and sell additional shares of its authorized common stock, par value $1.00 per share (''Common Stock''), or options or warrants exercisable for Common Stock, according to underwriting or purchase agreements of a type generally standard in the industry. Public distributions may be according to private negotiation with underwriters, purchasers, dealers or agents, as discussed below, or effected through competitive bidding. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All Common Stock sales will be at prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Specifically, NFG may issue and sell Common Stock through underwriters or dealers, through agents, or directly to a limited number of purchasers or a single purchaser. If underwriters are used in the sale of Common Stock, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Common Stock may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by NFG) or directly by one or more underwriters acting alone. Common Stock may be sold directly by NFG or through agents. If dealers are utilized in the sale of Common Stock, NFG will sell the Common Stock to the dealers as principals. Any dealer may then resell the Common Stock to the public at varying prices to be determined by the dealer at the time of resale.

NFG may also issue Common Stock and/or purchase shares of its Common Stock in the open market for purposes of reissuing the shares, and/or options, warrants or other stock purchase rights exercisable for Common Stock, in public or privately negotiated transactions in exchange for the equity securities or assets of other companies, provided that the acquisition of any equity securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules under the Act. The value of Common Stock issued in exchange for equity securities or assets of another company will be counted against the overall limitation on financing. The value will be as determined in accordance with any agreement with the seller or, if no value is specified in any agreement, then the value will be the closing price of NFG's Common Stock on the New York Stock Exchange on the trading day next preceding the date of the acquisition.

NFG also proposes to issue Common Stock under plans (''Stock Plans'') that allow shareholders, customers, officers, employees, non-employee directors and new investors to acquire shares of

Common Stock. Currently, NFG maintains the National Fuel Direct Stock Purchase and Dividend Reinvestment Plan, which provides for purchasing shares of Common Stock directly from NFG and permits participants to reinvest cash dividends in shares of Common Stock without the payment of any brokerage commissions or service charges. NFG also maintains (i) 401(k) and Employee Stock Ownership Plans that allow employees to invest in Common Stock and reinvest cash dividends paid on the Common Stock, in addition to a variety of other investment alternatives, (ii) various award and option plans that provide for the issuance of one or more of the following to key employees: Incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock, and performance units or performance shares, and (iii) a Director Stock Plan, under which it issues shares of Common Stock to its non-employee directors as partial consideration for their services as directors.

NFG proposes to issue shares of its Common Stock, as well as stock options, restricted stock awards, performance units, performance shares, and other Common Stock-based awards in order to satisfy its obligations under the Stock Plans. Shares of Common Stock issued or purchased for delivery under the Stock Plans may either be newly issued shares, treasury shares or shares purchased by NFG in the open market with its own funds (either currently or under forward contracts) for purposes of reissuance under any Stock Plan. NFG will make open-market purchases of Common Stock in accordance with the terms of or in connection with the operation of the Stock Plans as provided for in rule 42 under the Act. NFG also proposes, within the limitations set forth in the Application, to issue and/or purchase shares of Common Stock, according to these existing Stock Plans as they may be amended or extended, and similar plans or plan funding arrangements adopted without any additional Commission order. Stock transactions of this variety would, therefore, be treated the same as other stock transactions for which authority is sought in this Application. Finally, in connection with the adoption of any new Stock Plan or any extension of or amendment to an existing Stock Plan, NFG requests authorization to solicit any required shareholder approvals without further order of the Commission.

Preferred Securities: NFG, directly or through a Financing Subsidiary or Special Purpose Subsidiary, also proposes to issue and sell shares of its authorized preferred stock, par value $1.00 per share and/or other types of unsecured preferred securities (collectively, ''Preferred Securities'') in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by NFG's board of directors or a committee of the board. Preferred Securities may be redeemable or may be perpetual in duration. The dividend or distribution rate on any series of Preferred Securities will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal or closest to the term of the Preferred Securities. Dividends or distributions on any series of Preferred Securities will be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms which allow the issuer to defer dividend payments or distributions for specified periods. Preferred Securities may be convertible or exchangeable into shares of Common Stock.

Long-term Debt: NFG, directly or through a financing subsidiary, also proposes to issue and sell from time to time additional long-term indebtedness (''Long-term Debt''). Long-term Debt of a particular series (a) will be unsecured, (b) may be convertible into any other authorized securities of NFG, (c) will have a maturity ranging from one year to 50 years, (d) will bear interest at a rate not to exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal or closest to the term of the Long-term Debt, (e) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (f) may be entitled to mandatory or optional sinking fund provisions, (g) may provide for reset of the coupon according to a remarketing arrangement, and (h) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

Stock Purchase Contracts and Stock Purchase Units: NFG, directly or through a financing subsidiary, may also issue and sell from time to time stock purchase contracts (''Stock Purchase Contracts''), including contracts obligating holders to purchase from NFG and/or NFG to sell to the holders, a specified number of shares or aggregate offering price of Common Stock at a future date. The consideration per share of Common Stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units (''Stock Purchase Units'') consisting of a Stock Purchase Contract and Long-term Debt and/or Preferred Securities and/or debt securities of third parties, including U.S. Treasury securities, securing holders' obligations to purchase Common Stock under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations in a specified manner.

Short-term Debt: To provide financing for general corporate purposes, including making advances to participating subsidiaries through the NFG money pool, making advances directly to nonutility subsidiaries, and temporarily funding investments in new or existing subsidiaries, NFG requests authorization to issue and reissue from time to time during the Authorization Period, up to $750 million at any time outstanding of unsecured short-term debt securities in the form of promissory notes evidencing borrowings under its credit facilities, commercial paper notes, and other forms of short-term financing generally available to borrowers with investment grade credit ratings. The maturity of all Short-term Debt will be less than one year and will bear interest at a rate not to exceed at the time of issuance 300 basis points over the London Interbank Offered Rate (LIBOR) for maturities of up to one year.

Commercial Paper: Commercial paper may be sold by NFG, from time to time, in established domestic or foreign commercial paper markets directly or through dealers and placement agents at prevailing discount rates, or at prevailing coupon rates, at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers and placement agents acquiring commercial paper from NFG will re-offer the paper at a discount to corporate, institutional and, with respect to foreign commercial paper, also to individual investors. Corporate and institutional investors may include, among others, commercial banks, insurance companies, pension funds, investment trusts, mutual funds, foundations, colleges and universities, finance companies and nonfinancial

corporations. Back-up bank lines of credit for 100% of the outstanding amount of commercial paper may be required in order to obtain an investment grade rating by the credit rating agencies. NFG currently has a committed credit facility which acts as back-up to its commercial paper program.

Other Credit Facilities: National also proposes to establish credit facilities with various banks and/or other financial institutions and to issue and sell, from time to time, short-term notes. These notes would bear interest at rates comparable to, or lower than, those available through other forms of short-term borrowing with similar terms as contemplated in this Application. The total amount of notes outstanding at any time, when added to the aggregate amounts of short-term borrowing outstanding under other forms of short-term borrowing contemplated in this Application, would not exceed the total amount of Short-term Debt for which authorization is requested. Borrowing arrangements with banks and financial institutions may require compensating balances and/or commitment fees or similar fees. NFG, at all times, will attempt to negotiate the most favorable effective borrowing rate taking into account any compensating balances and/or other fees.

Other Securities: NFG may also engage in other types of short-term financing as it may deem appropriate in light of its needs and market conditions at the time of issuance. This short-term financing may include, without limitation, bank borrowings under uncommitted lines and issuance of bid notes to individual banks.

Financing Subsidiaries and Special Purpose Subsidiaries

NFG requests authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries or Special Purpose Subsidiaries, which would be organized specifically for the purpose of facilitating the issuance of certain types of long-term securities described above. Certain of the Nonutility Subsidiaries also propose to organize and acquire the equity securities of Financing Subsidiaries or Special Purpose Subsidiaries in order to facilitate financing of their operations. NFG represents that it has in place sufficient internal controls to enable it to monitor the creation and use of any of these entities. No Financing Subsidiary or Special Purpose Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any ''utility asset,'' as that term is defined under the Act. Of the overall $1.5 billion authorization for long-term securities requested in this Application, NFG requests authority to issue up to $500 million outstanding at any one time through Financing Subsidiaries and/or Special Purpose Subsidiaries.

Financing Subsidiaries: NFG proposes to acquire all of the outstanding shares of common stock or other equity interests of one or more Financing Subsidiaries. A separate Financing Subsidiary may be used by NFG with respect to financings of different types of non-core businesses. In connection with these financing transactions, NFG may enter into one or more guarantees or other credit support agreements in favor of the Financing Subsidiary. The amount of any guarantees or credit support would not count against the limit on guarantees that is proposed in this Application.

NFG has not created to date any direct Financing Subsidiary under the authority contained in the current financing order. However, NFG's natural gas and oil exploration and production subsidiary, Seneca Resources Corporation, is currently in the process of organizing certain Financing Subsidiaries, which are expected to increase the tax efficiencies of its operations in Canada. Any Financing Subsidiary or Special Purpose Subsidiary organized by NFG under the authority granted by the Commission in this proceeding shall be organized only if, in management's opinion, the creation and utilization of a Financing Subsidiary or Special Purpose Subsidiary, will likely result in tax savings, increased access to capital markets and/or lower cost of capital for NFG.

Special Purpose Subsidiaries: In connection with the issuance of certain types of Preferred Securities, NFG and/or a Financing Subsidiary proposes to organize one or more separate Special Purpose Subsidiaries as any one or any combination of (a) a limited liability company, (b) a limited partnership, (c) a business trust, or (d) any other entity or structure, foreign or domestic, that is considered advantageous by NFG. In the event that any Special Purpose Subsidiary is organized as a limited liability company, NFG or the Financing Subsidiary may also organize a second special purpose wholly-owned subsidiary (''Partner Sub'') for the purpose of acquiring and holding Special Purpose Subsidiary membership interests in order to comply with any requirement under the applicable law that a limited liability company have at least two members. In the event that any Special Purpose Subsidiary is organized as a limited partnership, NFG or the Financing Subsidiary also may organize a Partner Sub for the purpose of acting as the general partner of a Special Purpose Subsidiary and may acquire, either directly or indirectly through the Partner Sub, a limited partnership interest in a Special Purpose Subsidiary to ensure that the Special Purpose Subsidiary will have a limited partner to the extent required by applicable law.

NFG, the Financing Subsidiary and/or a Partner Sub will acquire all of the common stock or all of the general partnership or other common equity interests, as the case may be, of any Special Purpose Subsidiary for an amount not less than the minimum required by any applicable law (*i.e.*, the aggregate of the equity accounts of the Special Purpose Subsidiary). The aggregate of the investment by NFG, the Financing Subsidiary and/or a Partner Sub is referred to in this Application as the equity contribution (''Equity Contribution''). NFG and/or the Financing Subsidiary may issue and sell to any Special Purpose Subsidiary, at any time or from time to time in one or more series, unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments (individually, a ''Note'' and collectively, the ''Notes'') governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the Equity Contribution made to it and the proceeds from the sale of Preferred Securities by it from time to time to purchase Notes. Alternatively, NFG and/or the Financing Subsidiary may enter into a loan agreement or agreements with any Special Purpose Subsidiary under which the Special Purpose Subsidiary will loan to NFG and/or the Financing Subsidiary (individually, a ''Loan'' and collectively, the ''Loans'') both the Equity Contribution to the Special Purpose Subsidiary and the proceeds from the sale of Preferred Securities by the Special Purpose Subsidiary from time to time, and NFG and/or the Financing Subsidiary will issue to the Special Purpose Subsidiary Notes evidencing these borrowings. The terms (*e.g.*, interest rate, maturity, amortization, prepayment terms, and default provisions) of any Notes would be designed to parallel the terms of the Preferred Securities to which the Notes relate.

NFG or any Financing Subsidiary also proposes to guarantee solely in connection with the issuance of Preferred Securities by a Special Purpose Subsidiary (i) payment of dividends or distributions on the securities by the Special Purpose

Subsidiary if and to the extent the Special Purpose Subsidiary has funds legally available for this use, (ii) payments to the holders of the securities due upon liquidation of the Special Purpose Subsidiary or redemption of the Preferred Securities of the Special Purpose Subsidiary, and (iii) certain additional amounts that may be payable in respect of the Preferred Securities. Alternatively, NFG may provide credit support for any guarantee that is provided by a Financing Subsidiary. The amount of any guarantees or credit support provided by NFG for this purpose would not be counted against the limitation on guarantees as set forth in this Application.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of any Special Purpose Subsidiary, the holders of Preferred Securities issued by the Special Purpose Subsidiary will be entitled to receive, out of the assets of the Special Purpose Subsidiary available for distribution to its shareholders, partners or other owners (as the case may be), an amount equal to the par or stated value or liquidation preference of the Preferred Securities, plus any accrued and unpaid dividends or distributions.

The constituent instruments of each Special Purpose Subsidiary will provide, among other things, that the Special Purpose Subsidiary's activities will be limited to the issuance and sale of Preferred Securities from time to time and the lending to the Financing Subsidiary or Partner Sub of (i) the proceeds any issuance or sale and (ii) the Equity Contribution to a Special Purpose Subsidiary, and certain other related activities.

Financing by Subsidiaries

Distribution seeks authority to issue short-term debt securities as set forth in the Application. The Nonutility Subsidiaries seek authority to engage in financing transactions to develop and expand energy-related or functionally related nonutility businesses. Most often these financing transactions by the Nonutility Subsidiaries will be exempt under rule 52(b) of the Act; however, in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly-owned by NFG, directly or indirectly, authority is requested for NFG or any other Nonutility Subsidiary to make loans to nonutility subsidiaries at interest rates and maturities designed to provide a return to the lending entity of not less than its effective cost of capital. However, no loans will be made to a Nonutility Subsidiary that is less than wholly-owned if the Nonutility Subsidiary sells any services or goods to Distribution or to any other Nonutility Subsidiary which, in turn, sells goods or services to Distribution.

Certain of the Nonutility Subsidiaries may be able to achieve tax and other benefits by issuing securities through Financing Subsidiaries or Special Purpose Subsidiaries, and, accordingly, request authorization to organize and acquire the equity securities of these entities in the same manner as described above in connection with proposed financings by NFG.

Continuation of Money Pool Arrangements

Under the current financing order, Distribution, National Fuel Gas Supply Corporation, Seneca Resources Corporation, Highland Forest Resources Inc., Leidy Hub Inc., Horizon Energy Development Inc., Data-Track Account Services Inc., National Fuel Resources Inc., Upstate Energy Inc., Niagara Independence Marketing Company, and Seneca Independence Pipeline Company are authorized to participate in a money pool as both borrowers and lenders. Horizon Power is authorized to invest surplus funds in the money pool and to withdraw those funds when needed, but may not borrow through the money pool. NFG is authorized to lend funds through the money pool but may not borrow funds through the money pool. The Applicants propose to continue participation in, and, with the exception of NFG and Horizon Power, to incur short-term borrowings through the money pool on the same terms as approved under the current financing order. Authority is sought for the money pool participants, other than NFG and Horizon Power, (''Eligible Borrowers'') to borrow short-term funds through the money pool. The maximum amount of money pool borrowings outstanding for each Eligible Borrower will be determined by NFG and each Eligible Borrower in accordance with business needs.

NFG will administer the money pool and coordinate short-term borrowings by Eligible Borrowers. NFG proposes to make loans available to Eligible Borrowers through the money pool utilizing the proceeds of borrowings under various credit facilities, including but not limited to commercial paper, short-term lines of credit, demand credit facilities, and committed credit facilities (''Credit Facilities''), as determined by NFG, and issued in accordance with the authorization sought in this proceeding. In addition, at certain times during the year, NFG and certain of its Subsidiaries may generate surplus funds, which they may choose to invest in the money pool. Therefore, funds available for borrowings through the money pool will be derived from one or more of the following sources: (1) Surplus funds of NFG or one or more of its Subsidiaries; (2) proceeds from NFG's sale of commercial paper; and (3) borrowings by NFG under other Credit Facilities.

NFG will match, to the extent possible, the short-term cash surpluses and borrowing requirements of itself and its Subsidiaries. In the event that at any time during the Authorization Period there are insufficient funds available from money pool sources to satisfy money pool borrowing requirements of all Eligible Borrowers, Distribution will receive borrowing priority over the Nonutility Subsidiaries. Borrowings through the money pool would be met first from available surplus funds of the Subsidiaries and then from available surplus funds of NFG. Once these sources of funds become insufficient to meet the short-term loan requests, borrowings will be made by NFG through the issuance and sale of commercial paper or borrowings under other Credit Facilities.

Distribution seeks approval to make borrowings through the money pool in an amount not to exceed $500 million at any time outstanding. Distribution proposes to repay money pool borrowings principally by means of funds received as a result of providing services to its customers under its tariffs, and from the possible sale of debt (including long-term notes issued to NFG) or equity securities.

Borrowings through the money pool and repayments will be adequately documented and will be evidenced on the books of each participant that is borrowing funds or lending surplus funds. If only internal funds (surplus funds of NFG and the Subsidiaries) make up the funds available in the money pool, the interest rate applicable and payable to or by Subsidiaries for all loans from internal funds will be the rates for high-grade, unsecured, 30-day commercial paper sold through dealers by major corporations, as quoted in *The Wall Street Journal* or other national financial publications. Borrowings consisting wholly or in part of funds obtained through the sale of commercial paper or borrowings under other Credit Facilities by NFG will bear interest at a rate equal to NFG's net weighted daily average cost for external borrowings. Interest will be payable by the borrowing Subsidiary until the principal amount borrowed is fully repaid. Fees, commissions and expenses incurred by NFG to establish and maintain Credit Facilities used to fund loans through the

money pool, including rating agency fees, bank commitment fees, and transaction costs (such as legal fees incurred in connection with negotiating and documenting credit facilities), will be allocated to all Eligible Borrowers. Each Eligible Borrower's share of allocated expenses is a fraction of the total expenses. The numerator of the fraction is the respective per book capitalization plus the average daily balance of short-term borrowings outstanding during the twelve months ended as of the date of the most recent quarterly consolidating financial statements for each Eligible Borrower. The denominator of the fraction is the sum of all the numerators used in the calculation.

To the extent that there are excess funds available in the money pool from time to time because (a) there are no borrowings under the Credit Facilities that may be currently repaid, or (b) there is no commercial paper that is maturing, or (c) no Eligible Borrower has a need for excess funds available from other money pool participants, the excess funds will normally be invested in one or more short-term investments. The Applicants propose amendment of Article IV of the Money Pool Agreement to provide that these short-term investments may include any of the following: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government or its agencies and instrumentalities, or by any state or political subdivision of a state; (iii) tax exempt notes; (iv) tax exempt bonds; (v) tax exempt preferred stock; (vi) commercial paper rated not less than A–1 or P–1 or their equivalent by a nationally recognized statistical rating organization; (vii) money market funds; (viii) bank certificates of deposit and bankers acceptances; (ix) Eurodollar certificates of deposit or time deposits; (x) repurchase agreements with respect to any of the foregoing; and (xii) other investments as are permitted by the Act and the rules under the Act. With the exception of Article IV, no other substantive changes to the Money Pool Agreement as currently in effect are proposed.

Guarantees

NFG requests authority to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (collectively, ''Guarantees'') with respect to the obligations of any Subsidiary. Authority is sought to enter into Guarantees in an aggregate principal amount not to exceed $2 billion outstanding at any time, provided that any Guarantee outstanding on December 31, 2005, shall terminate or expire in accordance with its terms and provided further that the amount of any Guarantees with respect to the obligations of any Subsidiaries shall be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable. Guarantees of the obligations of any Financing Subsidiary or Special Purpose Subsidiary, as described above, will not count against this limitation.

NFG requests authority to charge each Subsidiary a fee for providing credit support. The fee will be determined by multiplying the amount of the Guarantee provided by the cost of obtaining the liquidity necessary to perform the Guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses, if any) for the period of time the Guarantee remains outstanding.

Hedging Transactions

Interest Rate Hedges: NFG and, to the extent not exempt under rule 52, the Subsidiaries, request authorization to enter into Interest Rate Hedges, subject to certain limitations and restrictions, in order to manage interest rate cost. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Moody's Investors Service, are equal to or greater than ''Baa,'' or an equivalent rating from Standard and Poor's Ratings Group or Fitch Inc.

Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets to manage the volatility of interest rates, including but not limited to interest rate swaps, swaptions, caps, collars, floors, forwards, rate locks, structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), and short sales of U.S. Treasury securities. The Applicants would use Interest Rate Hedges as a means of prudently managing the risk associated with any outstanding debt by, for example, (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, or (iii) limiting the impact of changes in interest rates resulting from variable rate debt. The transactions would be for fixed periods and stated notional amounts, which in no case would exceed the principal amount of the underlying debt instrument. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Anticipatory Hedges: In addition, NFG and the Subsidiaries request authorization to enter into Anticipatory Hedges, subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury securities and/or a forward swap (each a ''Forward Sale''), (ii) the purchase of put options on U.S. Treasury securities (a ''Put Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury securities (a ''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade (''CBOT''), the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. NFG or a Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution.

NFG represents that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. NFG will comply with Statement of Financial Accounting Standard (''SFAS'') 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board.

Changes in Capital Structure of Majority-Owned Subsidiaries

The portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to NFG or other immediate parent company during the Authorization Period according to rule 52 and/or according to

an order issued in this proceeding cannot be ascertained at this time. The proposed sale of capital securities may in some cases exceed the then authorized capital stock of a Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. Also, a Subsidiary may wish to engage in a reverse stock split to reduce franchise taxes or for other corporate purposes. As needed to accommodate these types of proposed transactions and to provide for future issuances of securities, the Applicants request authority to change the terms of any majority-owned Subsidiary's authorized capitalization by an amount deemed appropriate by NFG or other parent company, provided that the consent of all other shareholders has been obtained for the change. A Subsidiary would be able to change the par value, or change between par value and no-par value stock, or change the form of equity from common stock to limited partnership or limited liability company interests or similar instruments, or from these types of instruments to common stock, without additional Commission approval. Any action by Distribution would be subject to and would only be taken upon receipt of necessary approvals from state regulators.

Nonutility Subsidiary Reorganizations

NFG requests approval to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries and the activities and functions related to these investments. To effect any consolidation or other reorganization, NFG may wish to either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. These transactions may also take the form of a Nonutility Subsidiary selling or transferring the equity securities of a subsidiary or all or part of a subsidiary's assets as a dividend to NFG or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of a subsidiary, either by purchase or by receipt of a dividend. The purchasing company in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements, and any transaction structured as a sale would be carried out for consideration equal to the book value of the equity securities being sold.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25944 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 62997, October 9, 2002.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 10, 2002 at 2:30 p.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the Closed Meeting scheduled for Thursday, October 10, 2002 at 2:30 p.m.: formal order of investigation.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26150 Filed 10–9–02; 12:58 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46590; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of the Agreement Among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc., Pursuant to Rule 17d–2 Under the Securities Exchange Act of 1934

October 2, 2002.

Pursuant to section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on August 21, 2002, the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange, Inc. (''ISE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively the ''SRO participants'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a plan for the allocation of regulatory responsibilities.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every national securities exchange and registered securities association (''SRO'') to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or 19(g)(2)[4] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78s(g)(2).

regulatory duplication.[5] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[6] Rule 17d–1, adopted on April 20, 1976,[7] authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[8] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved the SRO participants' plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[9] The plan reduces regulatory duplication for a large number of firms currently members of two or more of the SRO participants by allocating regulatory responsibility for certain options-related sales practice matters to one of the SRO participants.

Under the plan, the SRO participant responsible for conducting options-related sales practice examinations of a firm, and investigating options-related customer complaints and terminations for cause of associated persons of that firm, is known as the firm's ''Designated Options Examining Authority'' (''DOEA''). Pursuant to the plan, any other SRO of which the firm is a member is relieved of these responsibilities during the period the firm is assigned to a DOEA.

III. Proposed Amendment to the Plan

On August 21, 2002, the SRO participants submitted a proposed amendment to the plan. The primary purpose of the amendment is to allocate regulatory responsibilities among all of the SRO participants.[10] The amended agreement replaces the previous agreement in its entirety.

Agreement among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc., Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934.

This Agreement, among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc., hereinafter collectively referred to as the Participants, is made this first day of July, 2002 pursuant to the provisions of Rule 17d–2 under the Securities Exchange Act of 1934 (the ''Act''), which allows for plans among self-regulatory organizations to allocate regulatory responsibility.

Whereas, the Participants are desirous of allocating regulatory responsibilities with respect to their common members (members of two or more of the Participants) for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants (collectively, ''Covered Securities''); and

Whereas, the Participants are desirous of executing a plan for this purpose pursuant to the provisions of Rule 17d–2 and filing such plan with the Securities and Exchange Commission (''SEC'' or the ''Commission'') for its approval;

Now, therefore, in consideration of the mutual covenants contained hereafter, the Participants agree as follows:

I. Except as otherwise provided herein, each Participant shall assume Regulatory Responsibility (as hereinafter defined) for its members that are both (i) members of more than one Participant (hereinafter the ''Common Members'') and (ii) allocated to it in accordance with the terms hereof. For purposes of this Agreement, a Participant shall be considered to be the Designated Options Examining Authority (''DOEA'') of each Common Member allocated to it.

II. As used herein, the term ''Regulatory Responsibility'' shall mean the inspection, examination and enforcement responsibilities relating to compliance by the Common Members and persons associated therewith with the rules of the applicable Participant that are substantially similar to the rules of the other Participants (the ''Common Rules'') and the provisions of the Act and the rules and regulations thereunder, insofar as they apply to the conduct of accounts for Covered Securities. In discharging its Regulatory Responsibility, a DOEA may act directly and perform such responsibilities itself or may make arrangements for the performance of such responsibilities on its behalf by The Options Clearing Corporation, a national securities exchange registered with the SEC under Section 6(a) of the Act or a national securities association registered with the SEC under Section 15A of the Act, but excluding an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products. Without limiting the foregoing, a non-exhaustive list of the current, Common Rules of each Participant applicable to the conduct of accounts for Covered Securities is attached hereto as Exhibit A. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibility'' does not include, and each of the Participants shall (unless allocated

[5] Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[6] 17 CFR 240.17d–1 and 17 CFR 240.17d–2.

[7] Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

[8] Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

[9] Securities Exchange Act Release No. 20158, 48 FR 41256 (September 14, 1983).

[10] Under the previous agreement, only the Amex, the CBOE, the NASD, and the NYSE were DOEAs.

pursuant to Rule 17d–2 otherwise than under this Agreement) retain full responsibility for:

(a) Surveillance and enforcement with respect to trading activities or practices involving its own marketplace, including without limitation its rules relating to the rights and obligations of specialists and other market makers;

(b) Registration pursuant to its applicable rules of associated persons;

(c) Discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Act;

(d) Evaluation of advertising, responsibility for which shall remain with the Participant to which a Common Member submits same for approval; and

(e) Any rules of a Participant that are not substantially similar to the rules of all of the other Participants.

III. Apparent violations of another Participant's rules discovered by a DOEA, but which rules are not within the scope of the discovering DOEA's Regulatory Responsibility, shall be referred to the relevant Participant for such action as the Participant to which such matter has been referred deems appropriate. Notwithstanding the foregoing, nothing contained herein shall preclude a DOEA in its discretion from requesting that another Participant conduct an enforcement proceeding on a matter for which the requesting DOEA has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in an investigation or enforcement proceeding.

IV. This Agreement shall be administered by a committee known as the Options Self-Regulatory Council (the ''Council''). The Council shall be composed of one representative designated by each of the Participants. Each Participant shall also designate one or more persons as its alternate representative(s). In the absence of the representative of a Participant, such alternate representative shall have the same powers, duties and responsibilities as the representative. Each Participant may, at any time, by notice to the then Chair of the Council, replace its representative and/or its alternate representative on such Council. A majority of the Council shall constitute a quorum and, unless specifically otherwise required, the affirmative vote of a majority of the Council members present (in person, by telephone or by written consent) shall be necessary to constitute action by the Council. From time to time, the Council shall elect one member of the Council to serve as Chair and another to serve as Vice Chair (to substitute for the Chair in the event of his or her unavailability) for such term as shall be designated and until his or her successor is duly elected, provided that in the event a Participant replaces a representative who is acting as Chair or Vice Chair, such representative shall also assume the position of Chair or Vice Chair, as applicable. All notices and other communications for the Council shall be sent to it in care of the Chair or to each of the representatives.

V. The Council shall determine the times and locations of Council meetings, provided that the Chair, acting alone, may also call a meeting of the Council in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior thereto. Notwithstanding anything herein to the contrary, representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VI. For the purpose of fulfilling the Participants' DOEA Regulatory Responsibilities, the Council shall allocate Common Members that conduct a public options business among Participants from time to time in such manner as the Council deems appropriate, provided that any such allocation shall be based on the following principals except to the extent all affected Participants consent:

(a) The Council may not allocate a member to a Participant unless the member is a member of that Participant.

(b) To the extent practical, Common Members that conduct a public options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants. For example, if sixteen Common Members that conduct a public options business are members only of three Participants, such members shall be allocated among such Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members.

(c) To the extent practical, the allocation of Common Members shall take into account the amount of customer activity conducted by each member in Covered Securities such that Common Members shall be allocated among the Participants of which they are members in such manner as most evenly divides the Common Members with the largest amount of customer activity among such Participants.

(d) Insofar as practical, it is intended that allocation of Common Members to Participants will be rotated among the applicable Participants and, more specifically, that Common Members shall not be allocated to a Participant as to which such member was allocated within the previous two years.

(e) The Council shall make general reallocations of Common Members from time-to-time as it deems appropriate.

(f) Whenever a Common Member ceases to be a member of its DOEA, the DOEA shall promptly inform the Council, which shall promptly review the matter and allocate the Common Member to another Participant.

(g) A DOEA may request that a Common Member that is allocated to it be reallocated to another Participant by giving thirty days written notice thereof. The Council, in its discretion, may approve such request and reallocate such Common Member to another Participant.

(h) All determinations by the Council with respect to allocations shall be by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any allocation relating to a Common Member unless the Common Member is a member of such Participant.

(i) Allocations for calendar years 2003 and 2004 shall also be subject to the provisions set forth at Appendix A hereof, which provisions shall control in the event of any conflict between them and the provisions set forth above.

VII. Each DOEA shall conduct a routine inspection and examination of each Common Member allocated to it on a cycle not less frequently than determined by the Council. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOEA. At each meeting of the Council, each Participant shall be prepared to report on the status of its examination program for the previous quarter and any period prior thereto that has not previously been reported to the Council. In the event a DOEA believes it will not be able to complete the examination cycle for its allocated firms, it will so advise the Council. The Council will undertake to remedy this situation by allocating selected firms and, if necessary, lengthening the cycles for selected firms.

VIII. Each Participant will, upon request, promptly furnish a copy of the report, or applicable portions thereof

relating to Covered Securities, of any examination made pursuant to the provisions of this Agreement to each other Participant of which the Common Member examined is a member.

IX. Each Participant will, routinely, forward to each other Participant of which a Common Member is a member, copies of all communications regarding deficiencies relating to Covered Securities noted in a report of examination conducted by each Participant. If an examination relating to Covered Securities conducted by a Participant reveals no deficiencies, such fact will also, upon request, be communicated to each other Participant of which the Common Member concerned is a member.

X. Each DOEA's Regulatory Responsibility shall include investigations into terminations ''for cause'' of associated persons relating to Covered Securities, unless such termination is related solely to another Participant's market. In the latter instance, that Participant to whose market the termination for cause relates shall discharge Regulatory Responsibility with respect to such termination for cause. In connection with a DOEA's examination, investigation and/or enforcement proceeding regarding a Covered Security-related termination for cause, the other Participants of which the Common Member is a member shall furnish, upon request, copies of all pertinent materials related thereto in their possession. As used in this Section, ''for cause'' shall include, without limitation, terminations characterized on Form U–5 under the label ''Permitted to Resign,'' ''Discharge'' or ''Other.''

XI. Each DOEA shall discharge the Regulatory Responsibility relative to a Covered Securities-related customer complaint or Form U–4 filing, unless such complaint or filing is uniquely related to another Participant's market. In the latter instance, the DOEA shall forward the matter to that Participant to whose market the matter relates, and the latter shall discharge Regulatory Responsibility with respect thereto. If a Participant receives a customer complaint for a Common Member related to a Covered Security for which the Participant is not the DOEA, the Participant shall promptly forward a copy of such complaint to the DOEA.

XII. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to each Participant entitled to receipt thereof, to the attention of the Participant's representative on the Council at the Participant's then principal office or by e-mail at such address as the representative shall have filed in writing with the Chair.

XIII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any Participants may agree that one or more will compensate the other(s) for costs.

XIV. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Council.

XV. This Agreement may be amended in writing duly approved by each Participant.

XVI. Any of the Participants may manifest its intention to cancel its participation in this Agreement at any time upon the giving to the Council of written notice thereof at least 90 days prior to such cancellation. Upon receipt of such notice the Council shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the petitioning party was the DOEA. Until such time as the Council has completed the reallocation described above, the petitioning Participant shall retain all its rights, privileges, duties and obligations hereunder.

XVII. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, provided that in the event a notice of cancellation is received from a Participant that, assuming the effectiveness thereof, would result in there being just one remaining member of the Council, notice to the Commission of termination of this Agreement shall be given promptly upon the receipt of such notice of cancellation, which termination shall be effective upon the effectiveness of the cancellation that triggered the notice of termination to the Commission.

Limitation of Liability

No Participant nor the Council nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other participants or their respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by any or all of the Participants or the Council with respect to any Regulatory Responsibility to be performed by each of them hereunder.

Relief From Responsibility

Pursuant to section 17(d)(1)(A) of the Securities Exchange Act of 1934 and Rule 17d–2 promulgated pursuant thereto, the Participants join in requesting the Securities and Exchange Commission, upon its approval of this Agreement or any part thereof, to relieve those Participants which are from time to time participants in this Agreement which are not the DOEA as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOEA.

In Witness Whereof, the Participants hereto have executed this Agreement as of the date and year first above written.

Appendix A—Allocation Provisions for Calender Years 2003 and 2004

The allocation for calendar year 2003 shall be performed in accordance with the provisions of Section VI, provided that immediately following the initial allocation there shall be a partial reallocation whereby one-half of the Common Members allocated to the International Stock Exchange, Inc., the Pacific Exchange, Inc. and the Philadelphia Stock Exchange, Inc. (such Participants being herein called the ''New DOEAs'') are reallocated among the other Participants that have such member in common. In the event that an initial allocation results in a New DOEA being allocated an odd number of Common Members, for purposes of the reallocation, such number shall be deemed to be increased by one or decreased by one to the extent this will result in the number of Common Members allocated to the remaining DOEAs being more equal. For example, if sixteen Common Members are members of one New DOEA as well as two DOEAs that are not New DOEAs, such members shall be allocated among such DOEAs in the normal manner such that two DOEAs are allocated five such members and the remaining DOEA is allocated six members. Thereafter and assuming only five Common Members were allocated to the New DOEA, three of the members allocated to the New DOEA would be reallocated among the DOEAs that are not New DOEAs such that the New DOEA shall end up with two Common Members allocated to it and the remaining two DOEAs shall both end up with seven Common Members. Again by way of example, if twenty-one Common

Members are members of one New DOEA as well as three DOEAs that are not New DOEAs and the New DOEA received an allocation of five members and two of the remaining DOEAs also received an allocation of five members with the fourth DOEA receiving an allocation of six members, only two of the five Common Members allocated to the New DOEA would be reallocated since such reallocation would result in an equal allocation of six each among the remaining DOEAs. For calendar year 2004, the Common Members reallocated from the New DOEAs to the remaining DOEAs as part of the allocation for calendar year 2003 shall be reallocated back to the New DOEA to which such Common Member was originally allocated.

Exhibit A—Participant Rules Applicable To The Conduct Of Covered Securities:

RULES ENFORCED UNDER 17D–2 AGREEMENT

Opening of Accounts	
AMEX	Rules 411 and 921
CBOE	Rule 9.7
ISE	Rule 608
NASD	Rule 2860(b)(16); IM–2860–2
NYSE	Rules 721 and 405
PHLX	Rule 1024(b)
PCX	Rule 9.2(a) and Rule 9.18(b)
Supervision	
AMEX	Rules 411 and 922
CBOE	Rule 9.8
ISE	Rule 609
NASD	Rule 2860(b)(20)
NYSE	Rules 722, 342 and 343
PHLX	Rule 1025
PCX	Rule 9.2(b)
Suitability	
AMEX	Rule 923
CBOE	Rule 9.9
ISE	Rule 610
NASD	Rule 2860(b)(19)
NYSE	Rule 723
PHLX	Rule 1026
PCX	Rule 9.18(c)

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the amended plan. 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 amended plan that are filed with the Commission, and all written communications relating to the amended plan 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of each of the SRO participants. All submissions should refer to File No. S7–966 and should be submitted by November 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26024 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46598; File No. SR–CBOE–2002–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Broker-Dealer Access on RAES

October 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to allow broker-dealer (''BD'') orders in equity options to be eligible for routing through the Exchange's Retail Automatic Execution System (''RAES''). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently allows BD orders in certain index option series to receive automatic execution through RAES, subject to the conditions contained in Interpretation and Policy .01 (''I&P .01'') to CBOE Rule 6.8. CBOE hereby proposes to amend I&P .01 to allow BDs to submit orders through RAES in certain equity option classes and/or series.[3] Under the proposal, the Exchange intends to vest the appropriate floor procedure committee (''FPC'') with the authority to determine the classes and/or series in which BDs may submit orders through RAES.[4] As such, the Equity Floor Procedure Committee (''EFPC'') would have responsibility for determining the eligible equity option classes and/or series while the Index FPC (''IFPC'') would have the authority for determining the eligible index option classes and/or series (with the exception of the S&P 500, which falls under the jurisdiction of the SPX FPC). In this regard, the Exchange notes that with respect to equity options, the EFPC could determine to make BD orders eligible for automatic execution in the 100 most active classes, or conversely, the EFPC may allow BD orders in all series in all equity option classes. Pronouncements regarding eligible classes and/or series will be made by Regulatory Circular. The Exchange does not propose any changes to the types of BD orders eligible for automatic execution.[5]

Currently, there are three primary limitations on BD access to RAES: (1) BD orders may not automatically

[11] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78(b)(1).

[2] 17 CFR 240.19b–4.

[3] Correspondingly, BDs will be eligible to submit orders in certain index option classes and/or series. Currently, BDs may submit orders in certain index option series.

[4] The current rule allows the Exchange to determine the products in which BD orders may be submitted to RAES.

[5] Currently, the Exchange may allow all categories of BD orders to receive automatic execution or it may allow only those BD orders that are not for the accounts of market makers or specialists to qualify for automatic execution.

execute against orders in the book; [6] (2) the eligible size limit for BD orders may be established at a level lower than that for public customer orders; [7] and (3) BD orders may not be eligible for automatic step-up.[8] The Exchange proposes to retain these three limitations (with the modifications described in the accompanying footnotes.)

BD orders executed through RAES will continue to be subject to the requirements of CBOE Rule 6.8. In this regard the Exchange notes that BD orders and public customer orders will both be subject to CBOE Rule 6.8(e)(iii), which prohibits the entry of multiple orders in a put and/or call class within a 15-second period for an account or accounts of the same beneficial owner.[9] Correspondingly, the Exchange proposes herein to amend CBOE Rule 6.8A (*Electronically Generated and Communicated Orders*) to clarify its applicability to BD orders executed through RAES. CBOE Rule 6.8A currently applies to all RAES-eligible orders, however, because it was adopted prior to the allowance of BD orders in RAES, it makes reference to the term ''public customers.'' Now that BD orders are eligible for execution through RAES, the reference to public customers in CBOE Rule 6.8A is incorrect. This proposal therefore eliminates that reference. The Exchange notes that Phlx Rule 1080, Commentary .05(i) codifies this same principle (*i.e.*, BD orders are subject to the restriction against electronically generated orders).

Finally, the current rule was approved on a pilot basis until November 20, 2002.[10] The Exchange proposes to eliminate the pilot status of the current rule and seek permanent approval of the new rule. The Exchange believes there are several reasons why permanent approval is justified. First, CBOE initially proposed the pilot program as a way to allow it to evaluate the effectiveness of the program after six months of operation. The pilot program was NOT proposed due to any SEC concerns. Therefore, the Exchange believes that there are no attendant regulatory concerns that would require continued operation under pilot status. Second, the pilot program has worked well and has attracted order flow to the Exchange without causing any operational problems or difficulties. Expanding the rule to apply to equities similarly will not cause any operational problems and will enhance the Exchange's competitive position. Third, the PCX rule was approved on a permanent basis,[11] accordingly, there is precedent for permanent approval. In this respect, the Exchange notes that all floor-based exchanges have (or are in the process of adopting) approved rules that grant BD access to automatic execution systems. Finally, the pilot expires in November and it is likely that SEC approval of this filing will not occur until late September or early October. By that time, the Exchange would have to submit an additional rule filing to seek permanent approval anyways. In short, this filing raises no new or unique issues of substance and, therefore, the Exchange believes it is practical to request permanent approval in this proposal instead of having to submit an additional filing a few weeks later.

2. Statutory Basis

The Exchange believes that this proposal will enhance the ability of BD orders to receive automatic executions in equity options, which should provide greater certainty to BDs with respect to their routing decisions. The Exchange further believes that this proposal, by allowing BD orders to receive automatic executions, will also increase depth and liquidity in those affected classes. Accordingly, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)(i) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the proposed rule change become operative immediately so that it may compete with other options exchanges.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective as of the date of this order.[18] The Commission

[6] CBOE Rule 6.8.01(b). The Exchange proposes to keep this provision but renumber it as 6.8.01(b)(1).

[7] This provision has been renumbered from 6.8.01(c)(1) to 6.8.01(b)(2).

[8] This provision has been renumbered from 6.8.01(c)(2) to 6.8.01(b)(3). In addition, the Exchange amends this provision to clarify that BD orders that are ineligible for automatic execution by opertion of this section shall be routed either to PAR or BART for manual handling.

[9] *See also* Phlx Rule 1080, Commentary .05(iii), which contains the identical restriction and was approved by the SEC. Exchange Act Release No. 45484 (February 27, 2002), 67 FR 10465 (March 7, 2002).

[10] *See* Securities Exchange Act Release Nos. 45967 (May 20, 2002), 67 FR 37888 (May 27, 2002) and 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002).

[11] *See* Securities Exchange Act Release No. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] Commission staff has provided interpretative guidance to the Exchange regarding the application of Section 11(a) of the Act, 15 U.S.C. 78k(a), to the RAES system. *See* letter from Paula Jenson, Deputy Chief Counsel, Division of Market Regulation, Commission, to Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, dated May 16, 2002.

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes of only accelerating the operative date of this proposal, the Commission has

Continued

notes that the other options exchanges currently permit BD orders to access their automatic execution systems and the Commission believes that this proposed rule change could enhance competition for BD orders in the options markets.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2002–56 and should be submitted by November 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46600; File No. SR–CBOE–2002–39]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. To Make Certain Changes Pertaining to the Enforcement of Trading Conduct and Decorum Policies

October 4, 2002.

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 July 15, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 30, 2002, CBOE submitted Amendment No. 1 to the proposed rule change.[3] On September 17, 2002, CBOE submitted Amendment No. 2 to the proposed rule change.[4] The Commission is 2 publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.20(c) (Admission to and Conduct on the Trading Floor—Fines Imposed by Floor Officials) to authorize two Floor Officials, in consultation with a designated senior executive officer of the Exchange, to summarily exclude a member or person associated with a member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense, except for those Class A offenses specified by Exchange Regulatory Circulars as not qualifying the offender for summary exclusion. The Exchange also proposes to amend CBOE Rule 17.50(g)(6) (Imposition of Fines for Minor Rules Violations—Violations of Trading Conduct and Decorum Policies) to reflect the incorporation into the fine policies of specified higher fine levels for ''subsequent'' offenses. Finally, the Exchange proposes to issue a new Regulatory Circular setting forth the fines that may be imposed under CBOE Rule 17.50 for violations of CBOE Rule 6.20. The proposed Regulatory Circular also sets forth those violations that may qualify the offender for summary expulsion. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

* * * * *

CHAPTER VI—Doing Business on the Exchange Floor

Section B: Member Activities on the Floor

* * * * *

Admission to and Conduct on the Trading Floor; Member Education

RULE 6.20.

(a) No Change.

(b) No Change.

(c) Fines Imposed by Floor Officials. The Exchange shall periodically issue fine schedules setting forth which violations of the Exchange's trading conduct and decorum policies are subject to fines pursuant to CBOE Rule 17.50 and the specific dollar amounts of such fines. Floor Officials may (i) fine members and persons employed by or associated with members pursuant to CBOE Rule 17.50 for trading conduct and decorum violations which are subject to fine under such fine schedule, (ii) direct members and persons employed by or associated with members to act or cease to act in a manner to ensure compliance with Exchange Rules and accepted and established standards of trading conduct and decorum and/or (iii) refer violations of the foregoing to the Business Conduct Committee for disciplinary action pursuant to Chapter XVII of the Rules. *In addition, two Floor Officials in consultation with a designated senior executive officer of the Exchange, may summarily exclude a member or person*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 received on August 30, 2002 (''Amendment No. 1''). Amendment No. 1 replaced the original filing in its entirety. In Amendment No. 1, the Exchange clarified that not all Class A offenses qualified the offender for summary exclusion, explained why three types of offenses previously set forth as ''Violations of Trading Conduct and Decorum Policies'' had been omitted from the proposed list of such violations, clarified that the ''rolling look back'' period used to determine the appropriate fine for Firm Quote violations will be 24 months, and cross-referenced the appeal procedure for the imposition of fines for minor rule violations.

[4] *See* letter from Christopher R. Hill, Attorney II, Legal Division, CBOE, to Nancy Sanow, Division of Market Regulation (''Division''), Commission, dated September 16, 2002 (''Amendment No. 2''). In Amendment No. 2, the Exchange underlined the entire subsection of Exhibit B to Amendment No. 2 labeled ''Class A Offenses'' to reflect that it is new text, and added the offense ''Trading in the Aisle'' to the subsection of Exhibit B to Amendment No. 2 labeled ''Class B Offenses.''

associated with a member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense, except for those Class A offenses specified by Exchange Regulatory Circulars as not qualifying the offender for summary exclusion. Any action taken by Floor Officials under this paragraph (c) shall not preclude additional disciplinary action by the Business Conduct Committee under Chapter XVII of the Rules. Any application or interpretation of Rules, and any decision to impose a fine under this paragraph (c), shall be agreed upon by at least two Floor Officials. Floor Officials shall file with the Exchange a written report of any action taken pursuant to authority specifically granted them by the Rules and of any interpretation of the Rules.

(d) No Change.

(e) No Change.

* * * Interpretations and Policies:

.01–.09 No Change.

.10 Where a member or person associated with a member is summarily excluded from the trading floor pursuant to Rule 6.20(c), that member or associated person shall have the right to request reinstatement from Floor Officials after a sufficient ''cooling-off'' period has elapsed. If, in the judgment of two Floor Officials, the member or associated person no longer poses an immediate threat to the safety of persons or property, the member or associated person shall be permitted to return to the trading floor.

* * * * *

CHAPTER XVII—Discipline

RULE 17.50. Imposition of Fines for Minor Rule Violations

(a)–(f) No Change.

(g) The following is a list of the rule violations subject to, and the applicable fines that may be imposed by the Exchange pursuant to, this Rule:

(1) No Change.

(2) No Change.

(3) No Change.

(4) No Change.

(5) No change.

(6) Violations of Trading Conduct and Decorum Policies. (Rule 6.20)

The Exchange's trading conduct and decorum policies shall be distributed to the membership periodically and shall set forth the specific dollar amounts that may be imposed as a fine hereunder with respect to any violations of those policies. If warranted under the circumstances in the view of two floor officials, the fine authorized under those policies for a second, [or]third *or subsequent* offense may be imposed for a first offense and the fine authorized for a third *or subsequent* offense may be imposed for a second offense.

* * * * *

(The following Regulatory Circular will supersede and replace RG98–123)

02– Violations of Trading Conduct and Decorum Policies

Date: , 2002

To: Exchange Members and Associated Persons of Member Organizations

From: Floor Officials Committee

The purpose of this circular is to advise members and their personnel of the provisions of Exchange Rule 17.50, Imposition of Fines for Minor Rule Violations, as they relate to violations of the Exchange's trading conduct and decorum policies under Exchange Rule 6.20, Admission to and Conduct on the Trading Floor.

(1) *The Rule. Rule 17.50(g)(6) provides for the imposition of fines for violations of the Exchange's trading conduct and decorum policies under Rule 6.20. The following schedule identifies certain conduct deemed to violate those policies and lists the applicable fines that may be imposed for such violations by the Exchange under Rule 17.50(g)(6). Please be advised that Rule 17.50(g)(6) enables the Exchange, if warranted under the circumstances, to impose for a first offense the fine authorized for a second, third or subsequent offense; to impose for a second offense the fine authorized for a third or subsequent offense; and to impose for a third offense the fine authorized for a subsequent offense.*

(2) *Two Floor Officials may impose a summary fine in a rolling twelve month period (except for firm quote violations, which will be assessed using a 24-month look back period) not to exceed $5,000 for violative conduct classified as a Class A offense within the following ranges:*

1st Offense	*2nd Offense*	*3rd Offense*	*Subsequent Offenses*
$500 to $1,500	*$1,000 to $3,000*	*$2,000 to $5,000*	*$3,500 to $5,000*

(3) *Two Floor Officials may impose a summary fine in a rolling twelve month period not to exceed $2500.00 for violative conduct classified as a Class B offense within the following ranges:*

1st Offense	*2nd Offense*	*Subsequent Offenses*
$100 to $500	*$500 to $1,000*	*$1,000 to $2,500*

TRADING CONDUCT AND DECORUM VIOLATIONS

Class A Offenses:

- *Physical Violence (Shoving, Fighting)*
- *Unbusinesslike Conduct*
- *Harassment (as set forth in Exchange Rule 4.19)*
- *Failure to Abide by a Floor Official Determination*
- *Property Damage (plus repair or replacement costs)*
- *Enabling/Assisting Suspended Member or Associated Person to Gain Improper Access to Floor*
- *Failure to Supervise a Visitor*
- *Failure to Attend Exchange Mandated Educational Training ‡*
- *Effecting or Attempting to Effect a Transaction with No Public Outcry ‡*
- *Violation of Rule 8.51 (Firm Quote)*[5] *‡*

‡ *Does not qualify the offender for summary exclusion pursuant to Exchange Rule 6.20(c).*

Class B Offenses:

- *Abusive Language*
- *Abusing Exchange Property (no damage)*
- *Dress Code Violation*
- *Failure to Display I.D.*
- *Food or Drink on Floor*
- *Gaining or Enabling Improper Access to Floor*

[5] *In any Rolling Twenty-Four Month ''Look-Back'' Period.*

- *Improper Use of Runners' Aisle*
- *Smoking in Unauthorized Areas*
- *Running*
- *Impermissible Use of Member Phones*
- *Visitor Badge Returned Late or Not Returned*
- *Failure of Market-Maker to Respond to Request for Market by Order Book Official or to Bid or Offer within Ranges Specified by Rule 8.7(b)*
- *DPM Failure to Activate or Deactivate RAES*

(2) *Floor Officials. Fines under Rule 17.50(g)(6) may be imposed upon the determination of two Floor Officials that the person fined has committed any of the 4 trading conduct and decorum violations enumerated in the fine schedule above. Any application or interpretation of the Rules relating to conduct on Exchange premises shall be agreed upon by at least two Floor Officials. Floor Officials shall file with the Exchange a written report of any action taken pursuant to authority specifically granted them by the Rules and of any interpretation of the Rules.*

(3) *Persons Subject to Fine. The Exchange may impose the preceding fines against either or both of the following: (a) the individual responsible for the subject violation and/or (b) if such individual is employed by or associated with a member, the member and/or any supervisory personnel of the member that failed to adequately supervise such individual to ensure compliance with Exchange rules. Any member or supervisory person who is fined more than one (1) time in any twelve month period for failure to supervise shall be subject to the fines specified above for second offenses, third offenses and subsequent offenses, regardless of the number of offenses committed by the individual subject to fine for the underlying violation.*

(4) *Right to Contest Fines. Any person against whom a fine is imposed pursuant to Rule 17.50(g)(6) may contest that fine. Specifically, fines imposed under Rule 17.50(g)(6) that do not exceed $2,500 may be contested before the Appeals Committee in accordance with the provisions of Rule 17.50(d), and fines imposed under Rule 17.50(g)(6) that exceed $2,500 may be contested before the Business Conduct Committee in accordance with the provisions of Rule 17.50(c). Persons wishing to contest such fines must comply with the deadlines and all other requirements set forth in Rule 17.50(d) or Rule 17.50(c), as applicable. Please be advised that if a fine imposed under Rule 17.50(g)(6) is contested and the reviewing body finds that the person fined committed the rule violation(s) alleged, the reviewing body may impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and Rules, including but not limited to a higher fine than the fine imposed pursuant to Rule 17.50(g)(6). In addition, if a person contests a fine imposed under Rule 17.50(g)(6) and the fine is upheld by the reviewing body, the reviewing body will impose a forum fee against the person in the amount of $100 if the reviewing body's determination was reached without a hearing, or in the amount of $300 if a hearing was conducted.*

(5) *Additional Floor Official Action. In addition to, or instead of, issuing a fine pursuant to Rule 17.50(g)(6), Rule 6.20(c) provides that Floor Officials may direct members and their associated persons to act or cease to act in a manner to ensure compliance with Exchange Rules and accepted and established standards of trading conduct and decorum and/or refer violations of the foregoing to the Business Conduct Committee for disciplinary action pursuant to Chapter XVII of the Rules. Furthermore, any action taken by Floor Officials under Rules 17.50(g)(6) and 6.20(c) does not preclude additional disciplinary action by the Business Conduct Committee under Chapter XVII. In addition, as set forth in Rule 6.20(c), two Floor Officials in consultation with a designated senior executive officer of the Exchange, may summarily exclude a member or person associated with a member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense.*

Any questions in connection with this circular should be directed to Andrew Spiwak of the Legal Division at (312) 786–7483 or to Rod Ely of the Trading Floor Liaison Group at (312) 786–7794.

(RG98–123, Revised)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Temporary Exclusion

The Exchange proposes to amend CBOE Rule 6.20(c) (Admission to and Conduct on the Trading Floor—Fines Imposed by Floor Officials) to authorize two Floor Officials, in consultation with a designated senior executive officer of the Exchange, to summarily exclude a member or person associated with a member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense, except for those Class A offenses specified by Exchange Regulatory Circulars as not qualifying the offender for summary exclusion.

Class A offenses are the most serious offenses against trading conduct and decorum policies, including but not limited to violations such as physical violence (*e.g.*, shoving or fighting), unbusinesslike conduct,[6] harassment, failure to abide by a floor official determination, or property damage. Most Class A offenses affect the safety or security of personnel and/or property on the Exchange in ways that may be ameliorated by temporarily excluding the offender from Exchange premises. The Exchange also proposes that members be summarily excluded from Exchange premises for enabling or assisting a suspended member or associated person to gain improper access to the floor, and failing to supervise a visitor. As specified in the proposed Regulatory Circular, the Exchange currently proposes to distinguish three Class A offenses as not qualifying the offender for summary exclusion. These are (1) Failure to Attend Exchange Mandated Educational Training; (2) Effecting or Attempting to Effect a Transaction with No Public Outcry; and (3) Violation of CBOE Rule 8.51 (Firm Quote). These offenses are so categorized because unlike the other Class A offenses, they do not raise significant issues of safety or security at the Exchange.

The Exchange believes that it is important for Floor Officials, in consultation with a designated senior Exchange executive, to have the

[6] In general, ''unbusinesslike conduct'' is conduct, other than harassment, that disrupts trading. Telephone call between Christopher R. Hill, Attorney II, Legal Division, CBOE, and Jennifer Lewis, Attorney, Division, Commission, on September 30, 2002.

authority to temporarily exclude certain such violators from the Exchange premises, in order to be able to defuse volatile situations, safeguard trading floor personnel and facilities, and minimize disruptions to the maintenance of fair and orderly markets. The proposed rule will enable an excluded 5 member or associated person to request reinstatement to the Trading Floor from Floor Officials after a sufficient ''cooling off period'' has elapsed.

The Exchange represents that this part of its proposal is closely patterned on Article XII, Rule 3(c) of the Rules of the Chicago Stock Exchange.

Penalties for Violations of Trading Conduct and Decorum Policies

The Exchange also proposes to amend CBOE Rule 17.50(g)(6) (Imposition of Fines for Minor Rules Violations—Violations of Trading Conduct and Decorum Policies) to reflect the incorporation into the fine policies of specified higher fine levels for ''subsequent'' offenses. For example, the amended provision would enable the imposition of the fine authorized for a Class A ''subsequent'' offense to be imposed for a first, second or third Class A offense, if such is deemed warranted under the circumstances in the view of two floor officials.[7] The Exchange believes this update will help Exchange officials safeguard people, property, and fair and orderly markets at the Exchange by enabling them to impose fine levels for violations of Trading and Decorum Policies that are most appropriate to the circumstances of particular offenses.

Regulatory Circular

The Exchange proposes to issue a new Regulatory Circular to update and replace Regulatory Circular RG 98–123, and classify trading conduct and decorum offenses as either Class A or Class B offenses. The Exchange believes the schedule of offenses is consistent with the recently revised Minor Rule Violation Plan.[8]

The Exchange notes that it has added the violation ''DPM Failure to Activate or Deactivate RAES'' to the new proposed regulatory circular in order to encourage DPM's to comply with their obligations under Exchange Rule 6.8 (RAES Operations).[9]

The Exchange notes the following reasons why three types of offenses previously set forth as ''Violations of Trading Conduct and Decorum Policies'' in RG–98–123 are omitted from the list of such violations in the new proposed regulatory circular. First, ''Disruptive Announcements of Stock Prints'' are no longer a focus of regulatory concern due to technological advances that have changed and improved the dissemination of such information. Second, ''Failure to Abide by Floor Official Request for Information,'' has been omitted because it is now deemed to be included within the broader offense entitled ''Failure to Abide by Floor Official Determination.'' Finally, ''Book Priority Violations'' are no longer included in the list of Trading Conduct and Decorum violations because under a recent Exchange rule change approved by the SEC, (Securities Exchange Act Release No. 34–45571, 67 FR 13382 (March 15, 2002), approving SR–CBOE–2001–71), such violations are now addressed separately in CBOE Rule 17.50(g)(5).

The Exchange also proposes that as set forth in the first footnote of the proposed regulatory circular, the ''rolling look back'' period used to determine the appropriate fine for Firm Quote violations will be 24 months.[10]

Finally, the Exchange notes that the appeal procedure for the imposition of fines for minor rule violations as set forth in CBOE Rule 17.50(d)(1) is described in paragraph (4) in the proposed draft regulatory circular.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(5)[12] and 6(b)(7)[13] of the Act, in particular, because the proposed rule change will refine and enhance the Exchange's Minor Rule Violation Plan to make it more efficient and effective. The Exchange believes the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in securities, to protect investors and the public interest, and enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE.

All submissions should refer to File No. SR–CBOE–2002–39 and should be submitted by November 1, 2002.

[7] The amended provision would also enable the imposition of the fine authorized for a Class B ''subsequent'' offense to be imposed for a first or second Class B offense, if such is deemed warranted under the circumstances in the view of two floor officials.

[8] *See* Securities Exchange Act Release No. 45571 (March 15, 2002), 67 FR 13382 (March 22, 2002).

[9] Telephone call between Christopher R. Hill, Attorney II, Legal Division, CBOE, and Jennifer Lewis, Attorney, Division, Commission, on October 3, 2002.

[10] *See* note 5 *supra.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(7).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26019 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46599; File No. SR–CSE–2002–04]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to a Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to the Introduction of Order Delivery and Automated Response

October 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 10, 2002.[3] On September 13, 2002, the CSE filed Amendment No. 1 to the proposed rule change [4] and on September 17, 2002, filed Amendment No. 2 to the proposed rule change.[5] Amendment Nos. 1 and 2 are described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As discussed in the Initial Notice, the Exchange proposed to amend CSE Rule 11.9, National Securities Trading System (''NSTS'' or ''System''), to modify CSE's execution functionality from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE System.[6] The Exchange filed Amendment No. 1 to delete proposed rule language in Paragraph 11.9(i)(2)(a) regarding price/time and agency/principal priorities, which was inadvertently included in the original proposal. The Exchange filed Amendment No. 2 to expand the proposed order delivery and automated response alternative to all securities traded through the Exchange's NSTS, rather than simply Nasdaq National Market Securities. In addition, Amendment No. 2 made certain non-substantive grammatical changes. The text of the proposed rule change, incorporating Amendment Nos. 1 and 2, is set forth below in its entirety. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter XI

Trading Rules

Rule 11.9(i)

The System [shall automatically match and execute like-priced orders, bids and offers in accordance with the price-time and agency/principal priorities set forth in Rule 11.9(l) and (m).] *offers two modes of order interaction selected by members:*

(1) *If automatic execution is selected, the System shall match and execute like-priced orders, bids and offers on an order by order basis only at the specific instruction of Users, including Designated Dealers.*

(*2*) *If order delivery and automated response is selected, the System will deliver contra-side orders against displayed orders and quotations on an order by order basis and only at the specific instruction of Users, including Designated Dealers. To be eligible for order delivery service, Users must demonstrate to Exchange examiners that the User's system can automatically process the inbound order and respond appropriately within 1 second.*

* * * * *

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, as amended. 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

As discussed in the Initial Notice and Amendment Nos. 1 and 2, the purpose of the proposed rule change is to increase the flexibility of CSE execution systems to accommodate member needs. Specifically, CSE proposes to modify CSE's execution functionality within the CSE System from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE System. CSE is proposing this modification to facilitate a diverse membership base while promoting a fair and orderly market. CSE members that operate as electronic communications networks (''ECNs'') [7] or alternative trading systems (''ATSs'') subject to SEC Regulation ATS,[8] as well as members that act as Designated Dealers or specialists on CSE will have the option of selecting the type of centralized execution system that best fits their business model.

In an order delivery and automated response system, a member's quotation or displayed order will be held in the CSE System, and when a contra-side order is received in the CSE System, CSE will immediately forward the order

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45873 (May 3, 2002), 67 FR 31856 (''Initial Notice''). No comments have been received on the proposal.

[4] *See* letter from Jennifer M. Lamie, CSE, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission (September 12, 2002) (''Amendment No. 1'').

[5] *See* letter from Jennifer M. Lamie, CSE, to Katherine England, Assistant Director, Division, Commission (September 16, 2002) (''Amendment No. 2'').

[6] In the Initial Notice, reference was made to a defined term, the CSE Over-the-Counter Unlisted Trading Privileges System (''CSE OTC–UTP System''). This reference created ambiguity, because the term CSE OTC–UTP System is defined in and ostensibly created by a pending CSE rule filing (File No. SR–CSE–2001–04) that has been published in the **Federal Register** for comment, but has not been approved by the Commission. *See* Securities Exchange Act Release No. 45405 (February 6, 2002), 67 FR 6558 (February 12, 2002). Because of this ambiguity and because of the lack of need for such a defined term in the instant proposal, the Exchange requested that the Commission remove the defined term, CSE OTC–UTP System, from the purpose section of the instant proposal. Telephone discussion between Jeffrey, T. Brown, Vice President, Regulation and General Counsel, CSE, and Katherine England, Assistant Director, and, Christopher B. Stone, Attorney Advisor, Division, Commission (October 3, 2002).

[7] ECNs are defined in SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8), as any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part.

[8] 17 CFR 242.300–303.

message to the quoting member, who will be obligated by rule to respond instantaneously to the order message. Moreover, the quoting member must have a demonstrated capability to respond instantaneously to the order message. On receipt of the order message delivered by CSE, the quoting member will automatically determine whether its quote is still active. If so, the member will automatically deliver to the CSE System matched orders representing its quote and the contra-side for execution. If the member's quote is in the process of changing due to a prior internal match at the displayed price, consistent with the Firm Quote Rule,[9] the member will reject the inbound order and send it back to the CSE System. The CSE System will then automatically send a cancellation message to the member submitting the order. The entire duration of the order delivery and automated response process likely will be less than one second.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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. Further, the Exchange believes that the proposal, as amended, is consistent with Section 6(b)(8) of the Act [12] in that it is not designed to impose any burden on competition not necessary or appropriate in furtherance of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended by Amendment Nos. 1 and 2, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[9] 17 CFR 240.11Ac1–1.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, including Amendment Nos. 1 and 2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2002–04 and should be submitted by November 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26023 Filed 10–10–02; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46594; File No. SR–NASD–2002–109]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's InterMarket

October 3, 2002.

On August 8, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), 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: (i) Modify the execution fees for Nasdaq InterMarket trades executed through the Intermarket Trading System (''ITS'') and Nasdaq's Computer Assisted Execution System (''CAES''); and (ii) establish a credit for the liquidity provider for executions via ITS and CAES.[3] The proposed rule change was published in the **Federal Register** on September 3, 2002.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

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 association.[5] Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(5) of the Act,[6] which requires that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls, and Section 15A(b)(6) of the Act,[7] which requires, among other things, that the rules of an association promote just and equitable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 13, 2002, the NASD, through its subsidiary, Nasdaq, filed a similar proposed rule change that was effective upon filing pursuant to Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). *See* Securities Exchange Act Release No. 46153 (July 1, 2002), 67 FR 45164 (July 8, 2002) (SR–NASD–2002–68). The proposal was summarily abrogated by Commission order on July 2, 2002. *See* Securities Exchange Act Release No. 46159, 67 FR 45775 (July 10, 2002).

[4] *See* Securities Exchange Act Release No. 46419 (August 27, 2002), 67 FR 56333.

[5] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78o–3(b)(6).

principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. The Commission believes that the proposed fee structure, which is similar to the fee structures in place for Nasdaq's SuperSOES and SuperMontage systems,[8] may encourage members to provide additional liquidity to support executions through Nasdaq's InterMarket and thereby enhance its competitiveness.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2002–109) is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26026 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46620; File No. SR–NYSE–2002–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Equity Compensation Plans and the Voting of Proxies

October 8, 2002.

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 October 7, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On August 16, 2002, the NYSE filed with the Commission amendments to its Listed Company Manual to implement significant changes to its listing standards aimed at helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate governance practices (''SR–NYSE–2002–33'' or the ''Corporate Governance Proposals'').[3] The Exchange represents that this filing excerpts certain proposed rule changes from the Corporate Governance Proposals relating to shareholder approval of equity-compensation plans and the voting of proxies, in compliance with a request from the Commission staff to address these issues separately from the remainder of the Corporate Governance Proposals.

The text of the proposed rule change is available at the Office of the Secretary, NYSE, at the Commission, and is also incorporated into the language of Item II, Section A below.

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 NYSE states that it has long pioneered advances in corporate governance. The NYSE represents that it has required companies to comply with listing standards for nearly 150 years, and has periodically amended and supplemented those standards when the evolution of our capital markets has demanded enhanced governance standards or disclosure. On February 13, 2002, SEC Chairman Harvey Pitt asked the Exchange to review its corporate governance listing standards. In conjunction with that request, the NYSE appointed a Corporate Accountability and Listing Standards Committee (the ''Committee'') to review the NYSE's current listing standards, along with recent proposals for reform, with the goal of enhancing the accountability, integrity and transparency of the Exchange's listed companies. On August 16, 2002, the NYSE filed the Corporate Governance Proposals with the Commission, proposing rule changes to its corporate governance standards which reflect the findings of the Committee and which are designed to further the ability of honest and well-intentioned directors, officers and employees to perform their functions effectively. The proposals for new corporate governance listing standards for companies listed on the Exchange are proposed to be codified in a new Section 303A of the Exchange's Listed Company Manual.[4]

Subsequent to the filing of the Corporate Governance Proposals, the Commission staff requested that the NYSE file proposed Section 303A(8) (relating to shareholder approval of equity-compensation plans) and proposed NYSE Rule 452 (which prohibits member organizations from giving a proxy to vote on equity-compensation plans absent specific instructions from a beneficial holder) separately from its remaining proposals to expedite review and processing of these portions of the Corporate Governance Proposals. The proposed rule change filed herewith amends proposed Section 303A(8) as originally filed to clarify its meaning in several respects,[5] and also proposes to make conforming changes to current Sections 303.00 and 312.03 of the Listed Company Manual and NYSE Rule 452.

As amended, rule language of proposed Section 303A(8) of the Exchange's Listed Company Manual is as follows:

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[8] *See* Securities Exchange Act Release Nos. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR–NASD–2001–67); and 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* File No. SR–NYSE–2002–33 (August 16, 2002).

[4] In its Report to the NYSE Board, the Committee set forth basic principles followed in many cases by explanation and clarification. The NYSE is adopting the recommendations as standards in substantially the form they were made by the Committee and adopted by the NYSE Board. Accordingly, the format used will state a basic principle, with the additional explanation and clarifications included as ''commentary.''

While many of the requirements set forth in this new rule are relatively specific, the Exchange is articulating a philosophy and approach to corporate governance that companies are expected to carry out as they apply the requirements to the specific facts and circumstances that they confront from time to time. Companies and their boards are expected to apply the requirements carefully and in good faith, making reasonable interpretations as necessary, and disclosing the interpretations that they make.

[5] Section 303A(11) of the Corporate Governance Proposals clarifies that the NYSE will continue its practice of accommodating the home country practices of our listed foreign private issuers with respect to the proposed corporate governance standards. In light thereof, the NYSE will not require foreign private issuers to comply with Section 303A(8) as proposed herein, assuming that they have provided to the Exchange the home country practice certification referred to in Section 303.00 of the Listed Company Manual.

8. To increase shareholder control over equity-compensation plans, shareholders must be given the opportunity to vote on all equity-compensation plans, except inducement awards, plans relating to mergers or acquisitions, and tax qualified and parallel nonqualified plans.

Commentary: Equity-compensation plans [6] can help align shareholder and management interests, and equity-based awards have become very important components of employee compensation. In order to provide checks and balances on the process of earmarking shares to be used for equity-based awards, and to provide shareholders a voice regarding the resulting dilution, the Exchange requires that all equity-compensation plans, and any material revisions to the terms of such plans, be subject to stockholder approval.[7]

For these purposes, a ''material revision'' would include, but not be limited to, a revision that: materially increases the number of shares available under the plan (other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction); [8] changes the types of awards available under the plan; materially expands the class of persons eligible to receive awards under or otherwise participate in the plan; materially extends the term of the plan; or materially changes the method of determining the strike price of options under the plan.[9] In addition, if a plan contains a provision that prohibits repricing of options, any revision that deletes or limits the scope of such a provision will be considered a material revision for purposes of this rule. If a plan does not contain a provision that specifically permits repricing of options, the plan will be considered for this purpose as prohibiting repricing, and any actual repricing of options will be considered a material revision of the plan, even if the plan itself is not revised.[10]

There are certain types of plans and awards, however, which are appropriately exempt from this shareholder approval requirement. Employment inducement awards—that is, grants of options or shares as a material inducement to such person's first becoming an employee of the issuer or any of its subsidiaries—will not be subject to shareholder approval under this rule. The Exchange recognizes the urgency that may attach to the granting of options and other equity-based compensation in the context of inducing a candidate to accept employment and the resulting impracticality of obtaining a shareholder vote in these situations.

In the case of corporate acquisitions and mergers, two exceptions are appropriate. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. The Exchange would view a plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. The NYSE believes that this exception is appropriate because it believes that it will not result in any increase in the aggregate potential dilution of the combined enterprise.[11]

Because inducement awards and mergers or acquisitions are not routine occurrences, and are not likely to be abused, the Exchange considers these exceptions to be consistent with the fundamental policy involved in this standard.

Similarly, any plan intended to meet the requirements of Section 401(a) [12] of the Internal Revenue Code (*e.g.*, ESOPs), any parallel nonqualified plan, [13] and any plan intended to meet the requirements of Section 423[14] of the Internal Revenue Code is exempt from the shareholder approval requirement. Plans such as Section 401(a) plans and Section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under

[6] For these purposes, and ''equity compensation plan'' would not include any plan that is made available to shareholders generally (such as typical dividend reinvestment plan). In addition, an ''equity compensation plan'' would not include a plan that merely provides a convenient way (for example, through payroll deductions) for employees, directors or other service providers to buy shares on the open market or from the issuer, even if the brokerage and other costs of the plan are subsidized. However, if employees, directors or service providers pay less than fair market value for shares under the plan, and the plan is not made available to shareholders generally, the plan would be considered to be an ''equity compensation plan'' for these purposes.

[7] For the sake of clarity, the Exchange notes that its traditional ''treasury stock exception'' will no longer be available with respect to this requirement.

[8] For these purposes, an automatic increase in the shares available under a plan pursuant to a formula set forth in the plan (sometimes referred to as an ''evergreen'' formula) will not be considered a revision if the term of the plan is limited to a specified period of time not in excess of ten years. *See also* footnote 15 below with respect to plans with evergreen formulas that were adopted before the effective date of this rule.

[9] A change in the method of determining ''fair market value'' from the closing price on the date of grant to the average of the high and low price on the date of grant is an example of a formula change that the Exchange would not view as material.

[10] For these purposes, a ''repricing'' means any of the following (or any other action that has the same effect as any of the following): (1) Amending the terms of an option after it is granted to lower its strike price; (2) any other action that is treated as a repricing under generally accepted accounting principles; and (3) canceling an option at a time when its strike price is equal to or less than the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction. A cancellation and exchange described in clause (3) of the preceding sentence will be considered a repricing regardless of whether the option, restricted stock or other equity is delivered simultaneously with the cancellation, regardless of whether it is treated as a repricing under generally accepted accounting principles, and regardless of whether it is voluntary on the part of the option holder.

[11] Note that any such shares reserved for listing in connection with the transaction would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock and thus required stockholder approval under Listed Company Manual Section 312.03(c).

[12] 26 U.S.C. 401(a) (1988).

[13] The term ''parallel nonqualified plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA''), 29 U.S.C. 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may hereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless (1) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitations that may hereafter be enacted) and (2) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence.

[14] 26 U.S.C. 423(1988).

which an employee can purchase no more than $25,000 worth of stock per year at a plan-specified discount capped at 15%, are also required under the Internal Revenue Code to receive shareholder approval. While Section 401(a) plans and their parallel nonqualified plans are not required to be approved by shareholders, the shares issued under these plans must be ''expensed'' (*i.e.*, treated as a compensation expense on the income statement) by the company issuing the shares. Equity compensation plans that would qualify for the exception described in this paragraph but for features necessary to comply with foreign tax law in the non-U.S. jurisdiction in which the employees covered by the plan reside, are also exempt from shareholder approval under this section.

In circumstances in which equity compensation plans and amendments thereto are not subject to shareholder approval, the plans and amendments still must be subject to the approval of the company's compensation committee or a majority of the company's independent directors.

This rule will be applicable to a plan adopted before the effective date of this rule only upon any subsequent material revision of the plan.[15]

In addition, the Exchange will preclude its member organizations from giving a proxy to vote on equity compensation plans unless the beneficial owner of the shares has given voting instructions. This will be codified in proposed changes to NYSE Rule 452.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market 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 does not impose any burden on competition that is not necessary or appropriate in the 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

Shareholder Vote on Equity Compensation Plans

The Exchange represents that this recommendation received particular support from the institutional investor community. They urged the NYSE Board not to dilute either the shareholder vote requirement or the broker vote prohibition. However, numerous constituents expressed concerns about both recommendations.

A. Shareholder Approval

The Exchange represents that more than half of the larger companies, financial institutions and associations that commented on this issue maintained that only plans that offer options to officers and/or directors should be subject to shareholder approval. Many companies argued that subjecting broad-based equity compensation plans to the shareholder approval requirement would lessen their ability to compensate rank-and-file employees with stock options, putting NYSE-listed companies at a competitive disadvantage in the labor market. They urged that the board should be able to adopt stock option plans for non-executive employees without shareholder approval; some suggested instead a requirement that all plans be approved by an independent compensation committee.

Some commentators advocated exceptions for inducement awards or new hire grants (citing competitive employment markets) and tax-qualified plan awards (citing the alternative regulatory framework provided by the tax code), subject perhaps to approval by the independent compensation committee. One company suggested that there should be an exemption for situations where full-value stock is used to deliver an award that would otherwise be paid in cash. Another company noted that some plans are part of collective bargaining arrangements and urged that these be excluded from the shareholder approval requirement. Another comment advocated excepting ''inducement awards'' made to *any* employee of a merger or acquisition target.

In addition, there were a number of detailed questions regarding plans approved prior to effectiveness of the new rules, amendments to plans, and plans run by an acquired company.

The Exchange responds that it has clarified that inducement awards acquired in certain mergers or acquisitions, tax qualified plans and parallel nonqualified plans would be exempt, but all other plans would require shareholder approval.

B. Elimination of Broker Voting

The Exchange represents that the institutional investor community gave strong support to this proposal. Many large companies, however, strongly urged the NYSE to maintain its existing rules, fearing primarily the increased proxy costs and increased uncertainty that the proposed change would entail. Large and small companies alike cited quorum difficulties and solicitation expenses that result when brokers are not allowed to vote uninstructed shares after a 10-day period. One such commentator warned that because of retail investor confusion about voting mechanics, there is a risk that the elimination of the discretionary broker vote will disenfranchise investors if not accompanied by an aggressive and vigorous program to educate them about how to vote their shares. Many commentators also expressed concern that institutional shareholders may simply vote their shares in accordance with strict internal or third-party guidelines or policies, rather than giving each plan individual consideration. One organization suggested proportional or mirror voting by brokers of uninstructed shares.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[15] A plan adopted before the effective date of this rule that contains an evergreen formula rather than setting forth a specific number of shares available under the plan must be submitted to shareholders for approval before the next increase in shares pursuant to the evergreen formula that occurs on or after the effective date of this rule, unless the plan (including the evergreen formula) was approved by shareholders before the effective date of this rule. *See also* footnote 8 above.

[16] The NYSE will establish a working group to advise with respect to the need for, and design of, mechanisms to facilitate implementation of the proposal that brokers may not vote on equity compensation plans presented to shareholders without instructions from the beneficial owners. This will not delay the immediate effectiveness of the broker-may-not-vote proposal.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–46 and should be submitted by November 1, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26037 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46606; File No. SR–OCC–2002–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Accelerating the Maturity Date for Certain Adjusted Security Futures Contracts

October 4, 2002.

I. Introduction

On June 25, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change OCC–2002–12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on August 13, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to permit OCC to accelerate the maturity date of stock futures contracts that have been adjusted to call only for delivery of a fixed amount of cash. If the issuer of an underlying security were party to a cash merger in which its stock was converted into a right to receive cash only, futures on that stock would ordinarily be adjusted to call for delivery of the cash. Under the proposed rule change, OCC would have authority to accelerate the maturity dates of the adjusted futures to fall on or shortly after the effective date of the merger. The final settlement price for all accelerated futures, regardless of maturity date, will be fixed at the amount of cash into which the underlying security has been converted.

The proposed rule change parallels OCC Rule 807, which governs the acceleration of European-style FLEX equity options. Acceleration of the expiration date for European-style options that have been adjusted to call for delivery of cash results in the acceleration of the options' ability to be exercised and therefore in the acceleration of payment of the exercise settlement amount to the holder if the option is in the money. Futures contracts, by contrast, are marked to market daily and settlement of an accelerated contract will occur through a final mark-to-market payment based on the amount of cash into which the underlying security has been converted.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to protect investors and the public interest.[3] By enabling OCC to advance the maturity dates of stock futures contracts when those contracts have been adjusted to call for a fixed amount of cash, the proposed rule change allows OCC to relieve market participants of the burden of continuing to maintain and account for open interest in contracts that no longer are subject to increases or decreases in value. Accordingly, the Commission finds that the rule change is consistent with OCC's obligation under Section 17A of the Act to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–12) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26021 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New System of Records and Proposed Routine Uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled the *Visitor Intake Process/Customer Service Record (VIP/CSR) System,* 60–0350, together with routine uses applicable to this system of records. The proposed system of records will consist of information collected from and about visitors to SSA field offices (FOs). This proposed system would assist SSA in improving the services it provides to visitors to our FOs.

DATES: We filed a report of the proposed system of records and routine uses with the Chairman of the Senate Governmental Affairs Committee, the Chairman of the House Government Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 2, 2002. The proposed system of records will become effective on November 11, 2002, unless we receive comments on or before that date that would warrant our not implementing the system of records.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46319 (August 6, 2002), 67 FR 52766.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela McLaughlin, Social Insurance Specialist, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone (410) 965–3677, e:mail: *pam.mclaughlin@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New System of Records, the VIP/CSR System, 60–0350

A. General Background

The *VIP/CSR System*, 60–0350, is designed to simplify and control all stages of interview and appointment tracking. The proposed *VIP/CSR System* will maintain information that SSA will use for management information and administrative purposes, such as tracking scheduled appointments and monitoring visitor information, and programmatic purposes associated with individuals' claims for benefits under programs administered by SSA.

B. Collection and Maintenance of the Data for the Proposed VIP/CSR System, 60–0350

SSA will collect the information that will be housed in the *VIP/CSR System* from visitors to SSA FOs, from other SSA Privacy Act systems of records such as the *Master Beneficiary Record, Supplemental Security Income and Special Veterans Benefits Record and Claims Folders System*, and via SSA processes used in conducting business with visitors (*e.g.*, appointment dates and times). The information will be maintained in manual and electronic formats. The information maintained will include personal information of the visitor such as name, Social Security number (SSN) and date of birth, appointment information and other information relating to the purpose of the visit. (See the ''Categories of Records'' section of the notice below for a description of the records that will be maintained in the *VIP/CSR System*.) We will retrieve information from the proposed system of records by using the visitor's/claimant's name and/or SSN. Thus, the *VIP/CSR System* will constitute a system of records under the Privacy Act.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed VIP/CSR System, 60–0350

A. Proposed Routine Use Disclosures

We are proposing to establish routine uses of information that will be maintained in the proposed new system as discussed below.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to information contained in this system of records. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to information contained in this system of records. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed new system of records and ensure that courts and other tribunals have appropriate information.

4. To contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

5. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs include: 5 U.S.C. 3111 regarding student volunteers and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals, and they need access to information in this system to perform their assigned agency duties.

6. Non-tax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904, as amended, with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of SSA Regulations permits us to disclose information under a routine use where necessary to carry out SSA programs.

Section 401.120 of SSA Regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 5 above will ensure efficient administration of the *VIP/CSR System*; the disclosure that would be made under routine use number 6 is required by Federal law. Thus, all the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Records Storage Medium and Safeguards for the Proposed New System, the VIP/CSR System, 60–0350

SSA will maintain information in the *VIP/CSR System* in electronic and paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer system that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas.

Contractor personnel having access to data in the proposed system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA and contractor personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. See 5 U.S.C. 552a(i)(1).

IV. Effect of the Proposed New System of Records, the VIP/CSR, 60–0350 on the Rights of Individuals

The information that will be maintained in the *VIP/CSR System* will enable SSA to provide more timely and efficient service to visitors conducting business in SSA FOs. This will increase customer satisfaction with the services SSA provides to the public. Additionally, SSA will adhere to all applicable provisions of the Privacy Act, Social Security Act and other Federal statutes that govern our use and disclosure of the information. Thus, we do not anticipate that this system of records will have an unwarranted effect on the privacy of individuals that will be covered by the *VIP/CSR System*.

Dated: October 1, 2002.

Jo Anne B. Barnhart,

Commissioner.

60–0350

SYSTEM NAME:

Visitor Intake Process/Customer Service Record (VIP/CSR) System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers visitors to the Social Security Administration (SSA—field offices (FOs) for various purposes (see ''Purpose(s):'' section below).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information about each visitor: (1) Visitor information such as Social Security number (SSN), full name and date of birth, when such information is provided by the visitor; (2) visit information such as the time visitor entered and left the office, an assigned group number, number of interviews associated with the visit and remarks associated with the visit; (3) appointment information such as date/time of appointment, source of appointment and appointment unit number (unit establishing appointment); (4) notice information such as close-out notice type (*e.g.*, title II 6-month closeout letter, title XVI SSA–L991) and close-out notice date/time when sent; (5) interview information such as each occurrence, subject of interview, estimated waiting time, preferred language, type of translator, number of interview in queue, interview disposition (*e.g.*, completed, deleted, left without service), interview priority, start and ending time and name of interviewer; and (6) SSN, full name and relationship to claimant/beneficiary, when such information is provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 222, 223, 225, 1611, 1615, 1631 and 1633 of the Social Security Act (42 U.S.C. 422, 423, 425, 1382, 1382d, 1383 and 1383b); the Federal Records Act of 1950 (Pub. L. 81–754, 64 Stat. 583), as amended.

PURPOSE(S):

Information in this system will be used to:

- Provide a means of collecting waiting time data on all in-office interviews in SSA FOs;
- Provide management information on other aspects of all in-office interviews in SSA FOs;
- Provide a source for customer service record data collection for such interviews, and
- Capture discrete data about the volume and nature of inquiries to support management decisions in the areas of process improvement and resource allocation.

Also, information collected from visitors to SSA FOs will be used for filing claims for benefits under title II, transacting post-entitlement actions if currently entitled to benefits under title II, filing claims for benefits under title XVI, transacting post-eligibility actions if currently eligible for benefits under title XVI, obtaining an SSN, transacting other actions related to a SSN, or other actions/queries that may require an interview at the Social Security Administration (SSA).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made for routine uses as indicated below.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. To contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

5. To student volunteers, individuals working under a personal services

contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

6. Non-tax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in both electronic and paper form (*e.g.*, magnetic tape and disc and microfilm).

RETRIEVABILITY:

Records in this system will be retrieved by the individual's SSN and/or name.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system. *See* 5 U.S.C. 552a(i)(1).

Contractor personnel and/or alternate participants having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

RETENTION AND DISPOSAL:

Records in this system are retained for one year when they pertain to documents provided by and returned to an individual, denial of requests for confidential information, release of confidential information to an authorized third party, and undeliverable material. Records are maintained for 4 years when they contain information and evidence pertaining to Social Security coverage, wage, and self-employment determinations or when they affect future claims development. Additional information collected such as waiting time information may be retained for longer periods for purposes of analysis and process improvement, without regard to individual records.

The means of disposal of the information in this system will be appropriate to the storage medium (*e.g.*, deletion of individual electronic records or shredding of paper records).

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system contains a record about him/her by writing to the system manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license. If an individual does not have identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURE(S):

Same as ''Notification'' procedure(s). Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

CONTESTING RECORD PROCEDURE(S):

Same as ''Notification'' procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from information collected from individuals interviewed in person in SSA FOs, from existing systems of records, such as the Claims Folders System, (60–0089), Master Beneficiary Record, (60–0090), Supplemental Security Income Record and Special Veterans Benefits, (60–0103), and from information generated by SSA, such as computer date/time stamps at various points in the interview process.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–25917 Filed 10–10–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13537]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas W. Harrelson, Maritime Administration, MAR–590, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–4610, FAX: 202–366–5522 or e-mail:

thomas.harrelson@marad.dot.gov. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Information Collection Activities Under Cargo Preference Statutes and Regulations, Including PR 17 and 46 CFR Part 381.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0013.

Form Numbers: MA–518.

Expiration Date of Approval: May 31, 2003.

Summary of Collection of Information: Title 46, App. U.S.C. 1241–1, Public Resolution 17, requires MARAD to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (Eximbank) to foreign borrowers. Public Resolution 17 requires that shipments financed by Eximbank and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

Need and Use of the Information: The prescribed monthly report is necessary for MARAD to fulfill its responsibilities under Public Resolution 17, to ensure compliance of ocean shipping requirements operating under Eximbank financing, and to ensure equitable distribution of shipments between U.S.-flag and foreign ships. MARAD will use this information to report annually to Congress the total shipping activities during the calendar year.

Description of Respondents: Shippers subject to Eximbank financing.

Annual Responses: 336.

Annual Burden: 168 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator,
Dated: October 7, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–26005 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–02–13546; Notice 1]

RIN 2127–AI72

Event Data Recorders

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

ACTION: Request for comments.

SUMMARY: Over the past several years, NHTSA has been actively involved with Event Data Recorders (EDRs) in motor vehicles. EDRs collect vehicle and occupant-based crash information. The agency's involvement has included sponsoring two working groups, using data from EDRs in crash investigations, and conducting research and development. Particularly since the two working groups have completed their work, we request comments on what future role the agency should take related to the continued development and installation of EDRs in motor vehicles.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 9, 2003.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590:

For technical and policy issues: Dr. William Fan, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–4922, facsimile (202) 366–4329.

For legal issues: J. Edward Glancy, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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II. Discussion of Issues
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  b. Technical issues
  c. Privacy issues
  d. Role of NHTSA
III. Rulemaking Analyses and Notices
IV. Submission of Comments

I. Introduction

Over the past several years, there has been considerable interest in the safety community regarding possible safety benefits from the use of Event Data Recorders (EDRs) in motor vehicles.

Types and uses of EDRs. EDRs collect vehicle and occupant-based crash information. They can be simple or complex in design, scope, and reach. Some systems collect only vehicle acceleration/deceleration data, while others collect these data plus a host of complementary data, such as driver inputs (*e.g.*, braking and steering) and vehicle systems status. [1]

The information collected by EDRs aids investigations of the causes of crashes and injury mechanisms, and makes it possible to better define safety problems. The information can ultimately be used to improve motor vehicle safety.

EDRs have been installed as standard equipment in an increasingly large number of light motor vehicles in recent years. Moreover, these devices have become more advanced with respect to the amount and type of data recorded. We estimate that essentially all model year 2002 passenger cars and other light vehicles have some recording capability, and that more than half record such things as crash pulse data.

Research and development. In 1997, the National Transportation Safety Board (NTSB) issued Safety Recommendation H–97–18 to NHTSA, recommending that we ''pursue crash information gathering using EDRs.'' Also, in that year, the National

[1] Since the term ''EDR'' can be used to cover many different types of devices, we believe it is important to define the term for purposes of this document. When we use the term ''EDR'' in this document, we are referring to a device that is installed in a motor vehicle to record technical vehicle and occupant-based information for a *brief* period of time (*i.e.*, seconds, not minutes) before, during and after a crash. For instance, EDRs may record (1) pre-crash vehicle dynamics and system status, (2) driver inputs, (3) vehicle crash signature, (4) restraint usage/deployment status, and (5) certain post-crash data such as the activation of an automatic collision notification (ACN) system. We are *not* using the term to include any type of device that either makes an audio or video record, or logs data such as hours of service for truck operators.

Aeronautics and Space Administration (NASA) Jet Propulsion Laboratory (JPL) recommended that NHTSA ''study the feasibility of installing and obtaining crash data for safety analyses from crash recorders on vehicles.'' In 1999, NTSB issued a second set of recommendations to NHTSA related to EDRs, H–99–53 and 54, recommending that we require EDRs to be installed on school buses and motor coaches.

In early 1998, NHTSA's Office of Research and Development (R&D) formed a Working Group comprised of industry, academia, and other government organizations. The group's objective was to facilitate the collection and utilization of collision avoidance and crashworthiness data from on-board EDRs.

The NHTSA EDR Working Group held six meetings between October 1998 and December 2000. The Working Group explored both original equipment manufacturer (OEM) and aftermarket systems, and also looked into data collection and storage.

In August 2001, the NHTSA EDR Working Group published a final report on the results of its deliberations.[2] Highlights of the Working Group findings were the following:

1. EDRs have the potential to greatly improve highway safety, for example, by improving occupant protection systems and improving the accuracy of crash reconstructions.

2. EDR technology has potential safety applications for all classes of motor vehicles.

3. A wide range of crash related and other data elements have been identified which might usefully be captured by future EDR systems.

4. NHTSA has incorporated EDR data collection in its motor vehicle research databases.

5. Open access to EDR data (minus personal identifiers) will benefit researchers, crash investigators, and manufacturers in improving safety on the highways.

6. Studies of EDRs in Europe and the U.S. have shown that driver and employee awareness of an on-board EDR reduces the number and severity of drivers' crashes.

7. Given the differing nature of cars, vans, SUVs, and other lightweight vehicles, compared to heavy trucks, school buses, and motor coaches, different EDR systems may be required to meet the needs of each vehicle class.

8. The degree of benefit from EDRs is directly related to the number of vehicles operating with an EDR and the current infrastructure's ability to use and assimilate these data.

9. Automatic crash notification (ACN) systems integrate the on-board crash sensing and EDR technology with other electronic systems, such as global positioning systems and cellular telephones, to provide early notification of the occurrence, nature, and location of a serious collision.

10. Most systems utilize proprietary technology and require the manufacturer to download and analyze the data.

The record of the NHTSA EDR Working Group, including both minutes of the meetings and the final report, is in Docket NHTSA–99–5218. Persons interested in additional information about EDRs may wish to examine section 12 of the final report, which sets forth a bibliography and references.

Meanwhile, in 2000, NHTSA sponsored a second working group related to EDRs, the NHTSA Truck & Bus EDR Working Group. This Working Group collected facts related to use of EDRs in trucks, school buses, and motor coaches. The record of this second Working Group is in Docket NHTSA–2000–7699. Its final report was published in May 2002.[3]

In 2001, NHTSA developed a website for highway-based EDRs located at the following address: *http://www-nrd.nhtsa.dot.gov/edr-site/index.html.*

Federal Register notices. On two previous occasions, the agency has published documents in the **Federal Register** addressing particular questions about its role with respect to EDRs. Both occasions involved the denial of a petition for rulemaking asking us to require the installation of EDRs in new motor vehicles. (63 FR 60270; November 9, 1998 and 64 FR 29616; June 2, 1999.) The first petitioner, Mr. Price T. Bingham, a private individual, asked the agency to initiate rulemaking to require air bag sensors to be designed so that data would be recorded during a crash, allowing it to be read later by crash investigators. The petitioner cited a concern about air bag deployments that might be ''spontaneous,'' but did not limit the petition to that issue. The second petitioner, Ms. Marie E. Birnbaum, also a private individual, asked us to initiate rulemaking to require passenger cars and light trucks to be equipped with ''black boxes'' (*i.e.*, EDRs) analogous to those found on commercial aircraft.

In responding to these petitions, NHTSA stated that it believed EDRs could provide information that is very valuable in understanding crashes, and that can be used in a variety of ways to improve motor vehicle safety. The agency denied the petitions because the motor vehicle industry was already voluntarily moving in the direction recommended by the petitioners, and because the agency believed ''this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.''

The agency has also received a third petition, from Dr. Ricardo Martinez, President of Safety Intelligence Systems Corporation, asking us to require the installation of EDRs in new motor vehicles. We have not yet responded to that petition. Copies of our responses to the two earlier petitions, and a copy of the petition submitted by Dr. Martinez, are being placed in the docket for this document.

Future actions. In light of the foregoing, the agency believes that it is appropriate to consider what role the agency should now be taking regarding the continued development of EDRs and their installation in motor vehicles.

II. Discussion of Issues

This section discusses a range of issues and presents a series of questions for public comment to aid the agency in evaluating what role it should take at this time relating to EDRs. The issues and questions are grouped as follows: (a) safety benefits, (b) technical issues, and (c) privacy issues. Finally, in section (d), we ask a general question about NHTSA's role in this area.

a. Safety Benefits

As we noted earlier, the information collected by EDRs aids investigations of the causes of crashes and injury mechanisms, and makes it possible to better define safety problems. This information can ultimately be used to improve motor vehicle safety. By way of illustration, the more that is known about such things as the change in velocity in real crashes and the more that is known about how key safety countermeasures work in real crashes (*e.g.*, which stage of a multi-stage air bag fired), the better the chances are of developing improved safety countermeasures and test procedures.

We invite comments on the following questions related to safety benefits:

(1) *Safety potential.* The NHTSA EDR Working Group concluded in its August 2001 final report (section 11.1) that EDRs have the potential to improve highway safety greatly. Do you agree with this finding? What do you see as the most significant safety potential of EDRs?

(2) *Application.* EDR technology has potential safety applications for all classes of motor vehicles. Do you believe different types of EDRs should be used for different vehicle types, such as light duty vehicles, heavy trucks,

[2] Event Data Recorders, Summary of Findings by the NHTSA EDR Working Group, August 2001, Final Report. (Docket No. NHTSA–99–5218–9)

[3] Event Data Recorders, Summary of Findings by the NHTSA EDR Working Group, May 2002, Final Report, Volume II, Supplemental Findings for Trucks, Motorcoaches, and School Buses. (Docket No. NHTSA–2000–7699–6)

intercity motor coaches, city transit buses and school buses? If so, why? If not, why not? Do you believe different types of EDRs should be used for different applications, such as private vehicles and commercial vehicles? If so, why? If not, why not?

(3) *Use of EDR data.* NHTSA has used EDR data primarily to improve its investigations and analyses of crashes. In some cases, EDR data includes information that the agency could not otherwise obtain; *e.g.*, which stage(s) of a multi-stage air bag deployed in a crash and when. In other cases, EDR data provide a more accurate indication of matters, *e.g.*, level of crash severity, that have previously been estimated based on crash reconstruction programs. NHTSA includes the new or improved information from EDRs in its crash databases as appropriate. We request comments concerning how other parties, including government agencies, vehicle manufacturers, insurance companies, and researchers, are using these data. We also request comments concerning other potential uses of these data, by NHTSA and/or other parties, which are related to improving vehicle safety, either in the short term or long term.

(4) *Future safety benefits.* What additional safety benefits are likely from continued development, installation, collection, storage, and use of EDRs?

(5) *Research databases.* NHTSA acquires EDR data in its Special Crash Investigations (SCI), National Automotive Sampling System Crashworthiness Data System (NASS–CDS), and Crash Injury Research and Engineering Network (CIREN) and incorporates them in its motor vehicle research databases. Have you ever used the EDR data stored in these databases? How could the presentation and/or use of EDR data be improved?

(6) *Prevention of crashes.* Several researchers have documented that the use of EDRs could have the potential to prevent crashes. Some studies of European fleets found that driver and employee awareness of an on-board EDR reduced the number of crashes by 20 to 30 percent, lowered the severity of such crashes, and decreased the associated costs. (See section 2.5.1.1 of the August 2001 NHTSA EDR Working Group final report.) These studies have generally been based on small samples and concentrated on commercial application of EDRs. We request comments on other studies of this type and on this potential benefit from EDRs, particularly for the U.S. driving population.

(7) *Possible new databases.* As more and more vehicles are equipped with EDRs, more EDR crash data will be generated. Collection of these data is likely to increase as state and local officials collect these data as part of their investigations. Do you have any recommendations for storing and maintaining a national or other database? Do you believe maintaining a database would be beneficial to motor vehicle safety? Please provide specific examples.

(8) *Standards.* What standards exist for collecting EDR data? The Society of Automotive Engineers (SAE) has a recommended practice (SAE J211) that provides guidance for collecting crash test data. Would it be possible to use this or similar standards for collecting EDR data regarding real-world crashes? The Institute of Electrical and Electronics Engineers, Inc. (IEEE) has recently initiated a new program to develop a standard for motor vehicle EDRs.[4] We request comments on the current activities of SAE, IEEE, and other standards organizations (U.S. and international) in developing standards for EDRs, and on what types of standards should be developed.

(9) *Standardization.* We request comments on whether there would be any safety benefits from standardizing certain aspects of EDRs, *e.g.*, defining specific data elements such as vehicle speed, brake application, air bag deployment time, etc. Would such standardization promote further development and implementation of automatic crash notification systems or other safety devices?

b. Technical Issues

(10) *Data elements.* The NHTSA EDR Working Group identified many data elements that could be collected by an EDR. See section 4 of the August 2001 final report.[5] More recently, the Truck & Bus EDR Working Group generated a list of 28 data elements. See section 4 of the May 2002 final report.[6] What data elements should be considered for inclusion in an EDR? Should they vary by vehicle type and/or application? Please provide a rationale for each element, with particular emphasis on how it would lead to improvements in safety. What costs are related to each of your proposed data elements?

(11) *Amount of data.* Many late-model vehicles are equipped with OEM-installed EDRs, but even among the vehicles of a given manufacturer, the type and amount of data collected vary. Do you have any recommendations for the amount of data to collect; *e.g.,* how long before the crash occurs should the data be collected? How should the data integrity be maintained?

(12) *Storage and collection.* Currently, data are accessed by a physical connection to the EDR unit. Manufacturers are developing wireless connections, *e.g.,* using a wireless probe near the crashed vehicle, or by having the on-board device upload the stored data to a central location using a telecommunications link, but such devices are not in widespread production. How should data be collected and stored in a motor vehicle? What measures should be in place to control traceability of EDR data to an actual vehicle or crash, such as EDR IDs or location and date stamping?

(13) *Training.* What training is needed for EDR data collection officials?

(14) *Survivability.* Recording and power systems need to withstand temperature and environmental effects, power failures, and the forces of different types and modes of crashes. They also need to be tamper proof. How can all these be accomplished? What needs to be done to ensure survivability of an EDR? What level of crash severity should an EDR be able to survive? What are the costs associated with producing an EDR with this level of crash survivability?

(15) *Effect of EDR technologies on your responses.* Indicate how the nature of the EDRs currently being installed in motor vehicles affects your answers to the questions in this notice. To the extent that future EDR technologies are foreseeable, how would the implementation of those technologies affect your answers?

c. Privacy Issues

The recording of information by EDRs raises a number of privacy issues.[7] These include the question of who owns the information that has been recorded, the circumstances under which other persons may obtain that information, and the purposes for which those other persons may use that information.

We recognize the importance of these privacy and related legal issues. The EDR Working Group, too, recognized their importance and devoted a considerable amount of time to discussing them. It also included a chapter on them in its August 2001 final report. Among other things, the chapter summarizes the positions that various participants in the EDR Working Group took on privacy issues.

[4] IEEE's program is titled IEEE Project 1616: Draft Standard, Motor Vehicle Event Data Recorders (MVEDRs). The web address for this program is *http://grouper.ieee.org/groups/1616/home.htm.*

[5] Docket No. NHTSA–99–5218–9.

[6] Docket No. NHTSA–2000–7699–6.

[7] We note that, in some press articles and op-ed pieces, persons have cited privacy issues as a reason for opposing the basic concept of EDRs.

We also recognize the importance of public acceptance of this device, whether voluntarily provided by vehicle manufacturers or required by the government. We note that General Motors informed the EDR Working Group (Docket No. NHTSA–99–5218–9; section 8.3.5) that it believes the risk of private citizens reacting negatively to the ''monitoring'' function of the EDR can be addressed through honest and open communications to customers by means of statements in owners' manuals informing them that such data are recorded. That company indicated that the recording of these data is more likely to be accepted if the data are used to improve the product or improve the general cause of public safety.

While we believe that continued attention to privacy issues is important, we observe that, from the standpoint of statutory authority, our role in protecting privacy is a limited one. For example, we do not have authority over such areas as who owns the information that has been recorded, or the circumstances under which other persons may obtain and use that information. These areas are covered by a variety of Federal and State laws not administered by NHTSA.

In our own use of information from EDRs, we are careful to protect privacy. As part of our crash investigations, including those with EDRs, we often obtain personal information. In handling this information, we are careful to comply with applicable provisions of the Privacy Act of 1974 and other statutory requirements that limit the disclosure of personal information by Federal agencies. In order to gain access to EDR data to aid our crash investigations, we obtain a release for the data from the owner of the vehicle. We assure the owner that all personally identifiable information will be held confidential.

We invite comments on the general topic of privacy as it relates to EDRs.

(16) *Privacy.* What organizations are analyzing privacy issues in the context of roadways, vehicles, and vehicle owners? Are any additional types of analyses needed? Are privacy concerns adequately met by the current Federal and State law and practices relating to the collection and use of the information recorded by EDRs? Are there significant differences in privacy and/or liability law among states, in the circumstances under which persons or institutions other than vehicle owners may obtain that information, and the purposes for which those other persons or institutions may use that information? In what circumstances are police officers and crash investigators (from government agencies or the private sector) allowed to access EDR data? What damages may result from inappropriate access to EDR data? What roles do technical solutions, such as data partitioning, encryption, and secure databases/vaults, play in addressing privacy concerns?

d. Role of NHTSA

(17) *Role of NHTSA.* Over the past several years, NHTSA has been actively involved with EDRs, through the two working groups discussed above, as part of its crash investigations, and in research and development. Particularly since one working group has completed its work and the other is nearing completion, we request comments on what future role the agency should take related to the continued development and implementation of EDRs in motor vehicles.

III. Rulemaking Analyses and Notices

NHTSA has considered the potential impacts of this request for comments under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This document was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' This document has been determined to be significant under the Department's regulatory policies and procedures.

This document seeks comment on what future role the agency should take related to the continued development and implementation of EDRs in motor vehicles. The agency could take a variety of nonregulatory and/or regulatory actions.

This document does not contain any regulatory actions. Further, this agency has not identified any regulatory actions sufficiently likely to warrant calculation of possible benefits and costs. The EDRs currently installed in motor vehicles cost very little as they take advantage of the existing sensors, processor and memory that the vehicles have. We estimate that an EDR that records basic air bag related data such as air bag deployment, deployment timing, and seat belt status, with moderate survivability, typically costs five dollars or less. We believe that a substantial percentage of light vehicles are already being equipped with such an EDR. However, EDRs with additional sensors, processing capability and memory, and greater survivability capabilities, could cost more.

Given the costs associated with various EDRs, and the fact that 17 million light vehicles are produced each year, a rulemaking proposal for EDRs could, but would not necessarily, have cost impacts that exceed $100 million annually. If NHTSA were to initiate rulemaking and develop a rulemaking proposal, the agency would calculate the costs and benefits associated with the specific proposal and place its analysis in the docket for that proposal. The agency would also conduct the various other rulemaking analyses required by applicable statutes and Executive Orders.

IV. Submission of Comments

How Do I Prepare and Submit Comments?

Interested persons are invited to submit comments in response to this request for comments. For easy reference, the agency has consecutively numbered its questions. We request that commenters respond to each question by these numbers and provide all relevant factual information of which they are aware to support their conclusion or opinions, including but not limited to statistical data and estimated cost and benefits, and the source of such information.

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESS.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given

above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESS.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are 9 a.m. to 5 p.m., Monday to Friday, except Federal holidays.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
- On that page, click on ''search.''
- On the next page (*http://dms.dot.gov/search/*), type in the five-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2001–12345,'' you would type ''12345.'' After typing the docket number, click on ''search.''
- On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

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

Issued: October 8, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–26006 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Refund Of Purchase Price Of United States Savings Bonds For Organizations.

DATES: Written comments should be received on or before December 12, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Refund Of Purchase Price Of United States Savings Bonds For Organizations.

Form Number: PD F 5410.

Abstract: The information is requested to support refund of purchase price of savings bonds to and organization.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for-profit/not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 500.

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.

Dated: October 7, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–25956 Filed 10–10–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Record

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of establishment of New System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''Telephone Care and Service Records–VA'' (113VA112).

DATES: Comments on this new system of records must be received no later than November 12, 2002. If no public comment is received, the new system will become effective November 12, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *''OGCRegulations@mail.va.gov''.* All relevant material received before

November 12, 2002 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed System of Records

The primary purpose of telephone care and service function is to provide veterans with clinical advice and education related to symptoms or problems an enrolled veteran caller may be experiencing. Calls may be made by family members but records of the calls will be maintained in the enrolled veteran's record. Except in the case of emergencies, clinical advice and education may only be provided to enrolled veterans. In order to better track and retrieve information about previous calls, all records of calls will be maintained under the name of the enrolled veteran. Records will not be retrievable by the name of the caller. Telephone care and service provides another mode of access for veterans that is available 24 hours a day, seven days a week from any place in the country.

The telephone care function acts as a part of the primary and ambulatory care delivery system and augments that system by providing advice to callers over the telephone. When patients or family members call with a concern or request, a record of the call is developed, whether it be a clinical or administrative issue. Clinical symptom calls are managed through the use of pre-approved clinical algorithms that ask a series of questions and based on the answers to each question moves to the next question, which eventually leads to the advice that is to be provided to the caller. The record of the call captures the questions asked, answers given, particularly those answers that reflect something abnormal, and the advice provided. Documentation of this type of information is consistent with standard requirements for medical record documentation, which captures symptoms and findings as they relate to how specific questions are answered and a plan of action established. This information is also recorded in the patient's medical record. At a minimum, documentation includes the complaint(s) and symptoms of the enrolled veteran, the algorithm and/or protocol used and the advice given. Information is recorded either electronically or in handwritten notes in the progress notes of the medical record and in the Call Center database.

Acting as a part of the primary and ambulatory care delivery system, the telephone care function may provide private sector providers or facilities with relevant clinical information about enrolled veterans in urgent or emergent situations. Information such as allergies, results of recent lab tests, medications, recent health history or procedures may be provided.

Telephone care and service for clinical symptom calls are provided in a number of ways, including contracts with private sector vendors, contracts with VA facilities or Networks that have developed clinical Call Centers, or through medical center-based Call Centers in primary care and other types of clinics. A number of VA facilities and Networks are providing access to telephone care and service through clinics or medical center-based Call Centers during the day and through Network or contracted Call Centers during non-administrative hours. Protocols or algorithms are used at any of these sites when advice is given by a registered nurse without first consulting with a clinician and all of these calls must be documented in the medical record and Call Center database.

Keeping records of all calls to a clinical Call Center in a separate database is the standard of practice for clinical Call Centers and is a required accreditation standard of the Utilization Review Accreditation Commission (URAC) for clinical Call Centers. Accreditation by URAC or another clinical Call Center accrediting body, if one should become available, is required by the VHA Directive 2000–35, Telephone Care and Service.

This system allows a record of all previous calls made by or for a veteran to be accessed whenever patients or family members call, which improves both the quality and the timeliness of addressing callers' concerns. Records are generally collected and stored electronically for ease of retrieval by the veteran's name or other personal identifier. The primary purpose of the data in this system of records is for rapid retrieval and ease of access to a record of all calls made by or for veterans, including the complaints of the patient, the findings according to the algorithms and the advice provided. This information is also used for follow-up calls to some patients. Information is also used for aggregation of data for the purposes of monitoring and improving quality. Though information is retrievable by individual patient identifier, when reporting aggregate information for purposes, such as quality, patient identifiers are not provided.

Access to such records provide Call Center staff with information about previous contacts and the clinical symptoms reported by veterans in those contacts. The protocol used, education provided, advice given and actions taken by the caller in previous calls are readily available to Call Center staff each time a veteran or family member calls, which improves the quality of the services.

Access to patient-specific information located in Call Center databases and storage areas is restricted to VA employees and contract personnel on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA Call Center file areas are locked after normal duty hours or when the Call Center is closed and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

VA and contracted Call Centers are held to the Department of Veterans Affairs Computer Security Policy and all free standing and contracted Call Centers are required to develop and implement a Computer Security Policy that is consistent with the National Policy. Call Centers located within a medical center are required to meet the requirements of that medical center's computer security policy.

Access to VA and contracted Call Centers and computer rooms is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Information in the Veterans Health Information Systems and Technology Architecture (VistA) may be accessed by authorized VA employees or authorized contract employees. Access to file information is controlled at two levels; the systems recognize authorized employees or contract employees by a series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on VA or contract personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA and contract

locations is controlled by individually unique passwords/codes.

Remote access to VHA information in VistA is provided to those Call Center employees, either VA or contract staff, that require access to information stored in the medical record. Access to this information is protected through hardened user access and is controlled by individual unique passwords. Additionally, contracted Call Centers, either VA or private sector, are required to have a separate computer security plan that meets national information security requirements.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following Routine Use disclosures of information maintained in the system:

1. Disclosure to a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of that individual.

Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

2. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

3. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individual's employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

VA must be able to report information regarding the care a health care practitioner provides to agencies and boards charged with maintaining the health and safety of patients.

4. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

VA health care facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices. VA must be able to disclose information for program review purposes and the seeking of accreditation and/or certification of health care facilities and programs.

5. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

6. Disclosure to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA.

VA must be able to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention or termination of the applicant or employee from the National Practitioner Data Bank in order to ensure VA has competent and qualified employees to provide patient care services.

7. Disclosure to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

VA must be able to report information to agencies and boards charged with tracking the practices of health care professionals.

8. Disclosure of information related to the performance of a health care student or provider may be made to a medical or nursing school or other health care related training institution or other facility with which there is an affiliation, sharing agreement, contract or similar arrangement when the student or provider is enrolled at or employed by the school or training institution or other facility and the information is needed for personnel management, rating and/or evaluation purposes.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, *etc.,* with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

VA occasionally contracts out certain of it functions, such as clinical care and the provision of Call Center services, when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, reporting of an investigation of an employee, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

VA must be able to provide information to agencies conducting background checks on applicants for employment or licensure.

11. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

12. On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to State or local agencies charged with protecting the public health as set forth in State law.

13. Disclosure of relevant information may be made to a non-VA physician or medical facility staff caring for a veteran for the purpose of providing relevant clinical information in an urgent or emergent situation.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or where disclosure is required by law.

A ''Report of New System'' and an advance copy of the new system notice have been sent to the appropriate Congressional committees and the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

113VA112

SYSTEM NAME:

Telephone Care and Service Records—VA.

SYSTEM LOCATION:

Records are located at each Call Center, which are operated at VA health care facilities or at contractor locations. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. In addition, information from clinical symptom calls is maintained in the patient's medical record at VA health care facilities and at the Department of Veterans Affairs (VA), 810 Vermont Avenue, NW., Washington, DC; Veterans Integrated Service Network Offices (VISNs); and Employee Education Systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning individual enrolled patients.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. Clinical care such as clinical symptoms, questions asked about symptoms, answers received, clinical protocol used and advice provided. It might include doctors' orders for patient care including nursing care, current medications, including their scheduling and delivery, consultations, radiology, laboratory and other diagnostic and therapeutic examinations and results; clinical protocol and other reference materials; education provided, including title of education material and reports of contact with individuals or groups. It includes information related to the patient's or family member's understanding of the advice given and their plan of action and, sometimes, the effectiveness of those actions.

2. Record of all calls made to the Call Center, including caller questions about medications, their uses and side effects; requests for renewals of prescriptions, appointment changes, benefits information and the actions taken related to each call, including the notification of providers and other staffs about the call.

3. Contact information from private sector medical facilities or clinicians contacting the VA about issues such as enrolled veterans' visits to an emergency department or admissions to a community medical center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 501.

PURPOSE(S):

The purpose of these records is to provide clinical and administrative support to patient care and provide medical and administrative documentation of the care and/or services provided in Call Centers. The records may be used for such purposes as improving Call Center staff's ability to provide telephone care services to veterans and the quality of the service by having immediate access to records of calls made previously by the veteran. Records may be used for purposes of notifying VA providers of the patient's condition and status, the criteria used to judge the status of the patient and/or the information given to the external provider on follow-up steps that they must take to receive authorization for the care.

Records may be used to assess and improve the quality of the services provided through telephone care services and to produce various management and patient follow-up reports. Records may be used to respond to patient, family and other inquiries, including at times non-VA clinicians and Joint Commission for Accreditation of Healthcare Organizations (JCAHO) or the Utilization Review Accreditation Commission (URAC) for the accreditation of a Call Center or facility. Records may also be used to conduct health care related studies, statistical analysis, and resource allocation planning using data that has been stripped of individual patient identifiers. The clinical information is integrated into the patient's overall medical record, into quality improvement plans, and activities of the facility, such as utilization review and risk management. They are also used to improve Call Center services, such as patient education, the improved integration of clinical care, the provision of telephone care services, and communication.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in the record system may include information protected by 38 U.S.C. 7332, *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that cannot be disclosed under a routine use unless there is also specific statutory authority permitting disclosure.

1. Disclosure may be made to a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of that individual.

2. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

3. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individual's employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

4. Disclosure may be made for program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

5. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

6. Disclosure may be made to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA.

7. Disclosure may be made to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

8. Disclosure of information related to the performance of a health care student or provider may be made to a medical or nursing school or other health care related training institution or other facility with which there is an affiliation, sharing agreement, contract or similar arrangement when the student or provider is enrolled at or employed by the school or training institution or other facility and the information is needed for personnel management, rating and/or evaluation purposes.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, reporting of an investigation of an employee, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

11. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

12. On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

13. Disclosure of relevant information may be made to a non-VA physician or medical facility staff caring for a veteran for the purpose of providing relevant clinical information in an urgent or emergent situation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and automated storage media, such as

magnetic tape, disc or laser optical medial.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifier of the enrolled veteran who is calling or about whom the call is being made.

SAFEGUARDS:

1. Access to patient-specific information located in Call Center databases and storage areas is restricted to VA employees and contract personnel on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA Call Center file areas are locked after normal duty hours or when the Call Center is closed, and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to VA and contracted Call Centers and computer rooms is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the Veterans Health Information Systems and Technology Architecture (VistA) may be accessed by authorized VA employees or authorized contract employees. Access to file information is controlled at two levels; the systems recognize authorized employees or contract employees by a series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on VA or contract personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA and contract locations is controlled by individually unique passwords/codes.

3. Remote access to VHA information in VistA is provided to those Call Center employees, either VA or contract staff, that require access to information stored in the medical record. Access to this information is protected through hardened user access and is controlled by individual unique passwords. Additionally, contracted Call Centers, either VA or private sector, are required to have a separate computer security plan that meets national information security requirements.

RETENTION AND DISPOSAL:

Records are to be disposed of in accordance with the Veterans Health Administration Records Control Schedule; 10–1. Paper records and information stored on electronic storage media are maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Chief Consultant for Primary and Ambulatory Care (112), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Officials maintaining the system: Network and/or facility director at the Network and/or facility where the individuals are associated.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA health care facility where care was rendered. Addresses of VA health care facilities may be found in VA Appendix 1 at the end of this document. Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write or visit the VA facility location where they normally receive their care.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Record sources include: enrolled patients, patients' families and friends, private medical facilities and their clinical and administrative staffs, health care professionals, Patient Medical Records-VA (24VA136), VistA (79VA19), VA health care providers, and Call Center nurses and administrative staff.

[FR Doc. 02–25996 Filed 10–10–02; 8:45 am]
BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 67, No. 198
Friday October 11, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 996, 997, 998, and 999

[Docket No. FV02–996–1 IFR]

Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulations

Correction

In rule document 02–22700 beginning on page 57129 in the issue of Monday, September 9, 2002, make the following correction:

On page 57142, in the table, under the column titled ''Type and grade category'', in the third entry from the top, the table is corrected in part to read as set forth below.

MINIMUM QUALITY STANDARDS: PEANUTS FOR HUMAN CONSUMPTION—WHOLE KERNELS AND SPLITS: MAXIMUM LIMITATIONS

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Excluding lots of ''splits''							
Virginia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00

[FR Doc. C2–22700 Filed 10–10–02; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0235; FRL–7198–4]

Clopyralid; Pesticide Tolerance

Correction

In rule document 02–24232 beginning on page 60152, in the issue of Wednesday, September 25, 2002, make the following correction:

On page 60154, in Table 1, in the second and third entries from the bottom, the table is corrected in part to read as set forth below.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY OF CLOPYRALID

Guideline No.	Study Type	Results
870.5450	Dominant lethal assay in rats.	No evidence of treatment related resorptions up to 400 mg/kg/day for 5 days.
870.5550	*In vitro* unscheduled DNA synthesis assay	There was no evidence of unscheduled DNA synthesis in initial or supplementary assays.

[FR Doc. C2–24232 Filed 10–10–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
October 11, 2002

Part II

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1421

2002 Farm Bill Regulations—Marketing Assistance Loans and Loan Deficiency Payments for Peanuts, Pulse Crops, Wheat, Feed Grains, Soybeans and Other Oilseeds; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AG72

2002 Farm Bill Regulations—Marketing Assistance Loans and Loan Deficiency Payments for Peanuts, Pulse Crops, Wheat, Feed Grains, Soybeans and Other Oilseeds

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final Rule.

SUMMARY: This final rule implements a portion of Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the farm commodity price support programs of the Farm Service Agency (FSA) and Commodity Credit Corporation (CCC). The 2002 Act authorizes Marketing Assistance Loans and Loan Deficiency Payments (LDP) for peanuts, wool, mohair, pulse crops (lentils, small chickpeas, dry peas), wheat, feed grains, soybeans and other oilseeds. Peanuts, wool, mohair and pulse crops, have not been eligible for these programs prior to enactment of this law and this rule adds these new commodities. Other provisions of the 2002 Act will be implemented under separate rules. The intended effect of this rule is to implement legislative requirements, add new crops to those eligible for assistance and increase the number of farm operators who may receive FSA and CCC program benefits.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Grady Bilberry, Director, Price Support Division, FSA/USDA, STOP 0512, 1400 Independence Ave. SW., Washington, DC 20250–0512; telephone (202) 720–7901; facsimile (202) 690–3307; e-mail: *Grady_Bilberry@wdc.usda.gov.* Persons with disabilities who require alternative means of communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule is economically significant according to Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of the changes made by this rule was completed and is summarized after the background section.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this final rule applies is 10.051—Commodity Loans and Loan Deficiency Payments.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Office of the Secretary, FSA and CCC are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Review

An environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. Section 1601 of the 2002 Act mandated that these regulations be promulgated no later than 90 days after the law's enactment. Further, this rule affects a large number of agricultural producers who are dependent upon its provisions for income support and need to know of its details as soon as possible because it has a profound effect on their planting and marketing decisions. Thus, FSA and CCC are attempting to satisfy both the Congressional mandate and their public missions by publishing this rule now, while continuing a good faith effort to comply with NEPA in as timely a fashion as possible, given the above-mentioned statutory and mission requirements. A copy of the draft environmental assessment will be made available for public review and comment upon request.

Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with its provisions. This rule is not retroactive. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because the Office of the Secretary, FSA and CCC are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about the subject matter of this rule. Further, this rule imposes no unfunded mandates, as define in UMRA, on any local, State, or tribal government or the private sector.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the planting and marketing decisions of an extraordinarily large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the **Federal Register**.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms, and other information collection activities needed to administer the program authorized by these regulations, are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically.

Currently, however, loan application forms are available electronically through the USDA eForms website for downloading. The regulation is available at FSA's Price Support Division internet site. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

Background

The 2002 Act provides for Marketing Assistance Loans and Loan Deficiency Payments (LDP's) for the 2002 through 2007 crop years. Marketing Assistance Loans and Loan Deficiency Payments are intended to: (1) Minimize potential loan forfeitures; (2) subsequent government accumulation of stocks; (3) minimize the cost incurred by the Federal Government in storing the commodity and; (4) allow a commodity produced in the United States to be marketed freely and competitively both domestically and internationally.

Producers of commodities that are eligible for loans can request marketing assistance loans or LDP's on their harvested commodities. Eligible producers request loans and LDP's on or before the final loan availability date for the applicable commodity. Marketing assistance loans are 9-month loans. Producers may repay the loan at a rate that is less than the original loan rate plus interest when market prices are below the commodity loan rates, which are established by law. Marketing assistance loans accomplish two objectives. First they provide producers with interim financing by providing money for continued farming operations while not requiring the crop to be marketed during a period which commonly coincides with a producer's peak labor demands. Second, they facilitate the orderly marketing and distribution of loan eligible commodities throughout the year, since it gives the producer another option beyond sale of the crop whenever funds may be needed.

As an alternative to a marketing assistance loan, a producer may obtain an LDP on their crop. An LDP is available to a producer who, although eligible to obtain a marketing assistance loan, agrees to forgo a marketing assistance loan for the commodity in return for an LDP. The payment is the established loan rate for the applicable loan commodity less the repayment rate multiplied by the eligible quantity of the commodity. The specific material changes made to the marketing assistance loan and LDP programs by the 2002 Act being implemented in this rule are as follows:

Loan Commodities Eligible

The previous law that authorized FSA and CCC to make marketing assistance loans was the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The 1996 Act limited marketing assistance loans to wheat, feed grains, oilseeds, cotton and rice. The specific oilseeds were eligible for marketing assistance loans, including sunflower, flaxseed, canola, rapeseed, safflower seed, mustard seed, crambe, and sesame seed.

The 2002 Act also authorizes marketing assistance loans for wheat, feed grains, oilseeds, cotton and rice. However, using the 2002 Act authority, USDA announced that loan eligible oilseeds for the 2002 crop year will be sunflower, flaxseed, canola, rapeseed, safflower seed and mustard seed. Thus, crambe and sesame seed are NOT eligible loan commodities for the marketing assistance loan and LDP programs.

More significantly, the 2002 Act extended eligibility for marketing assistance loans and LDP's to peanuts, wool, mohair, honey, small chickpeas, lentils, and dry peas. The 2002 Act refers to these new loan commodities as ''first time'' loan commodities in section 1205(f)(1). The revisions necessary to incorporate these new commodities into the programs covered by 7 CFR part 1421 are made throughout this rule, and several major crop specific revisions are discussed below. Conforming changes are being made to other CCC regulations in distinct final rules as a result of these expanded commodity provisions of the 2002 Act.

Other Eligibility Requirements for Producers

The 2002 Act also added conditions for a producer to receive a marketing assistance loan or LDP. The major requirement added is that producers must report all cropland on the applicable farm in which the eligible loan commodity is produced. Another restriction is that the producer must be in compliance with all wetland conservation requirements and other applicable conservation programs.

Another change that affects both the crop and producer who may be eligible is that program eligibility is no longer linked to ''contract'' commodities. The term ''contract'' commodities refers to provisions in the 1996 Act authorizing marketing assistance loans to eligible producers who produced commodities on a farm covered by a Production Flexibility Contract (PFC). The 2002 Act terminated the PFC program and authorizes marketing assistance loans to eligible producers of any eligible loan commodity produced on a farm for the 2002 through 2007 crop years covered. Thus, farms are not required to be covered by a PFC to be eligible. This relaxed requirement also applies to 2001-crop marketing assistance loans. Thus, commodities produced in 2001 on a farm not covered by a PFC are eligible for LDP's.

Beneficial Interest

As used in this rule beneficial interest in a commodity, means that all of the following remain with the producer: (1) Control of the commodity; (2) risk of loss; (3) title to the commodity. Beneficial interest requirements remain unchanged for most loan commodities, and, typically, all producers must retain beneficial interest in the commodity offered as collateral for a marketing assistance loan or LDP. However, the 2002 Act provides special treatment for 2001-crop and the ''first time'' loan commodities. Producers who lost ''beneficial interest'' in an eligible 2001 commodity before applying for a loan or LDP on that crop, may be eligible. Furthermore, producers of 2002-crop wool, mohair, honey, dry peas, lentils, and small chickpeas who lost beneficial interest in the 2002 crop prior to publication of the regulations are also eligible for LDP's. Likewise, producers of 2002 crop peanuts who before applying for a loan or LDP lost beneficial interest in a 2002 crop of peanuts are eligible for LDP's. Producers must request the LDP on or before the applicable final loan availability date which is January 31, 2003, for peanuts. For those LDP requests submitted after beneficial interest has been lost, the LDP rate will be based on the date it was lost. The exemptions provided in the 2002 Act are limited to those specified here. Beneficial interest must be maintained in order to receive a loan or an LDP in 2003 and subsequent crop years.

Hay, Silage and Unshorn Pelts

The 1996 Act authorized marketing assistance loans or LDP's for hay or silage. However, the 2002 Act, limits hay or silage and unshorn pelts derived from lambs to being eligible for an LDP only.

Warehouse Licensing Requirements

Eligible loan commodities offered as collateral for marketing assistance loans must be stored in an on-farm storage structure or warehouse approved by CCC. As the programs were administered under the 1996 Act, unlicensed storage facilities were not approved for storing collateral for a marketing assistance loan. The 2002 Act authorizes loan commodities serving as marketing assistance loan collateral to be stored in unlicensed warehouses if the producer redeems the marketing assistance loan immediately with a commodity certificate.

Treatment of First Time Loan Commodities

The 2002 Act directed USDA to make ''first time'' loan commodities available for marketing assistance loans and LDP's. Thus, for the first time, wool, mohair, honey, peanuts, lentils, small chickpeas and dry peas are eligible for the marketing assistance loan and LDP programs. As with all of the currently eligible loan commodities these loans are nonrecourse. Thus, producers may deliver the commodity pledged or repay the loan at the alternative repayment rate, a rate less than principal plus accrued interest. If such loans were, on the other hand, recourse loans, they would have to be repaid with principal plus interest, and the collateral could not be delivered or forfeited.

Wool and Mohair

The National Wool Act (Wool) Act has served as the basis for the FSA and CCC wool and mohair price support programs from 1955 to 1995. Public Law 103–130 enacted in November, 1993, was passed by Congress especially to phase out the USDA Wool Act programs over the 1994 and 1995 marketing years. However, subsequent legislation provided that the Secretary make recourse loans for mohair produced in 1999 and 2000. Under the recourse loans, producers had to repay marketing assistance loans at principal plus interest and commodities pledged as collateral for recourse loans could not be delivered or forfeited to settle a outstanding loan. The 2002 Act provides for wool and mohair nonrecourse loans. Thus, now, producers who offer wool or mohair as collateral to secure a nonrecourse loan may repay their loan at the alternative repayment rate or forfeit the wool or mohair to satisfy the loan, just like other eligible commodities.

Peanuts

The 2002 Act made profound changes to the FSA and CCC peanut program. Under title III of the Agricultural Adjustment Act of 1938, USDA administered a two-tiered price support program for peanuts. Eligible producers were limited to an established quota for domestic marketing. The old program limited the producers ability to market peanuts domestically and the old peanut price support program designated and authorized three area Marketing Associations to manage the commercial marketing of peanuts grown in the U.S. This program was terminated by the 2002 Act, which now extends the marketing assistance loan and LDP program coverage to peanuts for the 2002 through 2007 crops. The 2002 Act provides producers with the responsibility for and flexibility of marketing their own peanuts. Producers will be more involved in the orderly marketing of their peanuts. The 2002 Act revokes the authority of the Marketing Associations to manage and sell peanuts on behalf of the Commodity Credit Corporation. Producers may request marketing assistance loans from FSA. USDA will pay storage, and associated costs, according to this rule, for marketing assistance loan peanuts.

National Loan and Repayment Rates

Congress announced the national loan rates for the 2002 through 2007 crop years for the eligible loan commodities. The loan rates specified by 2002 Act are as follows:

	2002–03 crop year	2004–07 crop year
Wheat	$2.80/bu.	$2.75/bu.
Corn	1.98/bu.	1.95/bu.
Grain sorghum	1.98/bu.	1.95/bu.
Barley	1.88/bu.	1.85/bu.
Oats	1.35/bu.	1.33/bu.
Rice	6.50/cwt.	6.50/cwt.
Soybeans	5.00/bu.	5.00/bu.
Other oilseeds	0.096/lb	0.093/lb
Peanuts	355/ton	355/ton
Graded wool	1.00/lb	1.00/lb
Nongraded wool	0.40/lb	0.40/lb
Mohair	4.20/lb	4.20/lb
Small chickpeas	7.56/cwt.	7.43/cwt.
Lentils	11.94/cwt.	11.72/cwt.
Dry peas	6.33/cwt.	6.22/cwt.

The 2002 through 2007 crop year loans rates were increased for wheat, corn, grain sorghum, and oilseed from those provided in the 1996 Act.

In addition, the Secretary may differentiate other oilseed loan rates to reflect market price relationships among the different other oilseed types—an authority not provided in the 1996 Act. To the extent practicable, USDA will make adjustments to ensure ''weight averaged'' base county loan rates are consistent and reflect current market conditions. Also, the basis for adjustments to base county loan rates, will be used when determining alternative repayment rates for the applicable loan commodity, considering location and quality of the loan commodities. Beyond adjustments for market conditions, the Secretary may adjust repayment rate as necessary to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government domestically and internationally, and minimize discrepancies in marketing loan benefits between States and counties.

Payments In Lieu Of Loan Deficiency Payments For Grazed Acreage

The 2002 Act also provides a new payment program for producers who graze livestock on land that may otherwise be used to produce LDP eligible crops, also known as ''graze-out'' provisions. Producers who would be eligible for a wheat, barley, oats, or triticale LDP but instead use those planted crops to graze livestock will be eligible for LDP's if they agree to forgo harvesting of that acreage. The yield for the purposes of calculating the payment on graze-out wheat, barley and oats are those established for direct payments under the Direct and Counter-Cyclical Payment Program (DCP) authorized by the 2002 Act (7 U.S.C. 7913). The payment yield for triticale is the farm's wheat payment yield for direct payments under the DCP. For farms where a program payment yield is unavailable, USDA will establish an appropriate payment yield considering the yields applicable to the commodity for at least three similar farms. The payment amount per commodity is the payment rate multiplied by the payment yield, multiplied by the number of acres grazed. Triticale will be based on the predominant class of wheat in the county. Graze-out acreage planted to this wheat, barley, oat, or triticale will not be eligible for an indemnity payment under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) or a payment under the noninsured crop disaster assistance program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7201 *note*).

Cost/Benefit Assessment Summary

The changes made by the 2002 Act will have a significant impact on CCC and FSA funding and expenditures. The 2002 Act expands eligibility considerably for marketing assistance loans, loan deficiency payments and the price support programs governed by the regulations amended by this rule. Also, while the loan rate for soybeans is decreased, the rate for wheat, barley, and corn is increased, and other eligible crops are added, such as pulse crops, and peanuts. The net fiscal impact of the changes made by the 2002 Act and promulgated by this rule compared with continuing 1996 Act provisions will be to increase governmental outlays as shown in the Table 1.

TABLE 1.—AVERAGE ANNUAL CHANGE IN GOVERNMENT OUTLAYS BY PROGRAM, FISCAL YEARS 2002–2007

[In million of dollars]

Program	Average [1]
Loan Rates for Covered Commodities [2]	859
Loan Deficiency-like Payments for Grazed—Wheat, Barley, Oats	12
Triticale	26
Pulse Crops [3]	18
Wool and Mohair	2
Honey	80
Peanuts	997
Total	1,994

[1] Average annual outlay change.
[2] Includes wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds.
[3] Dry peas, lentils, and small chickpeas.

Covered Commodities, Except Other Oilseeds

Outlays for marketing assistance loan and loan deficiency payments are projected to average about $4.1 billion during FY's 2002–2007. The outlays progressively decline during the period. Market prices for each commodity are estimated to increase in this period, eroding LDP rates and marketing loan benefits. For some crops, outlays disappear completely by 2007. Outlays for marketing assistance loans and LDP's are projected to be about $859 million higher per year than they were under the 1996 Act. The increase is mainly due to higher loan rates (except for rice). Soybean projected loan outlays decrease because soybean acreage is projected to shift to other crops, demand remain constant, soybean supplies decrease and prices increase, according to capitalist market forces. For rice, the loan rate is unchanged and projected loan outlays decline slightly.

Other Oilseeds

Setting Differentiated National Loan Rates

Market prices vary substantially among the various types of other oilseeds (oil-type sunseed, other-type (confection) sunseed, flaxseed, canola, rapeseed, safflower, and mustard seed). The 1996 Act required that loan rates be set ''individually'' for the other oilseed types based on the all-sunflower seed price. The 2002 Act gives the Secretary the latitude necessary to differentiate other oilseed loan rates to reflect market price relationships among the different other oilseed types.

Setting loan rates to reflect market price relationships among the other oilseed types reduces past market distortions that have resulted from using a single loan rate for all the other (minor) oilseeds types. Loan rate-driven distortions occur during low-price periods when large LDP's for the lower-valued oilseeds (oil-type sunflower seed, canola, and flaxseed) have the undesirable effect of creating incentives to shift acreage away from the higher-valued oilseeds (confection sunflower seed and safflower).

Establishing differentiated other oilseed loan rates eliminates the incentive to shift acreage from higher-valued to lower-valued oilseeds. This is particularly important for sunseed where low prices and high oil-type sunseed LDP'S during recent years resulted in USDA setting 2000 and 2001 loan and loan repayment rates equal for oil-type and confection sunseed. (Confection repayment rates were not allowed to drop more than $3.00 per cwt. below loan rates, thus limiting confection LDP'S to $3.00 per cwt.). This change was necessary to maintain confection sunseed acreage as oil-type sunseed LDP'S raised relative per-acre returns to levels that discouraged confection planting.

The announced 2002 loan rates for oil-type and confection sunseed reflect a $2.95-per-cwt. spread at the national level. This spread is consistent with the spread that existed during the early 1990's before the loan program began to distort sunseed plantings and prices. It also establishes a guaranteed price spread that the sunseed industry indicates is critical to maintaining a balance of production between the sunseed types.

Differentiating other oilseed loan rates based on market price relationships is projected to cost less than setting all other oilseed loan rates at the same level over the 7-year life of the 2002 Act. Other oilseed loan program outlays are projected to average $24 million per year for crop years 2002–2007. Loan program outlays under the alternative of setting loan rates at the same level are projected to average $48 million per year.

The use of market-based loan rates is expected to reduce canola, flaxseed, and oil-type sunseed acreage and increase confection sunseed, mustardseed, and safflower acreage. This will bring acreage, production, and prices among the other oilseeds more in line with market demand. Planted acreage is expected to average about 250,000 acres lower for crop years 2003–2007 than it would be under a single loan rate. This represents a relatively small 5-percent annual reduction in total other oilseed acreage. Historically, other oilseed acreage has varied widely. Since 1995, plantings have ranged from 3.2 million acres in 1996 to 5.4 million acres in 1999

Designating Other Oilseeds Eligible for Loans and LDP

Crambe is not designated as an ''other oilseed'' under the 2002 Act, although it was loan-eligible under the 1996 Act for crop years 1999, 2000 and 2001. This change is expected to eliminate $367,000 in loan program outlays during the 2002–2007 crop years. Some of these savings will be offset as producers shift production into other covered commodities. Without the substantial level of price support provided to crambe during recent years, acreage is expected to continue to decline. Crambe plantings have declined from 42,000 acres in 1998 to an estimated 14,000 acres for 2002. Lack of designation as an other oilseed will eliminate the potential of an additional $1.3 million in projected direct payments to crambe producers during the life of the 2002 Act.

Sesame also is not designated as an other oilseed under the 2002 Act. It was designated as loan-eligible under the 1996 Act for crop years 2000 and 2001. Because of its relatively high price, sesame has not generated any loan program benefits and was not expected to under the 2002 Act, even if it were designated as loan-eligible. Lack of designation as an ''other oilseed,'' will eliminate the potential for a projected $210,000 in direct payments to sesame producers.

Wool and Mohair

USDA does not publish official wool or mohair supply-use-price projections. Private analysts and university researchers expect that sheep and lamb numbers in the United States will continue on a long-term downward trend. Falling domestic demand for

lamb meat and strong competition from imports of foreign lamb will weigh on domestic production. Falling numbers of sheep and a focus on selection of sheep based on meat attributes are expected to result in falling wool production for the foreseeable future. However, tightening supplies of wool, both domestically and abroad, are expected to result in a slow rebound in wool prices from their current depressed levels. Consequently, wool program outlays are expected to decrease in subsequent years. Mohair production, prices and program outlays are expected to follow a similar path.

Wool program costs are expected to range from about $25 million in 2002 to $6.4 million in 2007. Mohair program costs are expected to range from about $3.6 million in 2002, to $2.0 million in 2007. Government outlays are expected to increase producer income about $28 million in the initial program year, declining steadily to about $8.4 million in 2007. Neither domestic use nor exports of wool and mohair are expected to be significantly impacted by the program.

Pulses (Dry Peas, Lentils, and Small Chickpeas)

The 2002 Act provides nonrecourse marketing assistance loans and loan deficiency payments to dry peas, lentils and small chickpeas for the first time. It is likely that the availability of these provisions will increase the supply for the 2002–2007 crops of dry peas and lentils resulting in a minor decrease in wheat production. Small chickpea production is expected to be unchanged due to planting flexibility provisions with no change in expected returns including program benefits. Producers of dry peas and lentils are expected to receive additional marketing loan/loan deficiency benefits of $156 million over the 2002–2007 period. Wheat producers will receive $374 million less in benefits (loan outlays—$15 million lower and counter-cyclical payments—$359 million lower) as the decline in acreage increases the market price of wheat which lowers its LDP and counter-cyclical payment rates. Hence, a net decrease of $218 million in program outlays is expected. Likewise, taxpayer burden will decrease by $218 million over the same period. Even though food use demand for dry peas and lentils is believed to be relatively price-inelastic, consumers are expected to gain $12 million in additional income over the program period due to lower expected prices. The cost savings for feed purchases to livestock producers is expected to total $13 million over the program period as increases in feed pea production reduce prices.

Loan Deficiency-like Payments for Grazed Acreage of Wheat, Barley, Oats, and Triticale

The 2002 Act makes wheat, barley, oats and triticale available for grazing LDP's if the commodity is grazed. It is assumed that the availability of grazing LDP's will not affect the supply, demand, and price of these commodities for the 2002–2007 crops. Thus, these commodities LDP rates will not be impacted. Producers are expected to receive grazing LDP's of $71 million over the 2002–2007 period, increasing projected total revenues the same amount. The additional grazing LDP's also increase program outlays and, therefore, taxpayer burden by $71 million over the same period. The consumer impact will be negligible because crop and livestock prices are expected to be unchanged. Thus, food prices will not change.

Peanuts

Under the previously existing USDA peanut program producers delivered the peanuts to a buying point where the peanuts were graded and a check was written based on the weight of the peanuts adjusted for grade and minus fees. Quota peanuts received $610 per ton and additional peanuts received a lower support rate ($132 in 2001). Contract additional peanuts for export received a price less than $610 but generally above the additional support price. The storage of loan collateral was paid by one of three Marketing Associations (Associations) authorized under the previous statute. The Associations managed the peanuts and any profits or loss were passed on to the producers of quota peanuts. Any losses incurred under the program were paid the following year by an assessment on producers.

The new 2002 Act peanut program requires producers to be more involved in the marketing process. They can apply for a market assistance loan and place the peanuts in storage, request a loan deficiency payment or sell the peanuts commercially. Peanuts placed under loan can be redeemed by the producer prior to loan maturity, and sold to commercial handlers. The loan will be repaid at a rate determined by the Secretary of Agriculture. If the peanuts are not redeemed they will be forfeited and become the property of CCC.

Producer income is not expected to decline significantly under the new program despite the gap between the $355 loan rate and the old $610 support price. Under the 2002 Act producers may receive funds from three sources other than the marketing loan or the loan deficiency payment. These include a direct payment of $36 per ton, compensation for lost quota at a rate of 11 cents per pound per year for 5 years, and a counter-cyclical payment equal to the difference between the market price (or market loan rate if it is higher) plus the direct payment of $36 per ton and the $495 target price. DCP is being promulgated under a rule to follow this one. Furthermore, all of the peanuts produced are eligible for the $355 per ton marketing assistance loan or an LDP. Under the old program the average price received by the producer was a blend of the $610 quota support for quota peanuts, the contract additional price and the support price for additional peanuts.

Total peanut production is expected to increase slightly under the new program. Consumers may pay slightly less for peanut products because of the projected lower peanut prices paid by manufacturers. However, because of the very inelastic price elasticity of demand for peanuts, this is expected to be insignificant.

Shellers and manufacturers will be paying significantly less for peanuts under the 2002 program. The actual price they pay will be determined by the market price of peanuts, which is expected to be significantly below the $610 support price under the old program.

The loan repayment rate established by the Secretary will to some degree influence the market price for peanuts. This price will be determined on a weekly basis after several factors are evaluated. These factors may include, but not be limited to, marketing loan activity, domestic commercial prices and price and sales activity in the Western Europe and other international peanut markets. The process will be evaluated on a continuous basis and refined, as better information becomes available.

It is likely that the supply of peanuts will meet the demand for domestic edible peanuts in the U.S. This market is relatively stable and grows at about the same rate as the general population. Any significant growth in the production of U.S. peanuts will be in the export sector. This market will depend on the world equilibrium market price of peanuts.

The cost of marketing loans will be the cost of handling and storing the peanuts during the 9-month loan period plus any loses incurred disposing of forfeited peanuts. The storage and handling costs have been estimated by

the Congressional Budget Office at $74 million during the 2002–2007 period. The cost of the loan deficiency portion of the program has been estimated at $406 million over the 2002–2007 period. Because food use demand for peanuts is extremely price inelastic, consumers are expected to gain little in additional income over the program period, but peanut prices are not expected to drop.

There are many aspects of the 2002 Act that make the cost of the program open-ended. There is no limit on the amount of peanuts that can be produced. The price of peanuts will be determined in the market place and the cost of the LDP and the counter-cyclical payments could be significantly above the $406 million if production increases and prices drop. U.S. peanuts are currently moving into international trade at about $200 per farmer stock short ton, well below the average loan rate of $355. Thus, while these estimates are valid based on what the Agency knows, the real economic effects of the new peanut program are very likely to vary.

For specific details or further information regarding the cost/benefit assessment contact Mr. Phil Sronce at 202–720–2711.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Reporting and record keeping requirements.

For the reasons set out in the preamble, 7 CFR part 1421 is amended as set forth below.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR THE 2002 THROUGH 2007 CROP YEARS

1. The authority citation for 7 CFR part 1421 is revised to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

2. The title of part 1421 is revised as set forth above.

3. Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 Through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds, (Canola, Crambe, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed) and Farm-Stored Peanuts (§§ 1421.1–1421.32) is removed and Subparts A, B and C are added in its place as set forth below.

4. Subpart—Grazing Payments for 2001 Crop of Wheat, Barley, or Oats (§§ 1421.300–1421.307) is designated as Subpart D.

5. The subpart entitled Subpart—Regulations Governing the Wheat and Feed Grain Farmer-Owned Reserve Program for 1990 Through 1995 Crops (§ 1421.200) is removed.

Subpart E—Standards for Approval of Warehouses for Grain, and Similarly Handled Commodities

6. Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans and Seed (§§ 1421.5551–1421.5559) is designated as Subpart E and the heading is revised to read as set forth above.

7. For the convenience of the user, the table of contents for subparts A through E follows:

Subpart A—General

Sec.
1421.1 Applicability.
1421.2 Administration.
1421.3 Definitions.
1421.4 Eligible producers.
1421.5 Eligible commodities.
1421.6 Beneficial interest.
1421.7 Requesting marketing assistance loans and loan deficiency payments.
1421.8 Eligible quantity.
1421.9 Basic loan rates.
1421.10 Market rates.
1421.11 Spot checks.
1421.12 Production evidence.
1421.13 Handling payments and collections.
1421.14 Obtaining peanut loans.

Subpart B—Marketing Assistance Loans

1421.100 Applicability.
1421.101 Maturity dates.
1421.102 Adjustment of basic loan rates.
1421.103 Approved storage.
1421.104 Marketing assistance loan making.
1421.105 Farm-stored marketing assistance loans.
1421.106 Warehouse-stored marketing assistance loan collateral.
1421.107 Warehouse receipts.
1421.108 Transfers and reconcentrations.
1421.109 Personal liability of the producer.
1421.110 Repayments.
1421.111 Commodity certificate exchanges.
1421.112 Loan settlement.
1421.113 Foreclosure.
1421.114 Recourse loans.

Subpart C—Loan Deficiency Payments

1421.200 Applicability.
1421.201 Loan deficiency payment rate.
1421.202 Loan deficiency payment quantity.
1421.203 Personal liability of the producer.

Subpart D—Grazing Payments for 2002–2007 Crop Years of Wheat, Barley, Oats and Triticale

1421.300 Applicability.
1421.301 Administration.
1421.302 Definitions.
1421.303 Eligible producer and eligible land.
1421.304 Time and method for application.
1421.305 Payment amount.
1421.306 Misrepresentation and scheme or device.
1421.307 Refunds; joint and several liability.

Subpart E—Standards for Approval of Warehouses for Grain, and Similarly Handled Commodities

1421.5551 General statement and administration.
1421.5552 Basic standards.
1421.5553 Bonding requirements for net worth.
1421.5554 Examination of warehouses.
1421.5555 Exceptions.
1421.5556 Approval of warehouses, requests for reconsideration.
1421.5557 Exemption from requirements.
1421.5558 Contract and application and inspection fees.
1421.5559 OMB control numbers assigned pursuant to Paperwork Reduction Act.

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

8. The text of the new subparts A, B and C reads as follows:

Subpart A—General

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 2002 through 2007 crops of barley, small chickpeas, corn, grain sorghum, lentils, oats, dry peas, peanuts, rice, wheat, wool, mohair, oilseeds and other crops designated by Commodity Credit Corporation (CCC). These regulations set forth the general provisions under which marketing assistance loans and loan deficiency payments (LDP) will be administered by the CCC. Additional terms and conditions are in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive marketing assistance loans and LDP's.

(b)(1) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the marketing assistance and loan deficiency payment programs for the commodities specified in paragraph (a) of this section are available in Farm Service Agency (FSA) State and county offices. The forms for use in these programs will be prescribed by CCC.

(2) Loan deficiency payments shall be available for unshorn pelts, hay and silage.

(c) Marketing assistance loans and loan deficiency payments will not be available for any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(d) Producers who produced eligible loan commodities are eligible for

marketing assistance loans or loan deficiency payments.

§ 1421.2 Administration.

(a) The marketing assistance loan and loan deficiency payment program shall be administered under the general supervision of the Executive Vice President, CCC and shall be carried out in the field by FSA State and county committees, respectively.

(b) State and county committees, and representatives and employees thereof, cannot modify or waive any requirement of this part, except as provided in paragraph (e) of this section.

(c) The State committee shall take any required action not taken by the county committee. The State committee shall also:

(1) For the 2001 crop year only, allow producers who violated the terms and conditions of the note and security agreement which resulted in the producer losing beneficial interest in the commodity before repaying the loan and the county committee determined the producer acted in good faith, to repay the loan at a rate that is the lesser of the loan plus interest; or the alternative repayment rate, as determined under § 1421.10, in effect on the date the beneficial interest was lost. In cases, where a locked-in repayment rate under § 1421.110 was applicable, the prescribed form is considered null and void.

(2) Correct or require correction of an action taken by a county committee that is not in compliance with this part; or

(3) Require a county committee to not take an action or implement a decision that is not under the regulations of this part.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the marketing assistance loan and loan deficiency payment program.

(f) A representative of CCC may execute marketing assistance loan and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions in this section apply for all purposes of program administration. Terms defined in part 718 of this title and parts 1412 and 1425 of this chapter also apply, except where they conflict with the definitions in this section.

Basic loan rate means the loan rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

Commodity certificate exchange means the exchange, as provided for in part 1401 of this chapter, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. Such certificate may not be transferred or exchanged for the inventory of CCC.

Designated marketing association means a marketing association or cooperative, approved by the Secretary, to issue marketing loan benefits on behalf of CCC for peanuts.

Field direct loan deficiency payment means a loan deficiency payment issued to producers who:

(1) Will lose beneficial interest immediately at harvest or;

(2) Immediately feed the commodity during harvest.

High moisture commodities means corn and grain sorghum normally harvested and intended to be stored or marketed in a high moisture condition.

Incorrect certification means the certifying of a quantity of a commodity for the purpose of obtaining a marketing assistance loan or a loan deficiency payment in excess of the quantity eligible for such marketing assistance loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments.

Loan commodities means wheat, corn, grain sorghum, barely, oats, rice, soybeans, other oilseeds, peanuts, wool, mohair, dry peas, lentils, and small chickpeas and other crops designated by CCC.

Loan deficiency payment means a payment received in lieu of a loan when the CCC-determined value is below the applicable county loan rate.

Mohair means the hair sheared from a live Angora goat. Mohair does not include pelts, or hides or mohair shorn from pelts or hides.

Oilseeds means any crop of sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

Other crops designated by CCC means with respect to eligibilities for benefits under this part:

(1) Those crops harvested as other than grain, such as silage, haulage, earlage;

(2) Specific crops designated for grazing; or

(3) As otherwise designated by CCC.

Pulse crops means any crop of dry peas, lentils, and small chickpeas as defined by CCC.

Servicing agent bank means the bank designated as the financial institution for a CMA or a designated marketing association.

Small chickpea means any chickpea that meets the definition of a chickpea according to the Grain Inspection, Packers and Stockyards Administration (GIPSA), Federal Grain Inspection Service (FGIS) and falls below a 20/64th sieve.

Unauthorized disposition means the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the county committee.

Unauthorized removal means the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures that were designated when the loan was approved to any other storage structure, whether or not such structure is located on the producer's farm, without prior written authorization from the county committee.

Unshorn pelt means the removed skin and attached wool from a slaughtered lamb that has never been shorn.

Warehouse receipt means a receipt containing the required information prescribed in this part and is:

(1) A pre-numbered, negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC;

(2) An electronic warehouse receipt issued by such warehouse recorded in a central filing system or system maintained in one or more locations which are approved by FSA to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

Wool means the fiber sheared from a live sheep.

§ 1421.4 Eligible producers.

(a) To be an eligible producer, the producer must:

(1) Be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity that produces an eligible commodity as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop. With respect to wool and mohair, the producer must own, other than through a security interest mortgage, or lien, the sheep and goats that produced the wool and mohair respectively for a period of not less than 30 days.

(2) Comply with all provision of this part and:

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(ii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(iii) 7 CFR part 1400—Payment Limitation & Payment Eligibility;

(iv) 7 CFR part 1403—Debt Settlement Policies and Procedures;

(v) 7 CFR part 1405—Loans, Purchases and Other Operations.

(3) Have made a acreage certification with respect to all the cropland on the farm.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. Marketing assistance loans and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive marketing assistance loans or loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable marketing assistance loan or loan deficiency payment documents are signed by the guardian;

(3) Any note or loan deficiency payment program application signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) The county committee may deny a producer a marketing assistance loan on farm-stored commodities if the producer has:

(i) Made a misrepresentation in connection with the marketing assistance loan or LDP program;

(ii) Previously not allowed a representative access to the site where commodities pledged as collateral for CCC loans were stored or otherwise failed to corporate in the settlement of a marketing assistance loan; or

(iii) Failed to adequately protect the interests of CCC in the commodity pledged as collateral for a farm-stored loan.

(2) A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan or provide some other form of financial assurance to obtain a farm-stored loan.

(f) A CMA may obtain a marketing assistance loan and loan deficiency payment on eligible production of a loan commodity on behalf of its members who are eligible to receive marketing assistance loans or loan deficiency payments with respect to a crop of a commodity. For purposes of this subpart, the term ''producer'' includes a CMA.

(g) In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a marketing assistance loan or loan deficiency payment, payment shall, upon proper application to the FSA county service center that disbursed the marketing assistance loan or loan deficiency payment, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title.

§ 1421.5 Eligible commodities.

(a) Commodities eligible to be pledged as collateral for a loan made under this part are:

(1) Barley, corn, grain sorghum, oats, canola, peanuts, soybeans, oilseeds, wheat, dry peas, lentils, small chickpeas, rice and other crops designated by CCC produced and mechanically harvested in the United States;

(2) Dual purpose sorghum varieties as determined by CCC; and

(3) Wool and mohair produced and shorn from live animals in the United States.

(b) A commodity produced on land owned or otherwise in the possession of the United States that is occupied without the consent of the United States is not an eligible commodity.

(c)(1) To be an eligible commodity, the commodity must be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. A commodity containing vomitoxin, aflatoxin or Aspergillus mold may not be pledged for a loan made under this part, except as provided by CCC in the marketing assistance loan note and security agreement.

(2) The determination of class, grade, grading factor, milling yields, and other quality factors, including the determination of type, quality, and quantity for peanuts:

(i) With respect to barley, canola, corn, flaxseed, grain sorghum, oats, rice, soybeans, sunflower seed for extraction of oil, wheat and other commodities designated by CCC, shall be based upon the Official United States Standards for Grain, United States Standards for Whole Dry Peas, Split Peas, and Lentils for dry peas and lentils, United States Standards for Beans for small chickpeas and the United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection.

(ii) With regard to mustard seed, rapeseed, safflower seed, flaxseed and sunflower seed used for a purpose other than to extract oil, shall be based on quality requirements established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official quality determination may be

paid by CCC. The quality requirements that are used in administering marketing assistance loans and loan deficiency payments for the oilseeds in this paragraph are available in USDA State and county FSA service centers.

(iii) With regard to farm-stored peanuts, shall be determined at the time of delivery to CCC by a Federal or State Inspector authorized or licensed by the Secretary.

(d) Eligible wool and mohair must:

(1) Have been produced and sheared from live sheep and goats, of domestic origin and located in the U.S. for a period of not less than 30 calendar days prior to shearing.

(2) Be of merchantable quality deemed by CCC to be suitable for loan and must have been shorn in the United States.

(e) When certifying acreage on farms in which an interest is held, the producer must provide acceptable evidence of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable for the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county FSA service center at the producer's expense, before commingling.

§ 1421.6 Beneficial interest.

(a)(1) To be eligible to receive marketing assistance loans or loan deficiency payments, a producer must have the beneficial interest in the commodity that is tendered to CCC for a marketing assistance loan or loan deficiency payment. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, sheared or slaughtered in the case of unshorn pelts, the producer, and a former producer whom the producer tendering the commodity to CCC has succeeded, had such an interest in the commodity. Commodities obtained by gift, barter or purchase shall not be eligible to be tendered to CCC for marketing assistance loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing marketing assistance loan or loan deficiency payment shall be eligible to receive marketing assistance loans and loan deficiency payments whether succession to the commodity occurs before or after harvest, shearing or slaughter so long as the heir otherwise complies with this part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control, title, and risk of loss in the commodity, including the right to make all decisions regarding the tender of such commodity to CCC for marketing assistance loans or loan deficiency payments, including those cases where the producer takes either of the actions in paragraph (a)(2)(i) or (a)(2)(ii) of this section as follows:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, for such commodity if all other eligibility requirements are met and the option to purchase contains the following:

> Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR 1421.6, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:
>
> (1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such commodity;
>
> (2) The date CCC claims title to such commodity; or
>
> (3) Such other date as provided in this option;

(ii) Enters into a contract to sell the commodity if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser pays no advance payment amount or any incentive payment amount to enter into such contract to the producer, except as provided in part 1425 of this chapter.

(3) If marketing assistance loans and loan deficiency payments are made available to producers through an approved CMA under part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the CMA or its member CMA's, except as otherwise provided in this section. Commodities delivered to such a CMA shall not be eligible to receive marketing assistance loans or loan deficiency payments if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter.

(b) With respect to wool, mohair, dry peas, lentils and small chickpeas produced in the 2002 crop year, producers who lost beneficial interest before October 11, 2002 are eligible for a loan deficiency payment based on the date the producer lost beneficial interest in the applicable commodity.

(c) For peanuts produced in the 2002 crop year, producers who lost beneficial interest in the 2002 crop of peanuts are eligible for a loan deficiency payment based on the date the producer lost beneficial interest in the applicable commodity.

§ 1421.7 Requesting marketing assistance loans and loan deficiency payments.

(a) A producer must, unless authorized by CCC, request marketing assistance loans and loan deficiency payments at the county office that, under part 718 of this title, is responsible for administering programs for the farm on which the commodity was produced.

(b) A marketing assistance loan or loan deficiency payment may be requested in person, by mail or electronic format designated by CCC. Forms prescribed by CCC may be obtained from the USDA, Farm Service Agency Web site.

(c) To receive marketing assistance loans or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement or loan deficiency payment application on or before the applicable final loan availability date, as follows:

(1) March 31 of the year following the year in which the following crops are normally harvested: barley, canola, flaxseed, oats, rapeseed, and wheat.

(2) May 31 of the year following the year in which the following crops are normally harvested: corn, grain sorghum, mustard seed, rice, safflower, soybeans, sunflower seed, dry peas, lentils, and small chickpeas.

(3) January 31 of the year following the year in which peanuts are normally harvested or wool and mohair are normally sheared.

(d) With respect only to loan deficiency payments for eligible loan commodities produced in the 2001 crop year, whether or not produced on a farm covered by a production flexibility contract, the applicable final loan availability for such payment is November 12, 2002.

§ 1421.8 Eligible quantity.

(a) With respect to marketing assistance loans and loan deficiency payments for:

(1) Farm-stored commodities, all determinations of weight, and quality, except as otherwise agreed to or required by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed for measured requests, if applicable or selected for spot-check for certified requests.

(2) Warehouse-stored commodities, all determinations of grade, weight and quality, except as otherwise agreed to or required by CCC, shall be determined at the time the loan or LDP is requested when acceptable documentation, under § 1421.106, accompanies the loan or LDP request.

(b)(1) A producer may, before the final date for obtaining a marketing assistance loan for a commodity, repledge as collateral for securing a marketing assistance loan any commodity that had been previously pledged as collateral for a marketing assistance loan, except with respect to:

(i) Commodities that have been acquired with commodity certificate exchanges under part 1401 of this chapter;

(ii) Commodities that have been redeemed at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as determined by CCC.

(iii) Commodities on which a loan deficiency payment has been received.

(2) The commodity repledged as security for the subsequent loan shall have the same maturity date, under § 1421.101 as the original loan.

(c)(1) The marketing assistance loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible harvested commodity, is in existence, and is in approved farm or warehouse storage, as determined by CCC. If the commodity was not either an eligible commodity, in existence, or in approved storage at the time of disbursement, the total amount disbursed under the marketing assistance loan and charges plus interest shall be refunded promptly by the producer.

(2) Marketing assistance loans may be disbursed to eligible producers who store eligible commodities in unlicensed storage facilities only if the producer agrees to redeem the marketing assistance loan on the date in which the loan is disbursed with a commodity certificate exchange.

(3) CCC shall limit the total marketing assistance loan quantity for a loan disbursement, or loan deficiency payment quantity for a loan deficiency payment, based on a subsequent increase in the quantity of an eligible commodity by the final loan availability date to 100 percent of the outstanding quantity of such marketing assistance loan or loan deficiency payment application. A producer may obtain a separate marketing assistance loan or loan deficiency payment before the final loan availability date for the commodity for quantities in excess of 100 percent of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.9 Basic loan rates.

(a) Basic marketing assistance loan rates for a commodity may be established on a State, regional, county basis or other basis and may be adjusted by CCC to reflect quality and location and other factors applicable to the commodity and as otherwise provided in this section.

(b) The basic marketing assistance loan rates for wheat, corn, barley, oats, grain sorghum, rice, peanuts, soybean, canola, flaxseed, mustard seed, rapeseed, safflower, sunflower seed, dry peas, lentils, small chickpeas, wool, mohair and other crops designated by CCC will be determined by CCC and made available at State and county offices.

(c)(1) For all commodities except rice, warehouse-stored loans shall be disbursed at levels based on the basic county marketing assistance loan rate for the county where the commodity is stored, adjusted for the schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) For rice, warehouse-stored loans shall be disbursed at levels based on the milling yields times the whole and broken kernel marketing assistance loan rates, adjusted for the schedule of discounts on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

§ 1421.10 Market rates.

(a)(1) For the 2002 through 2007 crops of barley, corn, grain sorghum, oats, wheat, dry peas, lentils, small chickpeas, oilseeds, and other crops as designated by CCC, a producer may repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

(i) The marketing assistance loan rate and charges, plus interest determined for such crop; or

(ii) The alternative repayment rate for such crop.

(2) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the market prices at appropriate U.S. markets as determined by CCC, to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government domestically and internationally, and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries. The alternative repayment rate may be adjusted to reflect quality and location for each crop of a commodity as follows:

(i) On a weekly basis in each county for oilseeds, except soybeans;

(ii) On a daily basis in each county for barley, corn, grain sorghum, oats, soybeans, and wheat; and

(iii) On a weekly basis nationally for dry peas, lentils and small chickpeas.

(b)(1) For the 2002 through 2007 crops of peanuts, wool and mohair, a producer may repay a nonrecourse loan at a rate that is the lesser of:

(i) The loan rate and charges interest, plus interest determined for such crop; or

(ii) The alternative repayment rate for such crop.

(2) To the extent practicable, CCC shall determine and announce periodically an alternative repayment rate for peanuts, wool, and mohair to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government domestically and internationally, and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries.

(c)(1) The prevailing world market price for a class of rice shall be determined by CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and shall be expressed in U.S. equivalent values F.O.B. vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2, 4 percent broken kernels, long grain milled rice;

(ii) U.S. grade No. 2, 4 percent broken kernels, medium grain milled rice; and

(iii) U.S. grade No. 2, 4 percent broken kernels, short grain milled rice.

(2) Export transactions involving rice and all other related market information will be monitored on a continuous basis. Relevant information may be obtained for this purpose from USDA field reports, international organizations, public or private research entities, international rice brokers, and other sources of reliable information.

(3) The prevailing world market price for a class of rice adjusted to U.S. quality and location the adjusted world

price (AWP), as determined under paragraph (c)(5) of this section, shall apply to this section.

(4) The adjusted world price for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined under paragraphs (a)(2) and (3) of this section and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice shall be adjusted to reflect an F.O.B. mill position by deducting from such calculated price an amount that is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to F.O.B. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking charges, storage, and administrative costs.

(ii) The price determined under paragraph (c)(4)(i) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in milled rice by deducting the world value of broken kernels it contains, with the value of the broken kernels determined by multiplying the quantity of broken kernels (4 percent per hundredweight) by the world market value of broken kernels. The world market value of broken kernels shall be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

(iii) The price determined under paragraph (c)(4)(ii) of this section shall be adjusted to reflect the per-pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96 percent per hundredweight).

(iv) The price determined under paragraph (c)(4)(iii) of this section shall be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined under paragraph (c)(4)(iv) of this section shall be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(*1*) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(*2*) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated world market value of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice;

(B) Deducting from such price:

(*1*) An estimated cost of milling rough rice; and

(*2*) An estimated cost of transporting rough rice from farm to mill locations.

(vi) The price determined under paragraph (c)(4)(v) of this section may be adjusted to a whole kernel loan rate basis by deducting the estimated world market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(5)(i) The adjusted world price for each class for rice, loan rate basis, shall be determined by CCC and announced, to the extent practicable, on or after 3:00 p.m. Eastern Standard time each Tuesday, or more frequently, as determined necessary by CCC, continuing through the later of:

(A) The last Tuesday of July 2007; or

(B) The last Tuesday of the latest month the 2007-crop rice loans mature.

(ii) In the event that Tuesday is a non-workday, the determination will be made on the next workday, on or after 3:00 p.m. Eastern Standard time.

(iii) The announced prices will be effective upon announcement and will remain in effect for a period as announced by the CCC.

(6) On the day of the announcement of the adjusted world price, applications for loan deficiency payments for rice that specify the payment rate will not be accepted between 2:00 p.m. Eastern Standard time and the time of the world price announcement.

§ 1421.11 Spot checks.

(a) CCC may inspect the collateral for marketing assistance loans, and producers with such loans shall allow CCC access to the farm and storage facility as necessary to conduct collateral inspections, or ''spot checks'' as they are called. Spot checks will verify that the quality and quantity of farm-stored commodities pledged as collateral for marketing assistance loans are maintained by the producer.

(b) Loan deficiency payments are selected for spot check to ensure that all eligibility requirements, as required by CCC, are met in order to receive such loan deficiency payment.

(c) Producers must present production evidence for commodities acceptable to CCC when a spot check is conducted.

§ 1421.12 Production evidence.

(a) Producers who redeem marketing assistance loan collateral at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as CCC determines or receives a loan deficiency payment may be required to provide CCC with:

(1) Evidence of production of the collateral such as:

(i) Evidence of sales,

(ii) Delivery evidence,

(iii) Load summaries from warehouse, processor, or buyer,

(iv) Warehouse receipts

(v) Paid measurement service

(vi) Spot check measurements with paid measurement service

(vii) Cleaning tickets for seed (viii) Scale tickets, if not issued by the producer for the producer's own production

(ix) Core tests for wool and mohair

(x) Maximum eligible quantity as determined by CCC

(2) The storage location of the collateral that has not been otherwise disposed of and access to such collateral;

(3) Permission to inspect, examine, and make copies of the records and other written data as deemed necessary to verify the eligibility of the producer and commodity;

(4) In the case of wool and mohair, permission to examine and inspect the sheep herd; and

(5) Any other evidence requested by the county FSA service center or the Deputy Administrator, FSA.

(b) A producer who fails to provide acceptable evidence of production shall be required to repay the market gain or loan deficiency payment and charges, plus interest, as determined by CCC.

§ 1421.13 Handling payments and collections.

(a) Amounts of $9.99 or less due a producer will be paid only upon the producer's request.

(b) Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1421.14 Obtaining peanut loans.

(a) Peanuts loans to individual producers may be obtained through:

(1) County offices; or

(2) A designated Marketing Association or a CMA approved by CCC.

(b) The loan documents shall not be presented for disbursement unless the peanuts pledged as collateral for the

marketing assistance loan is eligible in accordance with § 1421.8. If the peanuts were ineligible at the time of the disbursement, the total amount disbursed under loan, or as an LDP, plus charges and interest shall be refunded promptly.

Subpart B—Marketing Assistance Loans

§ 1421.100 Applicability.

This subpart provides the terms and conditions for marketing assistance loans offered by CCC. Additional terms and conditions are also in the note and security agreement which the producer must sign to receive such marketing assistance loans.

§ 1421.101 Maturity dates.

(a)(1) All marketing assistance loans shall mature on demand by CCC and no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed and approved except, for transferred marketing assistance loan collateral. The maturity date for transferred marketing assistance loan collateral will be the maturity date applicable to the original loan that was transferred.

(2) CCC may at any time call the marketing assistance loan by notifying the producer at least 30 days in advance of the accelerated maturity date.

§ 1421.102 Adjustment of basic loan rates.

(a) Basic loan rates are established under § 1421.9 and will be adjusted or not adjusted as follows:

(1) For farm-stored commodities, except for peanuts, that exceed acceptable levels of contamination, the loan rate will be discounted to 10 percent of the base county marketing assistance loan rate.

(2) For farm-stored commodities where the test weight discounts are on the:

(i) Crop year specific schedules of premiums and discounts, the loan rate shall be adjusted for the higher of the discount for test weight or grade based on test weight.

(ii) Additional schedule of discounts, the marketing assistance loan rate shall be reduced to 20 percent of the county average marketing assistance loan rate.

(3) With respect to commodities harvested, excluding silage or hay, as other than grain and pledged as collateral for a nonrecourse marketing assistance loan, the marketing assistance loan rate shall be discounted to 30 percent of the base county loan rate.

(4) With respect to farm-stored wheat, the basic county marketing assistance loan rate shall not be adjusted to reflect the protein content.

(5) With respect to Segregation 2 and 3 peanuts as determined by CCC, the marketing assistance loan rate shall be discounted to 35 percent of the applicable loan rate.

§ 1421.103 Approved storage.

(a) Approved farm storage is:

(1) A storage structure located on or off the farm, (excluding public warehouses that do not enter into an agreement with CCC), that CCC determines to be controlled by the producer which affords safe storage of collateral pledged for a marketing assistance loan;

(2) If determined and announced to be available in a State or county, on ground storage and other temporary storage structures approved by CCC.

(3) As determined by CCC, temporary approved storage may also include:

(i) On-ground storage or;

(ii) Other storage arrangements.

(b) CCC may reduce the quantity of a commodity pledged as collateral for a loan made available under paragraph (a)(2) of this section to not more than 75 percent of such otherwise eligible quantity in order to protect the interests of CCC. CCC may also limit the length of time the commodity may be stored on-ground or in temporary structures to not more than 90 days. A marketing assistance loan made with respect to such commodity which is not moved to a structure specified in (a)(2) within 90 days of the date the loan was disbursed may be called by CCC.

(c) Approved warehouse storage shall consist of a public warehouse for which a CCC storage agreement for the commodity is in effect that is approved by CCC for price support purposes. Such a warehouse is referred to in this by part as an approved warehouse. The names of approved warehouses may be obtained from the FSA, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205, from State and county offices, or at the FSA web site on the Internet.

§ 1421.104 Marketing assistance loan making.

(a)(1) The FSA county service center shall file or record, as required by State law, all security agreements that are issued with respect to commodities pledged as collateral for marketing assistance loans.

(i) The cost of filing and recording shall be paid by CCC.

(ii) The cost for terminating the financing statement before the end of the term shall be paid by the producer.

(2) If there are any liens or encumbrances on the commodity, waivers that fully protect the CCC's interest must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the marketing assistance loan is approved.

(b) Fees, charges, and interest must be paid by the producer to CCC at a rate CCC determines. Such fees, charges, and interest include:

(1) A non-refundable loan service fee;

(2) Interest that accrues on a loan under part 1405 of this chapter;

(3) For each soybean crop, the producer as defined in the Soybean Promotion, Research and Consumer Information Act (7 U.S.C. Chapter 6301), shall remit to CCC an assessment that CCC determines when it acquires the commodity and shall be equal to one-half of 1 percent of the amount determined under § 1412.112.

(c) For peanuts, charges associated with warehouse stored loans including but not limited to storage and in charges, as determined by CCC are paid by CCC to the producer.

(d) The cost of terminating a financing statement shall be paid by the producer.

§ 1421.105 Farm-stored marketing assistance loans.

(a) The producer of a commodity pledged as security for a farm-storage loan shall:

(1) Certify the quantity of such commodity on the loan application, or;

(2) Have such quantity measured by CCC at the measurement service rate established by CCC.

(b) The State committee may establish a marketing assistance loan percentage not to exceed a percentage CCC establishes or it may apply quality discounts to the loan rate in each year for each commodity on a Statewide basis or for specified areas within the State. Before approving a county committee request to establish a different loan percentage, or to apply quality discounts, the State committee shall consider conditions in the State or areas within a State to determine if the marketing assistance loan percentage should be reduced below the maximum marketing assistance loan percentage or the quality discounts should be applied to the basic county marketing assistance loan rate to provide CCC with adequate protection. Marketing assistance loans disbursed based upon loan percentages previously lowered and loan rates adjusted for quality shall not be altered if conditions within the State or areas within the State change to substantiate removing such reductions. Percentages established or loan rates adjusted for quality under this section shall apply

only to new marketing assistance loans and not to outstanding marketing assistance loans. In determining loan percentages or the necessity to apply quality discounts, the State committee shall consider any factor at its discretion, including the following:

(1) General crop conditions;

(2) Factors affecting quality peculiar to an area within the State; and

(3) Climatic conditions affecting storability.

(c) An eligible quantity of a commodity that is commingled with an ineligible quantity of the commodity is not eligible to be collateral for a marketing assistance loan unless the producer, when requesting a marketing assistance loan designates all structures that may be used for storage of the marketing assistance loan collateral.

(1) In such cases, the producer is not required to obtain prior written approval from the county committee before moving marketing assistance loan collateral from one designated structure to another designated structure.

(2) In all other instances, if the producer intends to move marketing assistance loan collateral from a designated structure to another undesignated structure, the producer must request prior approval from the county committee. Such approval shall be written and the eligible or ineligible commodity must be measured by a representative of the county office, at the producer's expense, before commingling. Prior to commingling, with respect to wool and mohair, a representative of the county committee may determine an average production of the wool and mohair in a manner approved by CCC.

(d)(1) Two or more producers may obtain:

(i) A single joint marketing assistance loan for commodities that are stored in the same farm storage facility; or

(ii) Individual marketing assistance loans for their share of the commodity that is commingled in a farm storage facility with commodities owned by other producers if such other producers execute an agreement that provides that such producers shall obtain the permission of a representative of the county committee before removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities that have been pledged as collateral for a marketing assistance loan shall be liable for any damage incurred by CCC for the deterioration or unauthorized removal or disposition of such commodities.

(2) In such cases, each producer must execute a note and security agreement with CCC, and each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the requirements of this part. Each producer is also liable for repayment of the entire marketing assistance loan amount until the marketing assistance loan is fully repaid without regard to their share in the commodity pledged as collateral. In addition, such producer may not amend the note and security agreement for the producer's claimed share in such commodities, or marketing assistance loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) A producer, when requesting a marketing assistance loan, shall designate in writing specific storage structures.

(2) The producer is not required to request prior approval before moving marketing assistance loan collateral between such designated structures.

(3) Movement of marketing assistance loan collateral to any other structures not designated or the disposal of such loan collateral without prior written approval of the county committee, shall subject the producer to administrative actions.

(4) The producer is responsible for any loss in quantity or quality of the farm-stored commodity pledged as collateral.

(5) CCC shall not assume any loss in quantity or quality of the marketing assistance loan collateral for farm-stored loans.

§ 1421.106 Warehouse-stored marketing assistance loan collateral.

(a) A commodity may be pledged as collateral for a warehouse-stored marketing assistance loan in the quantity delivered to CCC for storage at a warehouse that meets standards for approval at part 1423 of this chapter. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) Two or more producers may obtain a single joint marketing assistance loan for commodities stored in an approved warehouse if the warehouse receipt pledged as collateral is issued jointly to the producers.

(c) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the marketing assistance loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the marketing assistance loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or marketing assistance loan proceeds, after execution of the note and security agreement by CCC.

(d) Handling and storage rates that CCC has approved to be deducted from marketing assistance loan proceeds are available in USDA State and county FSA service centers. Deductions shall be based upon entries on the warehouse receipt or supplemental certificate, but the storage rate shall not exceed the storage rate CCC has approved. No storage deduction shall be made if written evidence acceptable to CCC is submitted indicating that:

(1) Storage charges through the maturity date have been prepaid; or

(2) The producer has arranged with the warehouse operator for the payment of storage charges through the maturity date and the warehouse operator enters an endorsement in substantially the following form on the warehouse receipt:

> Storage arrangements have been made by the depositor of the commodity covered by this receipt through (date through which storage has been provided). No lien will be asserted by the warehouse operator against CCC or any subsequent holder of the warehouse receipt for the storage charges that accrued before the specified date.

(e) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(f) For hard red winter and hard red spring wheat tendered to CCC and stored in an approved warehouse, producers must obtain official protein content determinations or, as CCC determines is acceptable, protein content may be determined by mutual agreement between the producer and the warehouse operator. Costs of determinations shall not be paid by CCC.

(g) For warehouse-stored peanuts, CCC will pay storage charges and in-charges and other fees as determined by CCC, to ensure proper storage of CCC loan collateral. The beginning date to be used for computing storage deductions on the CCC peanut loan collateral stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(4) The date all required marketing assistance loan documents are received in the county office.

§ 1421.107 Warehouse receipts.

(a) Warehouse receipts tendered to CCC under § 1421.3 for marketing assistance loans must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipt must be properly endorsed on its reverse side certifying that the crop is free of encumbrances in order for title to vest in the holder. Receipts must be issued by an approved warehouse and must represent a commodity that is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity that is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit.

(c) If the receipt is issued for a commodity that is owned by the warehouse operator either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouse operator on the warehouse operator's commodity is invalid, the warehouse operator may offer the commodity to CCC for a marketing assistance loan if such warehouse is licensed under the U.S. Warehouse Act.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse that has a storage agreement with CCC shall indicate that the commodity is insured under such agreement. CCC shall not be responsible for the cost of such insurance.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, for rice, such receipt must also state the milling yield of the rice, and for wool, such receipts must also state the yield and micron of the wool.

(f) With respect to peanuts, a warehouse receipt must be submitted exhibiting grade, type, and segregation for peanuts tendered to CCC.

(g)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) that properly identifies the warehouse receipt, must be issued under the applicable CCC storage agreement or the U.S. Warehouse Act, as applicable, and must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The type of commodity;

(vi) The date the commodity was deposited or received;

(vii) The date to which storage has been paid or the storage start date;

(viii) Whether the commodity was received by rail, truck or barge;

(ix) The amount per bushel, pound, or hundredweight of prepaid in or out charges;

(x) The signature of the warehouse operator or the authorized agent; and

(xi) For warehouses operating under a merged warehouse code agreement (KC–385), the location and county to which the producer delivered the commodity.

(2) In addition to the information specified in paragraph (f)(1) of this section, additional commodity specific requirements shall be determined by CCC and be available at State and county offices and the Kansas City Commodity Office.

(h) If a warehouse receipt indicates that the commodity tendered for loan grades ''infested'' or ''contains excess moisture'', or both, the receipt must be accompanied by a supplemental certificate in order for the commodity to be eligible for a marketing assistance loan. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows ''infested'' and the commodity has been conditioned to correct the infested condition, the supplemental certificate must show the same grade without the ''infested'' designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iv) of this section.

(ii) When a supplemental certificate is issued under paragraphs (g)(1) and (g)(2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending.

(iv) For commodities dried or blended under paragraph (g)(2)(iii) of this section, such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage:

(A) For the following commodities, 1.3 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Barley: 14.5 percent;

(*2*) Corn: 15.5 percent;

(*3*) Grain sorghum: 14.0 percent;

(*4*) Oats: 14.0 percent;

(*5*) Rice: 14.0 percent;

(*6*) Soybeans: 14.0 percent;

(*7*) Wheat: 13.5 percen; and

(*8*) Peanuts: 10.0 percent.

(B) For the following commodities, 1.1 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Canola: 10.0 percent;

(*2*) Flaxseed: 9.0 percent;

(*3*) Mustard Seed: 10.0 percent;

(*4*) Rapeseed: 10.0 percent;

(*5*) Safflower Seed: 10.0 percent;

(*6*) Sunflower Seed: 10.0 percent;

(*7*) Crambe: 10.0 percent; and

(*8*) Sesame Seed: 10.0 percent.

(i)(1) If, under paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouse operator against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts that are stored in an approved warehouse that is operating under a CCC storage agreement may be subject to a lien for warehouse charges as specified in the applicable storage agreement. For all commodities except peanuts, the producer who pledged such a receipt as collateral for a loan under this part shall pay to CCC all costs incurred by CCC as result of the existence of the lien. In no event shall a warehouse operator be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(j) Warehouse receipts representing commodities that have been shipped by rail or by barge, must be accompanied by supplemental certificates completed under paragraph (f) of this section.

§ 1421.108 Transfers and reconcentrations.

(a) Upon request by the producer before transfer, the county committee may approve the transfer of a quantity of a commodity that is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed 110 percent of the loan quantity transferred from the farm-stored loan.

(2) Any amounts due the producer shall be disbursed by the FSA county service center.

(b) Upon request by the producer before the transfer, the county committee may approve the transfer of a warehouse-stored loan or part thereof to a farm-stored loan at any time during the marketing assistance loan period. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement or a calculation of average production of wool and mohair, such measurement or calculation to be made by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the farm-stored loan shall be the maturity date applicable to the warehouse-stored loan that was transferred.

(c) Upon the filing of the Reconcentration Agreement and Trust Receipt by the producer and warehouse operator, CCC may, during the marketing assistance loan period, approve the reconcentration in another CCC-approved warehouse for all or part of a commodity that is pledged as collateral for a warehouse-stored loan. Any such approval shall be subject to the terms and conditions in the Reconcentration Agreement and Trust Receipt. A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:

(1) The principal amount of the marketing assistance loan and charges plus interest and applicable charges; or

(2) If CCC so announces, an amount less than the principal amount of the marketing assistance loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such marketing assistance loan.

§ 1421.109 Personal liability of the producer.

(a) When a producer obtains a commodity marketing assistance loan, the producer agrees, in writing, not to:

(1) Provide an incorrect certification of the quantity or make any fraudulent or erroneous representation for the marketing assistance loan; or

(2) Remove or dispose of a quantity of commodity that is collateral for a CCC farm-stored loan without prior written approval from CCC.

(3) The violation of the terms and conditions of the note and security agreement, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible.

(b) Such violations as are referred to in paragraph (a)(3) of this section may include:

(1) Incorrect certification;

(2) Unauthorized removal; and

(3) Unauthorized disposition.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for such violations. Accordingly, if the county committee determines that the producer has committed such violations, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation.

(d) In the case of violations, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the marketing assistance loan rate applicable to the loan note for the first offense; or

(ii) 25 percent of the marketing assistance loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith about the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the marketing assistance loan rate applicable to the loan note.

(e) For violations and the liquidated damages under paragraph (d)(1) of this section, the county committee shall:

(1) Require repayment of the marketing assistance loan quantity incorrectly certified or the loan quantity removed or disposed at the lesser of:

(i) The applicable loan principal, and charges, plus interest or;

(ii) The announced alternative repayment rate in effect on date the violation occurred, plus 15 percent of the loan rate, as otherwise determined by the Deputy Administrator, and

(2) If the producer fails to pay such amount within 30 days from the date of notification, accelerate the marketing assistance loan in default and require repayment of all loan principal, charges, and interest.

(f) For violations committed and the liquidated damages were assessed under paragraph (d)(2) of this section, the county committee shall call the loan involved in the violation, and require repayment of the entire loan principal, charges and interest.

(g) The county committee may waive the liquidated damages if it determines that the violation was inadvertent, accidental, and unintentional.

(h) If, for any violation, the county committee determines that CCC's interest is not or will not be protected, the county committee shall call all of the producer's farm-stored loans, and deny future farm-stored loans and loan deficiency payments without production evidence for 24 months after the date the violation is discovered. Depending on the severity of the violation, the county committee may deny future farm-stored loans and loan deficiency payments without production evidence for an additional period CCC designates.

(i) If the county committee determines that the producer has committed a violation, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative actions will be taken.

(j) If the loan is accelerated, the producer may not repay the loan at the lower alternative loan repayment rate and may not utilize commodity certificate exchanges, unless authorized by CCC.

(k) Producers rejected for a farm-stored loan under this section may apply for a warehouse-stored loan.

(l) The loan plus other charges shall be payable to CCC upon demand if a producer:

(1) Makes any fraudulent representation in obtaining a marketing assistance loan, maintaining, or settling a loan; or

(2) Disposes or moves the loan collateral without the approval of CCC.

(m) A producer shall be personally liable for damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other

substances poisonous or harmful to humans or animals or property.

(n) If the amount disbursed under a marketing assistance loan or in settlement thereof, exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(o) If the amount collected from the producer in satisfaction of the marketing assistance loan is less than the amount required under this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(p) In the case of joint loans or loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

(q) Any or all of the liquidated damages assessed may be waived as determined by CCC.

§ 1421.110 Repayments.

(a) CCC may allow a producer to repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

(1) The loan rate and charges, plus interest determined for a crop; or

(2) The prevailing world market price, as determined by CCC, for rice or the alternative repayment rate for all other commodities, as determined by CCC.

(b)(1) On a form prescribed by CCC, a producer may request to lock in the applicable repayment rate for a period of:

(i) 60 calendar days; or

(ii) not less than 14 calendar days before the maturity date of the loan, but not both.

(2) The request to lock in the applicable repayment rate must be received in the FSA county service center that disbursed the loan.

(3) The repayment rate that is locked in is the rate in effect when the request to lock in is approved.

(4) The repayment rate may be locked in on outstanding farm-stored or warehouse-stored loans.

(5) The repayment rate that is locked in will expire the earlier of:

(i) 60 calendar days from date of approval, or;

(ii) 14 calendar days before loan maturity.

(6) The requests can only be completed one time for a designated quantity.

(7) The requests can be made in person or by facsimile.

(8) The requests cannot be canceled, terminated, or changed after approval.

(9) The locked-in applicable repayment rate will not transfer to any loan disbursed outside of the originating county where the commodity was stored.

(10) Once a repayment rate is locked in it cannot be extended.

(c) If a producer fails to repay a marketing assistance loan within the time prescribed by CCC under the terms and conditions of the request to lock in a market loan repayment rate, the producer may repay the loan:

(1) On or before maturity, at the lesser of:

(i) Principal plus interest as determined by CCC;

(ii) The repayment rate in effect on the day the repayment is received in the FSA county service center.

(2) After maturity at principal plus interest.

(d) When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval on a CCC approved form and comply with the terms and conditions of such form, to remove a specified quantity of the commodity from storage. Approval does not constitute release of CCC's security interest in the commodity or release of producer liability for amounts due CCC for the marketing assistance loan indebtedness if payment in full is not received by the county office. Failure to repay a marketing assistance loan within the time period prescribed by CCC in the case of a farm-stored loan and delivery of the pledged collateral to a buyer, is a violation of the agreement. In the case of such violation, the producer must repay the loan principal and interest or another amount as determined by the Deputy Administrator, FSA, under § 1421.109.

(e) The producer may obtain county committee approval of a release of all or part of pledged collateral for a warehouse-stored loan at or before the maturity of such loan by paying to CCC:

(1) The principal amount of the marketing assistance loan and charges plus interest, or

(2) An amount less than the principal amount of the marketing assistance loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the collateral for such loan.

(f) A partial release of marketing assistance loan collateral must cover all of the commodity represented by one warehouse receipt. Warehouse receipts redeemed by repayment of the marketing assistance loan shall be released only to the producer. However, such receipt may be released to persons designated in a written authorization that is filed with the county office by the producer within 15 days before the date of repayment.

(g) The note and security agreement shall not be released until the marketing assistance loan has been satisfied in full.

(h)(1) If the commodity is moved from storage without obtaining prior approval to move such commodity, such removal shall constitute unauthorized removal or disposition, as applicable under § 1421.109(b), unless the removal occurred on a non-workday and the producer notified the county office on the next workday of such removal.

(2) Any loan quantities involved in a violation of § 1421.109 must be repaid under § 1421.109(e).

§ 1421.111 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lessor of:

(1) The loan rate and charges, plus interest applicable to the loan;

(2) The prevailing world market price, as determined by CCC, for rice or the alternative repayment rate for all other commodities, as determined by CCC.

(c) Commodity certificate exchanges may not be used when locking in a repayment rate under § 1421.110.

(d) Producers must request a commodity certificate exchange in person at the FSA county service center that disbursed the marketing assistance loan by:

(1) Completing a written request as CCC determines.

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral.

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

§ 1421.112 Loan settlement.

(a) The value of the settlement of marketing assistance loan shall be made by CCC on the following basis:

(1) For nonrecourse marketing assistance loans, the schedule of premiums and discounts for the commodity provided that:

(i) If, the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If, the value of the collateral at settlement is greater than the amount due, such excess shall be retained by CCC and CCC shall have no obligation to pay such amount to any party.

(2) For recourse marketing assistance loans, the proceeds from the sale of the commodity provided that:

(i) If, the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If, the proceeds received from the sale of the commodity are greater than the sum of the amount due, plus any cost incurred by CCC in conducting the sale of the commodity, the amount of such excess shall be paid to the producer or, if applicable, to a secured creditor of the producer.

(3) If CCC sells the commodity described in paragraphs (a)(1) or (a)(2) of this section in settlement of the marketing assistance loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale. CCC may deduct such amount from the sales proceeds.

(b) Settlements made by CCC for eligible commodities that are acquired by CCC and that are stored in an approved warehouse shall be made on the basis of the entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(c) Settlements made by CCC for peanuts acquired by CCC and stored in an approved warehouse shall be based on the settlement value at the time of the loan disbursement and the entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents subject to adjustments for changes in quality and other factors.

(1) All eligible commodities that are stored in other than approved warehouses shall be delivered to CCC as CCC instructs. Settlement shall be based on entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(2) For eligible loan commodities that are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic marketing assistance loan rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(d) In all cases, settlements may be adjusted for changes in quality and other factors affecting the value of the commodity.

§ 1421.113 Foreclosure.

(a)(1) Upon maturity and nonpayment of a warehouse-stored loan, title to the unredeemed collateral securing the marketing assistance loan shall immediately vest in CCC.

(2) Upon maturity and nonpayment of a farm-stored marketing assistance loan, title to the unredeemed collateral shall automatically transfer to CCC upon CCC demand.

(3) When CCC acquires title to the unredeemed collateral, CCC shall not pay for any market value that such collateral may have in excess of the marketing assistance loan indebtedness, (the unpaid amount of the note and charges plus interest).

(b) If the total amount due on a farm-stored loan (the unpaid amount of the note plus charges, and interest) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto when, how, and upon terms as CCC determines. Disposition may also be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity at either a public or private sale.

(1) The value of settlement for a farm-stored commodity removed by CCC from storage and shall be as provided in § 1421.112.

(2) If a deficiency exists after the collateral is sold, a claim for such deficiency will be established in accordance with part 1403 of this title.

§ 1421.115 Recourse marketing assistance loans.

(a) CCC shall make recourse marketing assistance loans available to eligible producers of high moisture corn, high moisture grain sorghum and other eligible loan commodities as determined by the Deputy Administrator, Farm Programs.

(b) Repayment must be paid in full on or before the loan maturity date.

(c) Recourse marketing assistance loan collateral may not be delivered or forfeited to CCC in satisfaction of the loan indebtedness.

Subpart C—Loan Deficiency Payments

§ 1421.200 Applicability.

(a) During the loan availability period, loan deficiency payments will be made available to eligible producers when the alternative repayment rate is less than the applicable county loan rate.

(b) To be eligible to receive loan deficiency payments a producer must:

(1) Comply with all marketing assistance loan eligibility including beneficial interest requirements.

(2) Agree to forgo obtaining such loan, if applicable; and

(3) File in person, by mail or electronically a request for payment on a form prescribed by CCC; and

(4) Otherwise comply with all program requirements.

(c) A producer must submit a completed request for:

(1) A field direct loan deficiency payment to CCC on or before the date of harvesting or shearing a quantity of an eligible commodity, provided further that the producer must have beneficial interest in such quantity on the date the commodity is harvested or sheared.

(2) A field direct loan deficiency payment to CCC for unshorn pelts on or before the date of slaughter of the quantity of live lambs, before the loss by the producer of beneficial interest in the lamb and the unshorn pelt produced from such lamb.

(3) All other types of loan deficiency payment requests after harvest or shearing and before beneficial interest is lost in the commodity, but not later than the loan availability date.

(d) For unshorn pelts, the lamb must be owned for a period of not less than 30 days in advance of the application and sold for immediate slaughter or slaughtered for personal use. Producers must submit acceptable production evidence to CCC under § 1421.12 at the time of request. Producers who do not sell lambs for immediate slaughter are ineligible for a loan deficiency payment.

§ 1421.201 Loan deficiency payment rate.

(a) The loan deficiency payment rate for a crop shall be the amount by which the loan rate for the crop exceeds the rate at which CCC has announced that producers may repay their loans under § 1421.10.

(b) Such rate shall be the amount determined:

(1) For loan deficiency payments other than field direct:

(i) On the day the producer submits a completed request for a loan deficiency payment to the FSA county service center;

(ii) Using the rate in effect for the FSA county service center where the commodity is stored.

(2) For field direct loan deficiency payments:

(i) On the date the commodity was delivered to the processor, buyer, warehouse or CMA;

(ii) Using the rate in effect for the FSA county service center where the farm records are kept.

(3) For rice loan deficiency payments, the adjusted world price under § 1421.10(c).

(c) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan

deficiency payment rate, as determined under paragraph (b) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a nonrecourse loan for which the loan deficiency payment is requested.

§ 1421.202 Loan deficiency payment quantity.

(a) A loan deficiency payment may be based on 100 percent of the net eligible quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided for such commodity under § 1421.12.

(b) Two or more producers may obtain a single joint loan deficiency payment for commodities that are stored in the same storage facility. Two or more producers may obtain individual loan deficiency payments for their share of the commodity that is stored commingled in a farm storage facility with commodities for which a loan deficiency payment has been requested and shall be liable for any damage incurred by CCC for incorrect certification of such commodities under § 1421.203.

(c) Two or more producers may obtain a single joint loan deficiency payment for commodities that are stored in an approved or unapproved warehouse if the acceptable documentation representing an eligible commodity for which a loan deficiency payment is requested is completed jointly for such producers.

§ 1421.203 Personal liability of the producer.

(a) When a producer requests a loan deficiency payment, the producer agrees:

(1) When signing the Loan Deficiency Payment Application and Certification or the Direct Loan Deficiency Payment Agreement, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purpose; and

(2) That violation of the terms and conditions of the loan deficiency payment request, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible, if CCC determines that the producer has violated the terms and conditions of the applicable forms prescribed by CCC, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation.

(b) If CCC determines that the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan deficiency payment rate for the second offense.

(2) Did not act in good faith about the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan deficiency payment rate.

(c) For violations to which paragraph (b)(1) of this section applies, the producer must repay the loan deficiency payment applicable to the loan deficiency quantity incorrectly certified, and charges, plus interest applicable to the amount repaid. If the producer fails to pay such amounts within 30 days from the date of notification, the producer must repay the entire loan deficiency payment and charges plus interest.

(d) For violations to which paragraph (b)(2) of this section applies, the producer shall repay of the entire loan deficiency payment and charges plus interest.

(e) CCC may waive the liquidated damages taken applicable to paragraph (b) of this section if the CCC determines that the violation occurred inadvertently, accidentally, or unintentionally.

(f) If, for any violation to which paragraph (b) of this section applies, the county committee determines that CCC's interest is not or will not be protected, the county committee shall:

(1) Call the producer's farm-stored loans;

(2) Deny future farm-stored loans for the current and 2 following crop years;

(3) Deny loan deficiency payments for the current and 2 following crop years unless production evidence is presented to CCC. Depending on the severity of the violation, the county committee may deny future farm-stored loan and loan deficiency payments without production evidence.

(g) If the county committee determines that the producer has committed a violation, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative action will be taken under this section.

(h) If the amount disbursed under loan deficiency payments exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(i) In the case of joint loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the loan deficiency payment application.

(j) Any or all of the liquidated damages assessed under the provisions of paragraph (b) of this section may be waived as determined by CCC.

9. The heading of newly designated subpart D is revised to read as set forth below, and subpart D is further amended as follows:

Subpart D—Grazing Payments for 2002–2007 Crop Years of Wheat, Barley, Oats and Triticale

A. In § 1421.300, paragraph (a) is revised to read as follows:

§ 1421.300 Applicability.

(a) The regulations in this subpart are applicable to the 2002–2007 crops of eligible acreage planted to wheat, barley, oats or triticale that is grazed by livestock and not harvested in any other manner. This subpart sets forth the terms and conditions under which a grazing payment in lieu of a loan deficiency payment will be made by CCC.

* * * * *

B. In § 1401.303, paragraphs (a), (d) and (e) are revised and paragraph (f) is added to read as follows:

§ 1421.303 Eligible producer and eligible land.

(a) To be an eligible producer for a payment under this subpart, the person must be a producer of wheat, barley, oats, or triticale in the 2002 through 2007 crop years. Also, to be an eligible producer, the person must meet all other qualifications for payment that are set out in this subpart, set out in parts 12, 718, 1400, and 1405 of this title. A person will not be considered the producer of the crop unless that person was responsible for the planting of the crop and had the risk of loss in the crop at all times, including, at the time of planting and the time of the request for a payment under, this subpart.

* * * * *

(d)(1) A producer must, at the time of the agreement made under this part to obtain a payment, meet all other eligible criteria for obtaining loan deficiency payments.

(2) For producers of triticale who obtain a payment under this subpart the

producer must enter into an agreement with CCC to forgo any harvesting of triticale on the acreage for which such a payment is made.

(e)(1) No payment will be made if the crop could not have been harvested because of weather conditions or any other reason.

(2) The producer must retain the control, title and risk of loss in the commodity for which the payment is sought from the date of planting through the date on which mechanical harvesting of the crop would normally occur.

(f) Producers who elect to graze 2002–2007 crop wheat, barley, oats, or triticale will not be eligible for an indemnity under the Federal Crop Insurance Program provision of Chapter IV of this title or a payment under Noninsured Crop Assistance Program authorized under part 1437 of this chapter.

C. In § 1421.304 revise the first sentence to read as follows:

§ 1421.304 Time and method for application.

Application for the program provided in this subpart must be received, at the county office that is responsible for administering programs for the farm, no earlier than the date on which eligible crops would normally be harvested and no later than the final loan availability date as determined in accordance with § 1421.5. * * *

D. In § 1421.305 revise paragraphs (a), (c) and (f) to read as follows:

§ 1421.305 Payment amount.

(a) The grazing payment rate shall be the loan deficiency payment in effect for the farm on the date which the producer submits a complete program application to CCC. For triticale, the loan deficiency payment rate will be equal to the rate for the predominant class of wheat in the county where the farm is located in effect as of the date of the application is filed.

* * * * *

(c) The payment yield shall be the yield in effect for the calculation of direct payments under part 1412 of this chapter. In a case of a farm for which a farm program payment yield is unavailable for a covered commodity, an appropriate payment yield for the covered commodity on the farm will be determined by CCC taking into consideration the farm program payment yields applicable to the commodity using three (3) similar farms. For triticale, the payment yield shall be the yield for wheat from three (3) similar farms in that county.

* * * * *

(f) To receive the payment, the eligible producer must submit a request for payment on an application form as prescribed by CCC or FSA. The application may be obtained from the county FSA office, or from the USDA or FSA web site in the Internet. The form must be submitted to the county by the close of business on or before March 31 of the applicable crop year.

Signed in Washington, DC, on October 8, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–25969 Filed 10–8–02; 10:55 am]

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Federal Register

Friday,
October 11, 2002

Part III

The President

Proclamation 7605—Leif Erikson Day, 2002

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Friday, October 11, 2002

Presidential Documents

Title 3—

The President

Proclamation 7605 of October 8, 2002

Leif Erikson Day, 2002

By the President of the United States of America

A Proclamation

More than 1,000 years ago, Leif Erikson and his crew journeyed across the Atlantic seeking unknown lands. Their pioneering spirit of courage, determination, and discovery helped to open the world to new exploration and unprecedented development. Each October, we join our friends in Iceland, Norway, Denmark, Sweden, and Finland in honoring this historic voyage and in celebrating the strong transatlantic bonds that exist between those countries and the United States.

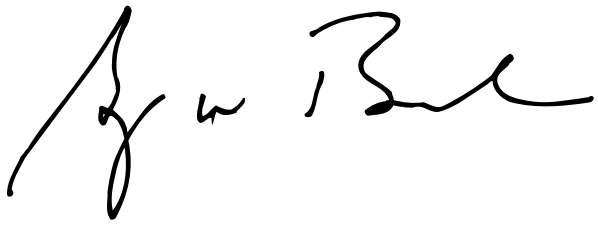
Our Nation is committed to promoting prosperity and stability throughout Northern Europe. Through the Northern Europe Initiative, we have partnered with other nations in the region to enhance security and economic growth in the Baltic region. This Initiative addresses concrete needs in six areas: the environment; public health; law enforcement and rule-of-law; civil society; energy; and trade. Our Nation also supports the European Union's ''Northern Dimension'' strategy, which aims to strengthen the integration of Northwest Russia and the accession countries to the European Union. These important efforts, along with the bilateral programs of all Nordic countries, are helping to build a brighter future for the entire region.

As we defend ourselves against terrorism, we are grateful for the support of our coalition partners around the world, including our Nordic friends and allies. The goodwill demonstrated by the people of this region has reinforced our close ties and strengthened our resolve to overcome the evil that is before us. As we celebrate Leif Erikson Day, we recommit ourselves to a world of innovation, prosperity, and opportunity.

To honor Leif Erikson, the brave son of Iceland and grandson of Norway, and to recognize our Nation's Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized and requested the President to proclaim October 9 of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 9, 2002, as Leif Erikson Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



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