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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 14

[Docket No. 00–26]

RIN 1557—AB81

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–1079]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 343

RIN 3064—AC37

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 536

[Docket No. 2001–16]

RIN 1550—AB34

Consumer Protections for Depository Institution Sales of Insurance; Change in Effective Date

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: This final rule delays the effective date for the final consumer protection rules for sales of insurance by depository institutions published by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the Agencies) in the **Federal Register** of December 4, 2000 (65 FR 75822). These rules were published pursuant to section 47 of the Federal Deposit Insurance Act (FDIA), which was added by section 305 of the Gramm-Leach-Bliley Act. Due to the need to complete significant information system changes and modifications to documentation and sales processes and to satisfy training demands with respect to compliance by depository institutions and other entities with the final rules, the Agencies are delaying the effective date of the final rules from April 1, 2001, to October 1, 2001.

EFFECTIVE DATE: This amendment delays the effective date of the final rules published December 4, 2000, at 65 FR 75822, until October 1, 2001.

FOR FURTHER INFORMATION CONTACT:

OCC: Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; Asa Chamberlayne, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Richard M. Ashton, Associate General Counsel, Legal Division, (202) 452–3750; Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Keith A. Ligon, Chief, Policy Unit, Division of Supervision, (202) 898–3618; Michael B. Phillips, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–3581; Amy A. Mitchell, Senior Capital Markets Specialist, Division of Supervision, (202) 898–3670, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Robyn Dennis, Manager, Corporate Governance and Controls, (202) 906–5751; Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; Sally Watts, Counsel (Banking and Finance), (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 2000, the Agencies published final rules (65 FR 75822) implementing section 47 of the FDIA, which was added by section 305 of the Gramm-Leach-Bliley Act. Section 47 of the FDIA directs the Agencies jointly to prescribe and publish consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product or annuity by a depository institution or any person at an office of the institution or on behalf of the institution. The final rules apply to retail sales, solicitations, advertising, or offers of insurance products or annuities made by an insured depository institution, by any person at an office of the institution, or by any person off of the institution's premises if the transaction is made on behalf of the institution. The rules require, among other things, various consumer disclosures, consumer acknowledgements, and segregation of deposit taking and insurance sales areas.

II. Justification for Amendment of the Effective Date

The final rules included an effective date of April 1, 2001. In establishing that effective date for the final rules, the Agencies recognized that a certain lead time would be necessary for depository institutions and other entities acting ''on behalf of'' those institutions to adjust their internal systems and sales practices to comply with the disclosure, consumer acknowledgments, and other requirements of the final rules. Based on information available as of the promulgation of the final rules, the Agencies established the effective date for the final rules as April 1, 2001.

Since December 4, 2000, the Agencies have received written comments describing various difficulties that depository institutions are experiencing in complying with the final rules. During February, 2001, several depository institutions and financial services trade associations requested that the effective date for the final rules be extended from April 1, 2001 to January 1, 2002. One of the comment letters, signed jointly by four trade associations, advised that financial institutions need to receive guidance ''as soon as possible'' from the Agencies that the effective date will be significantly delayed. The commenters indicated that otherwise, many institutions will need to temporarily terminate certain insurance sales programs, especially credit insurance sales programs, for which the

institutions would not be able to comply by April 1, 2001.

The commenters stated that the following implementation problems support a significant delay in the effective date of the final rules:

- Many of the larger depository institutions underestimated the magnitude of the compliance demands required by the final rules, including the training of a significant number of individuals who currently sell insurance ''on behalf of'' those institutions as ''dual employees'' or nonaffiliated insurance agents who sell from an institution's premises.
- With respect to the credit disclosure requirements in the final rules, institutions must check every loan application document pertaining to all lending lines of credit, including revising, inventorying, and restocking all credit card applications at each location of the institutions.
- Many institutions have relationships with insurance underwriters under which the institutions use an application form prepared by the underwriters. As a result of the final rules, those institutions must request that the underwriters revise their application documents to incorporate the disclosures and consumer acknowledgments required in the final rules.
- Since changes to the application documents of insurance underwriters that are prepared for depository institutions must be approved by state insurance commissioners (in certain situations, by state insurance commissioners in all 50 states), significant additional time will be necessary for compliance with the final rules.
- The marketing of certain insurance products, such as credit insurance products, by depository institutions was significantly impacted by the final rules. New marketing formats are under development but will not be available by April 1, 2001, for implementation by third parties acting ''on behalf of'' depository institutions.

The Agencies have determined that the reasons submitted by the commenters after the publication of the final rules are sufficient to support a significant delay of the effective date of the final rules. The delay will provide depository institutions and other entities subject to the final rules with sufficient time to become familiar with the requirements and bring their operations into compliance, thus avoiding the need to curtail the availability of insurance products and annuities to the public.

The Agencies believe that a six-month extension of the effective date to October 1, 2001, should provide a sufficient time for depository institutions and other entities to comply with the disclosure, customer acknowledgment, and other requirements in the final rules. This period will provide sufficient opportunity for analysis and training without unreasonably delaying important consumer protections.

Under the Administrative Procedure Act (APA), an agency may suspend general notice-and-comment rulemaking procedures if the agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B). The Agencies find that they have good cause to delay the effective date without first soliciting comment concerning this action. Because the effective date of the final rules (April 1, 2001) is fast approaching, it is impracticable to seek further public comment before issuing this amendment to the final rules delaying the effective date of those rules. In addition, such a delay is in the public interest for the reasons explaining above.

For similar reasons, the Agencies also find that this action delaying the effective date of the final rules must take effect on April 1, 2001, which is less than 30 days after publication of this amendment to the final rules. As a result, depository institutions and other entities subject to the final rules will not be required to comply with the new insurance consumer protection requirements for a brief period at the beginning of April 2001, as they would in the event that a 30-day, delayed effective date were used.

III. Regulatory Analysis

A. Regulatory Flexibility Act

Under section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604), a final regulatory flexibility analysis is required only for notice-and-comment rulemakings conducted under section 553 of the APA. Since the Agencies find that there is ''good cause'' under the APA for not proceeding with notice-and-comment rulemaking for this amendment to the effective date for the final rules, the RFA does not require that a final regulatory flexibility analysis be provided for this amendment.

The Agencies provided regulatory flexibility analyses in the preamble to the final rules published on December 4, 2000 (65 FR 75830—75837). In those regulatory flexibility analyses, the Agencies considered the likely impact of the final rules on small entities and determined that the final rules will not have a significant impact on a substantial number of small entities.

B. Executive Order 12866

The determinations made by the OCC and OTS that the final rules did not constitute a ''significant regulatory action'' (65 FR 75837) apply to the rules as amended by this effective date revision.

C. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMA) applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, the OCC and OTS have determined, for good cause, that this amendment to the final rules may be issued without prior notice and comment. Accordingly, the OCC and OTS have concluded that the UMA does not require an unfunded mandates analysis of this amendment to the final rules. The UMA finding made when the related final rules were published is found in the preamble of those rules (65 FR 75837–75838).

D. Executive Order 13132—Federalism

As described by the OCC and OTS in the preamble to the final rules (65 FR 75838), there are consultation requirements imposed on them by section 6(c) of Executive Order 13132. In accordance with those requirements and of section 47(a)(3) of the FDIA, the Agencies have consulted with the National Association of Insurance Commissioners concerning this amendment to delay the effective date of the rules.

Dated: March 9, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 12, 2001.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 13th day of March, 2001.

Robert E. Feldman,

Executive Secretary.

By the Office of Thrift Supervision.

Dated: March 12, 2001.

Ellen Seidman,

Director.

[FR Doc. 01–6638 Filed 3–16–01; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM98–9–000, Order No. 603]

Revision of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act; Correction

Issued March 13, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Technical amendment.

SUMMARY: In Order No. 603 published in the **Federal Register** on May 14, 1999 (64 FR 26571) the Federal Energy Regulation Commission inadvertently removed a paragraph of the Commission's regulations that required that a company report changes in rate schedules authorized under the Commission's regulations. This technical notice corrects the previous error by amending the regulations to add the removed paragraph.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT:

Michael J. McGehee, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2257.

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2246.

SUPPLEMENTARY INFORMATION:

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and record keeping requirements.

In consideration of the foregoing, the Commission amends Part 157, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority for Part 157 continues to read as follows:

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

2. In § 157.207, paragraphs (f) and (g) are redesignated as (g) and (h), respectively, and a new paragraph (f) is added to read as follows:

§ 157.207 General reporting requirements.

* * * * *

(f) For each change in rate schedule authorized under § 157.217, the information specified in § 157.217(b);

* * * * *

David P. Boergers,

Secretary.

[FR Doc. 01–6654 Filed 3–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

21 CFR Part 291

42 CFR Part 8

RIN 0910–AA52

Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction; Repeal of Current Regulations and Issuance of New Regulations: Delay of Effective Date and Resultant Amendments to the Final Rule

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Final rule; delay of effective date and resultant amendments to the final rule.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled ''Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction; Repeal of Current Regulations and Issuance of New Regulations'' published in the **Federal Register** on January 17, 2001 (66 FR 4076). It also amends the final rule published on January 17 to extend by 60 days the dates outlines in the rule for transitional certification of opioid treatment programs so as to be consistent with extending the effective date by that amount of time. That rule repealed the existing narcotic treatment regulations enforced by the Food and Drug Administration (FDA), and created a new regulatory system based on an accreditation model. It also shifted administrative responsibility and oversight of the program from FDA to SAMHSA.

DATES: This rule is effective March 18, 2001. The effective date of the ''Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction'' published in the **Federal Register** on January 17, 2001 (66 FR 4076), is delayed for 60 days, from March 19, 2001 to a new effective date of May 18, 2001.

FOR FURTHER INFORMATION CONTACT: Nicholas Reuter, Center for Substance Abuse Treatment (CSAT), SAMHSA, Rockwell II, 5600 Fishers Lane, Rm 12–05, Rockville, MD 20857, 301–443–0457, email: *nreuter@samsha.gov.*

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(b)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

List of Subjects in 42 CFR Part 8

Health professions, Levo-Alpha-Acetyl-Methadol (LAAM), Methadone, Reporting and recordkeeping requirements.

Dated: January 14, 2001.

Tommy G. Thompson,

Department of Health and Human Services.

For the reasons set forth above, Part 8 of Title 42 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 8 continue to read as follows:

21 U.S.C. 823; Sections 301(d), 543, and 1976 of the 42 U.S.C. 257a, 290aa(d), 290 dd–2, 300x–23, 300x–27(a), 300y–11.

2. Section 8.11(d) is revised to read as follows:

§ 8.11 Opioid treatment program certification.

* * * * *

(d) *Transitional certification.* OTPs that before May 18, 2001 were the subject of a current, valid approval by FDA under 21 CFR, part 291 (contained in the 21 CFR parts 200 to 299 edition, revised as of July 1, 2000), are deemed to be the subject of a current valid certification for purposes of paragraph (a)(11) of this section. Such ''transitional certification'' will expire on August 17, 2001 unless the OTP submits the information required by paragraph (b) of this section to SAMHSA on or before August 17, 2001. In addition to this application, OTPs must certify with a written statement signed by the program sponsor, that they will apply for accreditation within 90 days of the date SAMHSA approves the second accreditation body. Transitional certification, in that case, will expire on May 19, 2003. SAMHSA may extend the transitional certification of an OTP for up to one additional year provided the OTP demonstrates that it has applied for accreditation, that an accreditation survey has taken place or is scheduled to take place, and that an accreditation decision is expected within a reasonable period of time (e.g., within 90 days from the date of survey). Transitional certification under this section may be suspended or revoked in accordance with § 8.14.

* * * * *

[FR Doc. 01–6745 Filed 3–16–01; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two approved new animal drug applications (NADA's) from Wendt Laboratories, Inc., to First Priority, Inc.

DATES: This rule is effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Norman J. Turner, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0214.

SUPPLEMENTARY INFORMATION: Wendt Laboratories, Inc., 100 Nancy Dr., Belle Plaine, MN 56011, has informed FDA that it has transferred to First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, ownership of, and all rights and interests in NADA 48–646 for Therazone Injection and NADA 48–647 for Therazone Tablets. Accordingly, the agency is amending the regulations in 21 CFR 520.1720a and 522.1720 to reflect the transfer of ownership.

In addition, First Priority, Inc., has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for ''First Priority, Inc.'' and in the table in paragraph (c)(2) by numerically adding an entry for ''058829'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123	058829
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
058829	First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123.
* * * * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1720a [Amended]

4. Section 520.1720a *Phenylbutazone tablets and boluses* is amended in paragraph (b)(3) by removing ''015579'' and adding in its place ''058829''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 522.1720 [Amended]

6. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(1) by removing ''015579'' and adding in its place ''058829''.

Dated: February 9, 2001.

Claire M. Lathers,

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

[FR Doc. 01–6713 Filed 3–16–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 3555]

Visas: Documentation of Immigrants—International Broadcasters

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: This rule incorporates into existing regulation a new special immigrant visa classification for certain international broadcasting employees of the International Broadcasting Bureau of the Broadcasting Board of Governors or grantees of that Board. This addition to the regulation results from an amendment to the pertinent legislation. The change will permit certain broadcasting employees to receive immigrant visas and apply for entry into the United States as immigrants.

DATES: Effective date: This interim rule is effective on April 18, 2001.

Comment date: Written comments must be submitted on or before May 18, 2001.

ADDRESSES: Submit comments in duplicate to the Chief, Legislation and Regulations Division, Visa Services, Department of State, 20520–0106, (202) 663–1204, e-mail *odomhe@state.gov,* or fax at (202) 663–3898.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106.

SUPPLEMENTARY INFORMATION:

What Is the Authority for This Rule?

Pub. L. 106–536 created a new class of special immigrants under INA 203(b)(4) for international broadcasting employees. Such aliens must be seeking to enter the United States to work as a broadcaster for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors. The alien's accompanying spouse and child(ren) are entitled to derivative status. The law limits the number of immigrants in this category to 100 annually, excluding spouses and children for whom there is no numerical limitation.

Interim Rule

How Is the Department Amending its Regulation?

The Department is amending its regulation at 22 CFR 42.32 by adding a new paragraph (d)(8).

What Effect Will This Rule Have on Current Regulations?

This rule authorizes consular officers to accord fourth preference employment-based special immigrant classification to certain international broadcasters. As with other classes of fourth preference employment-based immigrants, the alien must be the beneficiary of an approved petition.

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). As the amendment to the regulation simply implements without interpretation a legislative mandate that provides a benefit to aliens by extending special immigrant status to a specific class of aliens, the Department has determined that it is unnecessary to publish a proposed rule or to solicit comments from the public. In view of this benefit and since the amendment applies to visas made available in any fiscal year beginning on or after October 1, 2000, the rule will be made effective immediately upon publication in the **Federal Register**.

Regulatory Flexibility Act

The Department of State, 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.

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 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

The Department of State does not consider this rule, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This regulation 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.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and Visas.

PART 42—[AMENDED]

1. The authority citation for Part 42 shall continue to read:

Authority: 8 U.S.C. 1104.

2. Amend § 42.32 by adding a new paragraph (d)(8) to read as follows:

§ 42.32 [Amended]

* * * * *

(d) * * *

(8) Certain United States international broadcasting employees.

(i) Entitlement to status. An alien is classifiable as a special immigrant under INA 203(b)(4) as described in INA 101(a)(27)(M), if the consular office has received a petition approved by the INS to accord such classification, or official notification of such an approval, and the consular officer is satisfied from the evidence presented that the alien is within the class described in INA 101(a)(27)(M).

(ii) Entitlement to derivative status. Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of any alien classified under INA 203(b)(4) as a special immigrant qualified under this section, if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to derivative status corresponding to the classification and priority date of the beneficiary of the petition.

* * * * *

Dated: December 22, 2000.

Maura Harty,

Acting Assistant Secretary for Consular Affairs, U.S. Department of State.

[FR Doc. 01–6477 Filed 3–16–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska–01–001]

RIN 2115–AA97

Safety Zone; Gulf of Alaska, Southeast of Narrow Cape, Kodiak Island, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. The zone is needed to protect the safety of persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, and the Coast Guard Captain of the Port, Western Alaska, or his on scene representative. The intended affect of the proposed safety zone is to ensure the safety of human life and property during the rocket launch.

DATES: This temporary final rule is effective from 11 a.m. on March 23, 2001, until 8 p.m. on March 30, 2001.

ADDRESSES: The public docket for this rulemaking is maintained by Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Materials in the public docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Rick Rodriguez, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. The parameters of the zone will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners. Because the hazardous condition is expected to last for approximately 5 hours of each day for eight days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal. Therefore, notice and comment is unnecessary. Additionally, the process of scheduling a rocket launch is uncertain due to unforeseen delays that can cause cancellation of the launch. The Coast Guard attempts to publish a Final Rule, with a 30-day window, as close to the expected launch date as possible, when it is conveyed to them in time. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch. This safety zone should have minimal impact on vessel transits and announcements via Broadcast Notice to Mariners will give vessels advanced notice of the launch.

Background and Purpose

The Alaska Aerospace Development Corporation (AADC) will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska sometime between 1 p.m. and 6 p.m. each day between March 23, 2001 and March 30, 2001. The safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners. Because the hazardous condition is expected to last for approximately 5 hours of each day for eight days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

Discussion of Regulation

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for 5 hours each day between March 23, 2001 and March 30, 2001. The size of the safety zone has been set based upon the trajectory information in order to provide a greater safety buffer in the event that the launch is aborted shortly after take-off. The proposed safety zone includes an area approximately 133 square nautical miles in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area by a line drawn from a point located at 57(30.5′ North, 152°23.5′ West, thence southeast to a point located at 57°22.0′ North, 151°52.5′ West, thence southwest to a point located at 57°15.0′ North, 152°00.0′ West, and thence northwest to a point located at 57°25.0′ North, 152°29.5′ West, and thence northeast to

the point located at 57°30.5′ North, 152°23.5′ West. All coordinates reference Datum: NAD 1983.

This safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch of the Alaskan Aerospace rocket. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule would have significant economic impacts on a substantial number of small entities. ''Small entities'' include 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. Because the hazardous condition is expected to last for approximately five hours of each day for eight days, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. The Coast Guard believes there will be minimal impact to small entities. Therefore, 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.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard 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.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 that funds to pay those costs. This rule will not impose an unfunded mandate.

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 economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Indian Tribal Governments

This proposed rule will not have tribal implications; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period we will undertake appropriate consultations.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. The justification for this categorical exclusion is that this rule is to establish a navigation safety zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying 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.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continue to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.401–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T17–012 to read as follows:

§ 165.T17–012 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island, AK: Safety Zones.

(a) *Description.* This safety zone includes an area approximately 133 square nautical miles in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located at 57°30.5′ North, 152°23.5′ West, thence southeast to a point located at 57°22.0′ North, 151°52.5′ West, thence southwest to a point located at 57°15.0' North, 152°00.0′ West, and thence northwest to a point located at 57°25.0′ North, 152°29.5′ West, and thence northeast to the point located at 57°30.5′ North, 152°23.5′ West. All coordinates reference Datum: NAD 1983.

(b) *Effective Dates.* This regulation is effective at 11 a.m. on March 23, 2001, and terminates at 8 p.m. on March 30, 2001.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700 or on VHF marine channel 16.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in Title 33 Code

of Federal Regulations, part 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, or his on scene representative. The Captain of the Port, Western Alaska, or his on scene representative may be contacted onboard the U.S. Coast Guard cutter in the vicinity of Narrow Cape via VHF marine channel 16.

Dated: February 22, 2001.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 01–6740 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 416, 482, and 485

[HCFA–3049–F2]

RIN 0938–AK08

Medicare and Medicaid Programs; Hospital Conditions of Participation: Anesthesia Services: Delay of Effective Date

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled ''Hospital Conditions of Participation: Anesthesia Services,'' published in the **Federal Register** on January 18, 2001 (66 FR 4674). That rule concerns the Anesthesia Services Condition of Participation (CoP) for hospitals, the Surgical Services Condition of Participation for Critical Access Hospitals (CAHs), and the Ambulatory Surgical Center (ASC) Conditions of Coverage—Surgical Services. That final rule changes the physician supervision requirement for certified registered nurse anesthetists furnishing anesthesia services in hospitals, CAHs, and ASCs. Under that final rule, State laws will determine which professionals are permitted to administer anesthesia and the level of supervision required, recognizing a State's traditional domain in establishing professional licensure and scope-of-practice laws. To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(3)(A). Alternatively, HCFA's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(3)(B) and 553(d)(3), in that seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest, in the orderly promulgation and implementation of regulations.

DATES: The effective date of the final rule, Hospital Conditions of Participation: Anesthesia Services, published in the **Federal Register** on January 18, 2001 (66 FR 4674), is delayed for 60 days, from March 19, 2001 to a new effective date of May 18, 2001.

FOR FURTHER INFORMATION CONTACT: Stephanie Dyson, Health Care Financing Administration, (410) 786–9226.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774 Medicare—Supplementary Medical Insurance Program)

Dated: February 27, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: March 12, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–6773 Filed 3–16–01; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 46

RIN 0925–AA14

Protection of Human Research Subjects: Delay of Effective Date

AGENCY: Department of Health and Human Services (DHHS).

ACTION: Final rule; delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled A Regulatory Review Plan, published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Protection of Human Subjects, published in the **Federal Register** on January 17, 2001, 66 FR 3878.

That rule concerns Protection of Human Subjects, Additional Protections for Pregnant Women and Human Fetuses Involved in Research, and Pertaining to Human In Vitro Fertilization. To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A).

Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3)—Seeking public comment and delaying the effective date of this rule would be impracticable, and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of regulations that had been published in the **Federal Register** as of January 20, 2001, but had not yet taken effect as of that date. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

DATES: The effective date of the Final Rule, Protection of Human Subjects, published in the **Federal Register** on January 17, 2001, at 66 FR 3878 is delayed for 60 days, from March 19, 2001 to a new effective date of May 18, 2001.

FOR FURTHER INFORMATION CONTACT: Melody Lin, Ph.D., Office for Human Research Protections (OHRP) 6100 Executive Blvd., Suite 3B01, Rockville, MD 20892–7505. Telephone 301–496–7005. Email *LinM@od.nih.gov.*

Dated: January 14, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–6808 Filed 3–15–01; 12:17 pm]

BILLING CODE 4160–17–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 01–64]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission affirmed its April 2000 decision to use a point system to select among mutually exclusive noncommercial educational (NCE) broadcast applicants on reserved channels. In response to requests for additional information, the Commission clarified various aspects of the new system and revised several rules to reflect the clarifications. Appendix D to the decision identifies approximately 1,500 pending applications that are members of closed mutually exclusive groups on reserved channels. The Commission will issue a public notice announcing a date by which those applicants must file either a supplement to claim points or a settlement agreement. The Commission will waive its rules to permit timely filed settlements to exceed the amount of the applicants' reasonable and prudent expenses.

DATES: Effective April 18, 2001.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Internet address: *http://www.fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Federal Communications Commission, Mass Media Bureau, Audio Services Division, 445 12th Street, SW., Washington, DC 20554, (202) 418–2700. Internet address: ibleiwei@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* adopted February 15, 2001, and released February 28, 2001, which affirms and clarifies earlier action in this proceeding (See 65 FR 36375, June 8, 2000; 66 FR 3884, January 17, 2001). The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036. The text and list of applicants in Appendix D can also be obtained over the internet, in the headlines section of the FCC's home page *http://www.fec.gov.*

Synopsis of Order

1. On February 28, 2001, the Commission released a decision responding to seventeen Petitions for Reconsideration and/or Clarification of noncommercial educational (NCE) broadcast selection procedures adopted in April 2000. The decision clarifies filing procedures and selection methods for mutually exclusive applicants seeking to construct new or to make major changes to existing reserved channel NCE broadcast stations including FM, FM translator, and television stations. While providing additional guidance to applicants, the decision leaves the point system that will be used to select among applicants basically unchanged from that adopted in April 2000.

2. Future applicants seeking to build new reserved channel NCE stations or to make major changes to such existing stations will file applications during a ''filing window.'' They will claim points as part of their original application, based on their qualifications at the time of filing. If mutually exclusive applications are received during the filing window the Commission will use a point system and tie breakers to select among them. Each applicant's characteristics at the time of filing will determine that applicant's maximum points and its maximum position in a tie breaker. If an applicant makes changes after filing that detract from the original proposal, it will lose points.

3. Procedures will differ somewhat for pending applications, because those applications did not contain any point information at the time of filing. Procedures will depend on whether the applicant is in a group that is considered ''closed'' or ''open'' in terms of whether it is subject to future competition from additional parties.

4. Appendix D to the Commission's decision lists the applicants in ''closed'' groups. With respect to these applicants the Commission will issue a public notice announcing a supplement date, approximately 30 days thereafter. By that date, applicants in ''closed'' groups must file either a settlement agreement or a supplement to claim points. Applicants filing neither will be dismissed. The Commission will waive its rules to permit closed group applicants that file settlements on or before the supplement date to receive consideration that exceeds reasonable and prudent expenses.

5. Two types of settlements are acceptable: Universal settlements and technical solutions, each of which allows immediate grant of an authorization. Universal settlements resolve the claims of all applicants in the mutually exclusive group. Technical solutions make it possible, by means of a minor engineering change, for one applicant to remove itself from the group on the four corners of its application without affecting the viability of any other applicants.

6. Non-settling applicants in closed groups must file point supplements to remain viable. They may claim non-technical points based on their qualifications as of the future ''supplement date'' to be announced by public notice. To some degree this may enable existing applicants to enhance their positions. For example, an applicant that unconditionally withdraws pending applications prior to the supplement date would not count those stations for purposes of the tie breaker which favors applicants with fewer pending applications. Not all point factors can be enhanced in that manner, however. For example, only those applicants that have been local for a full two years by the supplement date can claim points as an ''established'' local applicant. An organization cannot be considered established through its later actions, such as by changing in its board of directors after our adoption of the point system. Applicants also will not be permitted to claim additional points based on recent technical changes, because applications have already been studied for technical matters and changes now would cause undue delay. The applicant's technical points will be examined as of the date on which we issued a ''B'' cut-off public notice establishing the closed group or, if no such notice has been issued, as of April 21, 2000, the release date of our Report and Order in this proceeding. These dates establish maximum points, which will be reduced if the applicant makes detracting changes thereafter.

7. With respect to the final type of applicants (those with pending applicants that are still ''open'' to future competition because they were never placed on an ''A'' cut-off notice) such applicants will be considered along with any additional applications filed within the first filing window. Pending applicants in open proceedings have two options for claiming points. If an applicant chooses to keep its application pending, it may amend that application during the first filing window to enhance its proposal and claim the points for which it would qualify as of the close of the filing window. Alternatively, an applicant may withdraw its pending application

prior to the first filing window and file a new application that includes point information within that window. In either case, existing applicants that are subject to competition will have the same opportunity as new applicants to submit their best proposals during the first filing window.

8. The Commission's decision makes several other clarifications. The rules are amended to clarify that, to the extent that attribution is relevant to an NCE station, the attribution standards contained in the notes to 47 CFR 73.3555 (the commercial ownership rule) will apply. The rules are amended to incorporate the provision that government entities are considered local throughout their areas of jurisdiction. It is clarified that the NCE standards for fair distribution pursuant to 47 U.S.C. 307(b) are based on whether a station is the first or second reserved channel FM station *received* by a substantial population within the station's 60dBu contour. For NCE 307(b) purposes, it is immaterial whether there are also stations operating on non-reserved channels with noncommercial formats and whether there are other NCE stations *licensed to* a particular community. It is clarified that consortia of schools can qualify for the state-wide network credit. It is clarified that for purposes the point system and its tie breakers, radio applicants (whether full service or translator) will count as their existing stations and applications, AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations. To ensure efficient processing the Commission will waive the requirement that applications for new NCE FM stations and major changes to existing mutually exclusive NCE FM stations be amended pursuant to Docket No. 98–93 to provide city grade coverage.

Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (''RFA''),[1] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Further Notice of Proposed Rulemaking and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Report and Order. *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants,* MM Docket No. 95–31, *Further Notice of Proposed Rule Making,* 63 FR 58358 (October 30, 1998), 13 FCC Rcd 21167 (1998) *(Further Notice); Report and Order,* 65 FR 36375 (June 8, 2000), 15 FCC Rcd 7386 (2000). This present Supplemental Final Regulatory Flexibility Analysis (''Supplemental FRFA'') conforms to the RFA as amended by the Contract with America Advancement Act of 1966, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''). *See* 5 U.S.C. 604.

Need For and Objectives of the Memorandum Opinion and Order

In the Report and Order, the Commission established a point system, a type of simplified paper hearing, to select among applicants competing to construct new noncommercial educational (NCE) broadcast stations on channels reserved for NCE use. The Commission received petitions requesting reconsideration and clarification of a variety of issues. This Memorandum Opinion and Order affirms the use of a point system and the elements therein, but makes the following clarifications: (1) Attribution standards applicable to NCE stations are clarified; (2) the stated policy that government entities are considered local throughout their areas of jurisdiction is incorporated into the rules; (3) it is clarified that first and second NCE aural signals received, rather than those licensed to a community, will be considered for the threshold fair distribution analysis and that, if fair distribution is not decisive only equivalent mutually exclusive applications with respect to fair distribution will proceed to be considered under a point system; (4) the manner in which applicants will claim points is clarified; and (5) the manner in which to count translator stations is clarified. Additionally, the Memorandum Opinion and Order gives applicants in pending closed groups of mutually exclusive applications a limited opportunity to settle for more than reasonable and prudent expenses.

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

No comments were received in direct response to the FRFA in MM Docket No. 95–31. Two Petitioners for Reconsideration, while not addressing the FRFA, ask for clarification of whether small community colleges with fewer than five campuses can qualify for state-wide network points. The Memorandum Opinion and Order clarifies that small colleges that form consortiums with other colleges, so that at least five campuses are served, can so qualify. *See infra.*

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small organization,'' ''small business,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *See* 5 U.S.C. 601(3); 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Small Business Act, 15 U.S.C. 632 (1996). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. 1992 Economic Census, U.S. Bureau of Census, Table 6 (special tabulation of data under contract to Office of Advocacy of U.S. Small Business Administration). ''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.'' 5 U.S.C. 601(4). 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.

The rules adopted in this Order will apply to television and radio stations licensed to operate on channels reserved as ''noncommercial educational.'' Specifically, the rules will affect reserved channel FM, FM translator, and TV stations that apply to make major changes to those existing stations and to applicants for permits to construct new reserved channel FM, FM translator, and TV stations. Stations that operate on non-reserved channels, such as TV translator stations and AM stations are not affected. Stations in low power services (LPTV and LPFM) also are not affected.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

With respect to television stations, the Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Television stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are other establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

For 1992 the total number of television stations that produced less than $10.0 million in revenue was 1,155 of the 1,509 television stations then operating, both commercial and noncommercial, or 77 percent. As of February 1, 2001, of the 1,667 total television stations, 374 were noncommercial educational. Thus, we estimate that the proposed rules will potentially affect 288 (77 percent of 374) noncommercial educational television stations that are small businesses. These existing stations would only be affected if they file an application for major modification of their existing facilities, and if another applicant files a mutually exclusive application. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. On the other hand they may understate the number of small entities, because we believe that a larger percentage of noncommercial educational stations are small businesses than the percentage applicable to the television industry as a whole. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In 1997, minorities owned and controlled 38 (3.2%) of 1,193 commercial television stations in the United States. Comparable figures are not available for noncommercial stations. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and noncommercial television stations in the United States. The proposal would also affect pending and future mutually exclusive applications for noncommercial television stations. As of February 2001, there are currently 89 pending applications for 31 channels reserved for noncommercial educational television usage.

The rules would also affect noncommercial educational radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. 13 CFR 121.201, SIC code 4832. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. 1992 Census, Series UC92–S–1, at Appendix A–9. Radio stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are entities which primarily are engaged in radio broadcasting and which produce radio program materials. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96 percent of radio station establishments produced less than $5 million in revenue in 1992. The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each colocated AM/FM combination counts as one establishment. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. FCC News Release, No. 31327 (January 13, 1993). As of February 1, 2001, Commission records indicate that 12,751 radio stations were operating. Of that radio station total, 2,170 stations were noncommercial educational FM radio stations. Thus, we estimate that 2,083 (96%) of these noncommercial educational stations are small businesses, possibly more because we believe that a greater percentage of noncommercial educational stations are small businesses than of the radio industry overall. These existing stations would only be affected by the proposal if they choose to file applications for major modification of facilities and if their applications are mutually exclusive with the application of another noncommercial entity. Applicants for new NCE radio stations would also potentially be affected. As of February 2001 there were 439 pending mutually exclusive groups of 1,356 applications, for new noncommercial FM radio stations. We also note that this proposal will affect future full service FM applications. It also will affect pending and future noncommercial FM translator applicants. As of February 1, 2001 there were 43 pending mutually exclusive groups of 97 applications for reserved channel FM translator stations.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Most of the provisions of the Report and Order are unchanged by the Memorandum Opinion and Order. As noted in the Report and Order, the point system is expected to reduce the overall administrative burden of the Commission's application processes on applicants and the Commission. Use of a point system will eliminate the expense of preparing for and appearing at lengthy traditional hearings. Applicants should also receive decisions faster, because the Commission will make numerical calculations instead of preparing detailed hearing decisions. These savings should more than offset the time that would be required for applicants to gather and submit documentation supporting the points claimed. No additional professional services are required by applicants filing under these revised rules. Further, the cost of compliance will not vary between large and small entities.

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

All significant alternatives presented in the petitions and responsive comments were considered. The alternatives considered generally would affect all reserved channel applicants, regardless of whether they are small or large entities, and whether they are seeking to construct small or large stations. For example, the Commission considered but did not adopt suggestions to use lotteries rather than a point system, to adjust the previously established qualifications needed to receive various points, and to adopt points for new factors such as radio reading services. While generally affirming the choices made previously in its Report and Order in this proceeding, MM Docket No. 95–31, 15 FCC Rcd 7386 (2000), the Commission clarified various matters. Only one clarification specifically affects small entities. In response to a concern raised by community colleges, the Commission clarified that existing rules permit applicants with fewer than 5 colleges/50 secondary schools of their own to qualify as state-wide networks if through a consortium or similar arrangement they are also able to count schools under the authority of other

educators to which they regularly provide curriculum programming. This option may benefit small entities. We expect that there is no significant economic impact on small entities as a result of this clarification. We will continue to consider small entities favorably in the point system, in that they are more likely than large entities to qualify for the points awarded for diversity of ownership, established local entity, and in a tie breaker for number of existing authorizations and applications.

Report to Congress

The Commission will send a copy of the *Memorandum Opinion and Order*, including this Supplemental 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 will send a copy of this *Memorandum Opinion and Order*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Memorandum Opinion and Order* and Supplemental FRFA, (or summaries thereof) will also be published in the **Federal Register** pursuant to 5 U.S.C. 604(b).

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Regulatory Text

For the reasons discussed in the preamble, parts 73 and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read:

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

2. Section 73.3555 is amended by revising the last sentence of paragraph (f) to read as follows:

§ 73.3555 Multiple ownership.

(f) * * * However, the attribution standards set forth in the Notes to this section will be used to determine attribution for noncommercial educational FM and TV applicants, such as in evaluating mutually exclusive applications pursuant to subpart K.

* * * * *

3. Section 73.7000 is amended by revising the definition of ''Local applicant'' to read as follows:

§ 73.7000 Definition of terms (as used in subpart K only).

* * * * *

Local applicant: An applicant physically headquartered, having a campus, or having 75% of board members residing within 25 miles of the reference coordinates for the community to be served, or a governmental entity within its area of jurisdiction.

* * * * *

4. Section 73.7002 is amended by revising paragraph (b) to read as follows:

§ 73.7002 Fair distribution of service on reserved band FM channels.

* * * * *

(b) In an analysis performed pursuant to paragraph (a) of this section, a full service FM applicant that will provide the first or second reserved channel noncommercial educational (NCE) aural signal received by at least 10% of the population within the station's 60dBu (1mV/m) service contours will be considered to substantially further fair distribution of service goals and to be superior to mutually exclusive applicants not proposing that level of service, provided that such service to fewer than 2,000 people will be considered insignificant. First service to 2,000 or more people will be considered superior to second service to a population of any size. If only one applicant will provide such first or second service, that applicant will be selected as a threshold matter. If more than one applicant will provide an equivalent level (first or second) of NCE aural service, the size of the population to receive such service from the mutually exclusive applicants will be compared. The applicant providing the most people with the highest level of service will be awarded a construction permit, if it will provide such service to 5,000 or more people than the next best applicant. If none of the applicants in a mutually exclusive group would substantially further fair distribution goals, all applicants will proceed to examination under a point system. If two or more applicants will provide the same level of service to an equivalent number of people (differing by less than 5,000), only those equivalent applicants will be considered together in a point system.

* * * * *

5. Section 73.7003 is amended by adding two new sentences to the end of paragraphs (b)(2) and (c)(1) and adding new paragraphs (e) and (f) to read as follows:

§ 73.7003 Point system selection procedures.

* * * * *

(b) * * *

(2) * * * Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

* * * * *

(c) * * *

(1) * * * Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

* * * * *

(e) For applications filed after April 21, 2000, an applicant's maximum qualifications are established at the time of application and will be reduced for any post-application changes that negatively affect any evaluation criterion.

(f) For applications filed on or before April 21, 2000, an applicant's maximum qualifications are established as of the relevant date listed in paragraph (f)(1), (2), or (3) of this section. After the relevant date for determining an applicant's maximum points, points will be reduced for any changes that negatively affect any evaluation criterion. Applicants will establish their qualifications according to the following:

(1) If the applicant is in a group for which a ''B'' cut-off notice issued prior to April 21, 2000 its maximum non-technical qualifications are established as of the date by which applicants must supplement their applications to supply point information, and its maximum technical qualifications are established as of the date of the ''B'' cut-off notice;

(2) If the applicant is in a group for which an ''A'' cut-off notice issued prior to April 21, 2000 but for which no ''B'' cut-off notice issued, its maximum non-technical qualifications are established as of the date by which applicants must supplement their applications to supply point information, and its maximum technical qualifications are established as of April 21, 2000;

(3) If the applicant was neither placed on an ''A'' cut-off list prior to April 21, 2000 nor filed in response to such an ''A'' cut-off list, it is subject to competition from applications filed within the first filing window, and its maximum technical and non-technical qualifications will be determined as of the close of the first filing window.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read:

Authority: 47 U.S.C. 154, 303, 307, 336(f), and 554.

2. Section 74.1233 is amended by revising paragraphs (e)(3)(i) and (ii) to read as follows.

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(e) * * *

(3) * * *

(i) *Existing authorizations.* Each applicant's number of existing radio authorizations (licenses and construction permits for AM, FM, and FM-translators but excluding fill-in translators) as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee. If each applicant is applying for a fill-in translator only, and consideration of its other radio stations is not dispositive, its number of existing fill-in translator authorizations will also be considered, and the fill-in applicant with the fewest fill-in authorizations will be chosen as tentative selectee.

(ii) *Existing applications.* If a tie remains, after the tie breaker in paragraph (e)(3)(i) of this section, the remaining applicant with the fewest pending radio new and major change applications (AM, FM, and non fill-in FM translators) will be chosen as tentative selectee. If each applicant is applying for a fill-in translator only, and consideration of its other radio stations is not dispositive, its number of existing fill-in translator applications will also be considered, and the fill-in applicant with the fewest fill-in authorizations will be chosen as tentative selectee.

* * * * *

[FR Doc. 01–6637 Filed 3–16–01; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 031201C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery off the Southern Atlantic States; Closure of the Penaeid Shrimp Fisheries off South Carolina and Georgia

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

ACTION: Closure of the penaeid shrimp fisheries in the exclusive economic zone (EEZ) off South Carolina and Georgia.

SUMMARY: NMFS closes the trawl fishery for penaeid shrimp, i.e., brown, pink, and white shrimp, in the EEZ off South Carolina and Georgia. This closure action is taken in accordance with the procedures and criteria specified in the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) and its implementing regulations and is intended to protect the spawning stock of white shrimp that has been severely depleted by unusually cold weather conditions.

DATES: The closure is effective March 13, 2001 until the effective date of a notification of opening which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–570–5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The commercial penaeid shrimp fishery in the South Atlantic Region is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The FMP and implementing regulations at 50 CFR 622.35(d) provide the procedures, criteria, and authority for a concurrent closure of the EEZ adjacent to South Atlantic states that have closed their waters to harvest of brown, pink, and white shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather. Consistent with those procedures and criteria, the states of Georgia and South Carolina have determined, based on standardized assessments, that unusually cold temperatures have resulted in at least an 80-percent reduction of the white shrimp populations in their respective state's waters. Both states have closed their waters to the harvest of brown, pink, and white shrimp and have requested that the Council recommend that NMFS implement a concurrent closure of the EEZ off Georgia and South Carolina. The Council convened a review panel to evaluate the data supporting the states' requests. Based on the review panel's recommendation, the Council approved the states' requests and requested that NMFS concurrently close the EEZ off Georgia and South Carolina to the harvest of brown, pink, and white shrimp. NMFS has determined that the recommended closure conforms with the procedures and criteria specified in the FMP and implementing regulations, the Magnuson-Stevens Act, and other applicable law and, therefore, implements the closure effective March 13, 2001. The closure will be effective until the ending dates of the closures in the respective states' waters, but may be ended earlier based on the states' request. In no case will the closure remain effective after June 15, 2001. NMFS will terminate the closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

During the closure, no person may: (1) trawl for brown, pink, or white shrimp in the EEZ off Georgia or South Carolina; (2) possess on board a fishing vessel brown, pink, or white shrimp in or from the EEZ off Georgia or South Carolina unless the vessel is in transit through the area and all nets with a mesh size of less than 4 inches (10.2 cm) are stowed below deck; or (3) use or have on board a vessel trawling in that part of the EEZ off Georgia or South Carolina that is within 25 nautical miles of the baseline from which the territorial sea is measured a trawl net with a mesh size less than 4 inches (10.2 cm).

Classification

This action responds to the best available information recently obtained from the fishery. The closure must be implemented immediately to protect the severely depleted spawning stock of white shrimp off Georgia and South Carolina and avoid overfishing. This action complements closures already imposed by the respective states. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause, that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C.

553(d), a delay in the effective date is waived.

This action is authorized by 50 CFR 622.35(d) and is exempt from review under Executive Order 12866.

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

Dated: March 13, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–6623 Filed 3–13–01; 4:24 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000822244–1060–03; I.D. 030201B]

RIN 0648–AO66

Fisheries Off West Coast States and in the Western Pacific Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure

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

ACTION: Emergency interim rule; notification of closure; clarification of closure requirements; request for comments.

SUMMARY: NMFS announces that the limit on the number of longline sets specified for Hawaii longline fishing restricted Area B, from January 1, 2001, through March 14, 2001, will not be reached. Therefore, NMFS will allow longline fishing to continue in Area B through March 14, 2001. Further, NMFS clarifies that from March 15, 2001 through May 31, 2001, the use of longline gear by vessels registered for use under Hawaii longline limited access permits (Hawaii-based longliners) is prohibited everywhere. Closure of Hawaii's longline fishery takes effect at 0001 hours local time (l.t.) on March 15, 2001, at which time all Hawaii longliners at sea must have ceased fishing operations, removed their longline gear from the water, and be in active transit to the next port of call.

DATES: This emergency interim rule is effective from March 14, 2001 through August 20, 2001.

ADDRESSES: Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to Dr. Charles Karnella, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, at 808–973–2935, ext. 207.

SUPPLEMENTARY INFORMATION: Emergency interim measures (66 FR 11120, February 22, 2001) governing the Hawaii-based longline fishery require the NMFS Southwest Region Regional Administrator to inform Hawaii-based longliners when further use of longline gear to fish for Pacific pelagic management unit species is prohibited in Hawaii Longline Fishing Restricted Area B (all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 137° W. long. and on the west by 150° W. long; and all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 168° W. long. and on the west by 173° E. long.). Based on longline observer information, the total amount of longline fishing effort expended by Hawaii-based longliners in Area B through March 14, 2001, will be close to, but less than, the limit of 77 longline sets allowed in the area; therefore, closure of Area B will coincide with closure of the Hawaii-based longline fishery on March 15, 2001.

At present, emergency measures prohibit the use of longline gear in Hawaii Longline Fishing Restricted Area A (waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 150° W. long., and on the west by 168° W. long.). For Area B (previously described) and Hawaii Longline Fishing Restricted Area C (waters bounded on the south by 0° lat., on the north by 28° N. lat., on the east by 137° W. long., and on the west by 173° E. long.), longline fishing is prohibited from March 15, 2001, through May 31, 2001. Closure of Areas B and C, in addition to the currently closed Area A, is intended to comply with an order issued by the U.S. District Court for the District for Hawaii (Order Further Amending Order Modifying Provisions of Order of Injunction, August 4, 2000) in *Center for Marine Conservation* v. *NMFS*, Civ. No. 99-00152. Under the Order, longline fishing by Hawaii-based longliners is prohibited from March 15, 2001, through May 31, 2001.

When the emergency interim measures to close the Hawaii longline fishery were initially promulgated on August 25, 2000 (65 FR 51992), NMFS surmised that closing the longline fishing restricted areas, which encompass about 10 million square miles of the central and western Pacific Ocean, from March 15, 2001, through May 31, 2001, would effectively close the fishery. However, longline logbook information from August 1, 2000, through December 31, 2000, indicates that Hawaii longliners made at least 28 longline sets (19 sets east of 147° W. longitude and 9 sets west of 173° E. longitude) outside Areas A, B, and C. In this emergency interim rule, NMFS makes clear that the use of longline gear by Hawaii-based longliners is prohibited everywhere, inside and outside Areas A, B, and C.

The emergency interim rule also clarifies that closure of the Hawaii longline fishery takes effect at 0001 hours l.t. on March 15, 2001, at which time all Hawaii-based longliners must have ceased fishing operations, removed their longline gear from the water, and be in active transit to their next port of call.

This emergency interim rule is authorized under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that clarification of the emergency interim rule is necessary to comply with a valid order of the U.S. District Court.

The AA finds for good cause that providing prior notice and opportunity for public comment for this action is unnecessary given that the Court ordered the specific actions contained in this emergency interim rule, thus precluding implementation of any alternative, and is impracticable given the Court's deadline to close the fishery on March 15, 2001. Similarly, the AA finds, for good cause, under 5 U.S.C. 553(d)(3), that delaying the effectiveness of this emergency interim rule for 30 days is impracticable given the Court's deadline. Accordingly, the AA is making this emergency interim rule effective from March 14, 2001 through August 20, 2001.

Because this emergency interim rule is not required to be published with notice and opportunity for public comment under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

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

The President has directed Federal Agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language

used in this emergency interim rule. (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

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

Dated: March 14, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR is amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

2. In § 660.22, paragraph (ee) is revised to read as follows:

§ 660.22 Prohibitions.

* * * * *

(ee) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit using longline gear in violation of § 660.33(a)(4), (b)(1), (c)(1), (c)(4), (c)(5), or (d)(1).

* * * * *

3. In § 660.33, new paragraph (a)(4), is added to read as follows:

§ 660.33 Hawaii emergency closure.

* * * * *

(a) * * *

(4) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species from March 15 through May 31, 2001.

* * * * *

[FR Doc. 01–6763 Filed 3–14–01; 4:12 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 031301B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 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 pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 16, 2001, until 1200 hrs, A.l.t., August 20, 2001.

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

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.

Within any fishing year, under harvest or over harvest of a seasonal allowance may be added to or subtracted from the subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment (§ 679.20(a)(5)(ii)(C)). The combined A and B season allowance of the pollock TAC in Statistical Area 610 is 11,561 metric tons (mt) as established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001). The Regional Administrator hereby reduces the B season pollock TAC by 2,011 mt, the amount of the A season pollock over harvest. In accordance with § 679.20(a)(5)(ii)(C), the B season allowance of pollock TAC in Statistical Area 610 is 1,843 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,643 mt, and is setting aside the remaining 200 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 be reached within 24 hours of the March 15 opening date. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective at 1200 hrs, A.l.t., March 16, 2001.

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 that the need to immediately implement this action to prevent exceeding the seasonal allocation of pollock in Statistical Area 610 constitutes 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)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the seasonal allocation of pollock in Statistical Area 610 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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: March 14, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–6726 Filed 3–14–01; 2:48 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 031301A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District 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 pollock in West Yakutat

District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) specified for the West Yakutat District in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 1, 2001, until 2400 hrs, A.l.t., December 31, 2001.

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

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 pollock TAC in the West Yakutat District, Statistical Area 640, was established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) as 2,235 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the TAC of pollock in the West Yakutat District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,035 mt, and is setting aside the remaining 200 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 pollock in the West Yakutat Districtof 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 that the need to immediately implement this action to prevent exceeding the pollock TAC in the West Yakutat District constitutes 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)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the pollock TAC in the West Yakutat District constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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: March 14, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–6728 Filed 3–14–01; 2:48 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 031301E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 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 pollock in Statistical Area 630 outside the Shelikof Strait conservation area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 630 outside the Shelikof Strait conservation area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 17, 2001, until 1200 hrs, A.l.t., August 20, 2001.

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

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.

Within any fishing year, under harvest or over harvest of a seasonal allowance may be added to or subtracted from the subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment (§ 679.20(a)(5)(ii)(C)). The combined A and B season allowance of the pollock TAC in Statistical Area 630 outside Shelikof Strait is 8,211 metric tons (mt) as established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001). The Regional Administrator hereby increases the B season pollock TAC by 227 mt, the amount of the A season under harvest. In accordance with § 679.20(a)(5)(ii)(C), the B season allowance of pollock TAC in Statistical Area 630 outside Shelikof Strait is 2,964 mt. This adjusted B season TAC does exceed 30 percent of the annual TAC.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the pollock TAC in Statistical Area 630 outside the Shelikof Strait conservation area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,464 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 be reached within 48 hours of the March 15 opening date. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 outside the Shelikof Strait conservation area in the GOA effective at 1200 hrs, A.l.t., March 17, 2001.

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 that the need to immediately implement this action to prevent exceeding the seasonal allocation of pollock in Statistical Area 630 outside the Shelikof Strait conservation area constitutes 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)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures

would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the seasonal allocation of pollock in Statistical Area 630 outside the Shelikof Strait conservation area constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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: March 14, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–6727 Filed 3–14–01; 2:48 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 53
Monday, March 19, 2001

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 55 Series Airplanes and Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 55 Series Airplanes and Model 60 Airplanes. This proposal would require replacement of the brake valve adjustment screw with a new improved screw, and for certain airplanes, it would also require installation of a new brake valve lever stop. This action is necessary to prevent bottoming of the valve components before contact of the brake valve lever with the stop, which could result in loss of all hydraulic fluid and consequent loss of normal braking. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 3, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–128–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–128–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports of sheared brake valve adjustment bolts on certain Learjet Model 60 airplanes. Additionally, we have received a report indicating that loss of all hydraulic fluid during taxi occurred on one airplane, which was attributed to broken brake valve adjustment bolts. Loss of all hydraulic fluid, if not prevented, could result in loss of normal braking capability.

Explanation of Relevant Service Information

The FAA has reviewed and approved Bomardier Service Bulletins 60–32–10, Revision 1, dated June 22, 2000 (for Learjet Model 60 airplanes), and 55–32–14, dated November 9, 1999 (for Learjet Model 55 series airplanes). Both service bulletins describe procedures for installing a new brake valve lever stop and replacing the brake valve adjustment screws with new improved screws. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 331 airplanes of the affected design in the worldwide fleet. The FAA estimates that 285 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,368 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $948,480, or $3,328, per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Learjet: Docket 2000–NM–128–AD.

Applicability: Model 55 series airplanes, serial numbers 55–003 through 55–147 inclusive, and Model 60 airplanes, serial numbers 60–002 through 60–189 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent bottoming of the valve components before contact of the brake valve lever with the stop, which could result in loss of all hydraulic fluid and consequent loss of normal braking; accomplish the following:

Replacement of Brake Valve Lever Stop Switch

(a) Within 300 flight hours or one year after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraph (a)(1), (a)(2), or (a)(3), as applicable.

(1) For Learjet Model 60 airplanes having serial numbers 60–002 through 60–093 inclusive, and 60–095 through 60–188 inclusive: Replace the existing brake valve lever stop switch with a new brake valve lever stop switch, and replace the brake valve adjustment screws with new improved screws, per Bombardier Service Bulletin 60–32–10, Revision 1, dated June 22, 2000.

(2) For Learjet Model 60 airplanes having serial number 60–094 or 60–189: Replace the brake valve adjustment screws with new improved screws, per Bombardier Service Bulletin 60–32–10, Revision 1, dated June 22, 2000.

(3) For Learjet Model 55 series airplanes having serial numbers 55–003 through 55–147 inclusive: Replace the existing brake valve lever stop with a new brake valve lever stop, and replace the brake valve adjustment screws with new improved screws, per Bombardier Service Bulletin 55–32–14, dated November 9, 1999.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

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

Issued in Renton, Washington, on March 12, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–6646 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–262–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes. This proposal would require modification of the rigging of the engine control cable assembly and replacement of either the entire engine control cable assembly or a segment of the control cables. This proposal is prompted by issuance of mandatory continuing airworthiness information issued by a foreign airworthiness authority. This

action is necessary to prevent fatigue of the engine control cables, leading to breakage of the cables, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 18, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–262–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, ANM–116, FAA, Transport Airplane Directorate, 10601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–262–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direccion General De Aviacion Civil (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on certain CASA Model CN–235 series airplanes. The DGAC reported the occurrence of three in-service incidents of the breakage of a segment of the engine control cable assembly of the power plant, due to incorrect rigging of the system. In two of these incidents, the broken cable was that of the power lever. In the other incident, the broken cable was that of the condition lever. This incorrect rigging, if not corrected, could result in fatigue of the engine control cables, leading to breakage of the cables, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued CASA COM 235–140, Revision 01, dated March 21, 2000, which appends a portion of the revised Aircraft Maintenance Manual to modify the rigging of the power levers and condition levers of the engine control stops to eliminate overload on the engine control cables. CASA COM 235–140 also recommends the replacement of either the entire engine control cable assembly or only that segment of the control cable which has been found to be broken in the three incidents. Accomplishment of the actions specified in CASA COM 235–140 is intended to adequately address the identified unsafe condition. The DGAC classified this document as mandatory and issued Spanish airworthiness directive 03/00, dated March 2000, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 8 work hours per airplane to accomplish the proposed modification of the rigging of the engine control cable assembly, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of modifying the rigging on U.S. operators is estimated to be $960, or $480 per airplane.

It would take approximately 47 work hours per airplane to accomplish the proposed replacement of either the engine control cable assembly or a segment of the control cables, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,444 per airplane. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $8,528, or $4,264 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A. (CASA): Docket 2000–NM–262–AD.

Applicability: Model CN–235 series airplanes, serial numbers C001 to C074, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue of the engine control system cables, which could lead to breakage of the engine control cables, which could result in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 15 days after the effective date of this AD: Rig the power lever and condition lever control stops, in accordance with CASA COM 235–140, Revision 01, dated March 21, 2000.

Replacement

(b) Prior to the accumulation of 12,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later: Replace either the entire engine control cable assembly (part number 7–44728–12) with a new assembly or replace a segment of the control cable (part number 72830–20) with a new segment, in accordance with CASA COM 235–140, Revision 01, dated March 21, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 03/00, dated March 2000.

Issued in Renton, Washington, on March 12, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–6647 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300 B4, A310, A319, A320, A321, A330, and A340 Series Airplanes; and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2, A300 B4, A310, A330, and A340 series airplanes; all Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes; and all A319, A320, A321 series airplanes. That AD requires repetitive checks of the alternate braking system, and replacement of the braking dual distribution valve (BDDV) if necessary. This action would require, for certain airplanes, inspecting and/or replacing the BDDV cover with an improved cover. For all other airplanes, this action would provide for optional termination of the repetitive checks. This action would also revise the applicability of the existing AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the alternate braking system, which could result in the airplane overrunning the end of the runway during landing.

DATES: Comments must be received by April 18, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–267–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–NM–267–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2000–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 22, 1998, the FAA issued AD 98–15–51, amendment 39–10678 (63 FR 40805, July 31, 1998), applicable to all Airbus Model A319, A320, A321, A300, A310, A300–600, A330, and A340 series airplanes. That AD requires repetitive in-flight operational checks of the alternate braking system, and replacement of the braking dual distribution valve (BDDV) with a serviceable part, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent failure of the alternate braking system, which could result in the airplane overrunning the end of the runway during landing.

Actions Since Issuance of Previous Rule

In the preamble to AD 98–15–51, the FAA specified that the actions required by that AD were considered ''interim action,'' and indicated that it may consider further rulemaking action. The manufacturer has identified the more exposed location of the BDDV on Model A319, A320, and A321 series airplanes as a major contributing factor to water ingress in the BDDV cover. The manufacturer has developed a modification that will positively address the unsafe condition for those airplanes. The FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 32–19, Revision 04, dated April 29, 1999. The original version of the AOT was cited as the appropriate source of service information for doing the operational checks required by AD 98–15–51. Revision 04 was issued to provide operators with certain updated information; the accomplishment instructions remain essentially unchanged.

Airbus has issued the following service bulletins for Model A319, A320, and A321 series airplanes:

Service bulletin	Date	Actions	Purpose
A320–32–1199	1/15/99	Repetitive detailed visual inspections to detect corrosion of the rocker arm mechanism inside the BDDV cover.	To prevent seizure of the BDDV rocker arm mechanism on airplanes modified per Airbus Service Bulletin A320–32–1200 (production Modification 27833).
A320–32–1200	9/17/98	Modification of the BDDV, including drilling a drain hole in the cover and lubricating all the parts.	To prevent water accumulation in the cover and consequent jamming of the rocker arm mechanism under freezing conditions. To avoid corrosion from water condensation. To eliminate the need for repetitive checks (currently required on a weekly basis by AD 98–15–51).
A320–32–1203	6/4/99	Replacement of the BDDV cover with a new cover that includes a bonded seal, new attachment parts, and a transparent drain hose.	To improve the waterproofing of and detection of water in the BDDV cover. To provide a permanent solution for water accumulation in airplanes modified per Service Bulletin A320–32–1200 (production Modification 27833). To eliminate the need for the repetitive checks, the modification specified by Service Bulletin A320–32–1200, and the repetitive inspections specified by Service Bulletin A320–32–1199.

Accomplishment of the actions specified in the AOT and Service Bulletins A320–32–1199 and A320–32–1203 is intended to adequately address the identified unsafe condition. The Direction Générale de l'. Aviation Civile (DGAC), which is the airworthiness authority for France, classified these two service bulletins as mandatory. The DGAC issued French airworthiness directive 2000–258–146(B), dated June 14, 2000, to mandate the terminating action for Model A319, A320, and A321 series airplanes in France.

Airbus has issued additional service bulletins that describe procedures to modify the emergency BDDV. The modification involves replacing the BDDV cover with a new, improved cover, which includes a bonded seal, new attachment parts, and a transparent drain hose. This modification, if accomplished, would eliminate the need for the repetitive checks. The service bulletins are identified as follows:

Model/series	Service bulletin	Revision level	Date
A300 B2 and B4	A300–32–0429	Original	September 2, 1999.
A300–600	A300–32–6075	Original	September 2, 1999.
A310	A310–32–2113	Original	September 2, 1999.
A330	A330–32–3086	01	June 30, 1999.
A340	A340–32–4122	Original	May 21, 1999.

FAA's Conclusions

These airplanes are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–15–51 to continue to require repetitive in-flight operational checks of the alternate braking system, and replacement of the BDDV with a serviceable part if necessary. In addition, this action would:

- Require repetitive inspections to detect corrosion of the rocker arm mechanism inside the BDDV cover, and corrective actions if necessary, for Model A319, A320, and A321 series airplanes modified per Service Bulletin A320–32–1200.
- Require the eventual replacement of the BDDV cover with a new, improved cover for all Model A319, A320, and A321 series airplanes, which would terminate the requirements of the AD for those airplanes.
- Provide for optional terminating action for the repetitive operational checks.
- Remove airplanes from the applicability of the existing AD.

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

Operators should note that Service Bulletins A300–32–0429, A300–32–6075, A310–32–2113, A320–32–1203, A330–32–3086, and A340–32–4122 recommend subsequent repetitive inspections at each ''4A check'' to detect water inside the drain tube. However, to be consistent with the recommendations of the DGAC, this AD does not specify a 4A-check inspection, which is a task included in the airplane maintenance planning document.

Clarification of Model Designation

Since the issuance of AD 98–15–51, the FAA has changed the manner in which it identifies the airplane models referred to as Airbus Model ''A300 series airplanes'' and ''A300–600 series airplanes'' to reflect the model designation specified on the type certificate data sheet. This proposed AD specifies the appropriate model designations for those airplanes.

Cost Impact

There are approximately 367 airplanes of U.S. registry that would be affected by this proposed AD. Of these, approximately 311 are Model A319, A320, and A321 series airplanes.

The repetitive operational checks that are currently required by AD 98–15–51 and retained in this AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required repetitive checks is estimated to be $60 per airplane, per check.

The new inspection that is proposed in this AD action for certain Model A319, A320, and A321 series airplanes would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection proposed by this AD is estimated to be $60 per airplane, per inspection cycle.

The new BDDV cover replacement that is proposed in this AD action for Model A319, A320, and A321 series airplanes would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $55,980, or $180 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10678 (63 FR 40805, July 31, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000–NM–267–AD. Supersedes AD 98–15–51, Amendment 39–10678.

Applicability: The following airplanes, certificated in any category, identified in Table 1 of this AD:

TABLE 1.—APPLICABILITY

Model/series	Airplanes affected
A300 B2 and A300 B4.	All.
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600).	All.
A310	All.
A319, A320, and A321.	Those on which Airbus Modification 28301 (reference Airbus Service Bulletin A320–32–1203) has not been accomplished.
A330	All.
A340	All.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the alternate braking system, which could result in the airplane overrunning the end of the runway during landing, accomplish the following:

Repetitive Checks

(a) At the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD: Perform an in-flight operational check of the alternate braking system, in accordance with Airbus All Operator Telex (AOT) 32–19, Revision 04, dated April 29, 1999.

(1) For Model A319, A320, and A321 series airplanes: Perform the check at the earlier of the times specified by paragraphs (a)(1)(i) and (a)(1)(ii) of this AD. Thereafter, repeat the operational checks at intervals not to exceed 7 days.

(i) Within 7 days after the most recent check done per AD 98–15–51, amendment 39–10678.

(ii) Within 7 days after the effective date of this AD.

(2) For all other airplanes: Perform the check at the earlier of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii). Thereafter, repeat the operational checks at intervals not to exceed 500 flight hours.

(i) Within 500 flight hours after the most recent operational check done per AD 98–15–51.

(ii) Within 500 flight hours after the effective date of this AD.

(b) If any discrepancy is found during any operational check required by paragraph (a) of this AD: Prior to further flight, replace the brake dual distribution valve (BDDV) with a serviceable part, in accordance with AOT 32–19, Revision 04, dated April 29, 1999.

Note 2: The AOT refers to the following Flight Operation Telexes (FOT) as additional sources of service information: FOT 999.0062, Revision 01, dated August 20, 1998 (for Model A300 series airplanes), FOT 999.0061, Revision 01, dated August 20, 1998 (for Model A300–600 and A310 series airplanes), FOT 999.0059, Revision 02, dated September 2, 1998 (for Model A319, A320, and A321 series airplanes), and FOT 999.0060, Revision 01, dated August 20, 1998 (for Model A330 and A340 series airplanes).

Note 3: Doing the operational checks and replacing the BDDV per earlier versions of Airbus AOT 32–19 (issued prior to Revision 04) are also acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of this AD.

Repetitive Inspections for Certain Airplanes

(c) For Model A319, A320, and A321 series airplanes modified per Airbus Service Bulletin A320–32–1200 (production Modification 27833): Within 6 months after accomplishment of the modification, or within 3 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect corrosion of the rocker arm mechanism inside the BDDV cover, per Airbus Service Bulletin A320–32–1199, dated January 15, 1999. Repeat the inspection thereafter at least every 6 months until the actions required by paragraph (e) or (f), as applicable, of this AD have been accomplished. If any corrosion is detected during any inspection required by this paragraph: Before further flight, replace the BDDV cover with a new cover per Airbus Service Bulletin A320–32–1199, dated January 15, 1999.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Optional Terminating Action for Operational Checks

(d) Modification of the BDDV, if accomplished, per the applicable service bulletin listed in Table 2 of this AD cancels the operational checks required by paragraph (a) of this AD. Table 2 follows:

TABLE 2.—SERVICE BULLETINS FOR OPTIONAL TERMINATING ACTION

For model	Modification of the BDDV per airbus service bulletin	Cancels
A300 B2 and B4 series airplanes	A300–32–0429	The operational checks required by paragraph (a) of this AD.

TABLE 2.—SERVICE BULLETINS FOR OPTIONAL TERMINATING ACTION—Continued

For model	Modification of the BDDV per airbus service bulletin	Cancels
A300–600 series airplanes	A300–32–6075.	
A310 series airplanes	A310–32–2113.	
A319, A320, and A320 series airplanes	A320–32–1200.	
A330 series airplanes	A330–32–3086.	
A340 series airplanes	A340–32–4122.	

Required Terminating Action for Repetitive Inspections for Certain Airplanes

(e) Except as provided by paragraph (f) of this AD: For Model A319, A320, and A321 series airplanes, within 12 months after the effective date of this AD, replace the BDDV cover with a new, improved cover, per Airbus Service Bulletin A320–32–1203, dated June 4, 1999. This replacement terminates the requirements of this AD for these airplanes.

(f) For Model A319, A320, and A321 series airplanes modified per Airbus Service Bulletin A320–32–1200 within the compliance time specified by paragraph (e) of this AD: Do the replacement required by paragraph (e) of this AD within 15 months after doing the modification specified by Airbus Service Bulletin A320–32–1200, or within 2 months after the effective date of this AD, whichever occurs later. This replacement terminates the requirements of this AD for these airplanes.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–15–51, amendment 39–10678, are approved as alternative methods of compliance with the applicable requirements of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 6: The subject of this AD is addressed in French airworthiness directive 2000–258–146(B), dated June 14, 2000.

Issued in Renton, Washington, on March 12, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate,, Aircraft Certification Service.

[FR Doc. 01–6648 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 275

[Release No. IC–24890; IA–1932; File No. S7–06–01]

RIN 3235–AI05

Electronic Recordkeeping by Investment Companies and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing for public comment amendments to revise rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 that permit registered investment companies and registered investment advisers to preserve required records using electronic storage media such as magnetic disks, tape, and other digital storage media. The proposed amendments would expand the ability of advisers and funds to use electronic storage media to maintain and preserve records. The Commission is proposing these rule amendments in response to the enactment of the Electronic Signatures in Global and National Commerce Act, which encourages federal agencies to accommodate electronic recordkeeping.

DATES: Comments must be received on or before April 19, 2001.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–06–01; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).[1]

FOR FURTHER INFORMATION CONTACT: William C. Middlebrooks, Jr., Attorney, or Martha B. Peterson, Special Counsel, Office of Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') today is requesting public comment on proposed amendments to rule 31a–2 [17 CFR 270.31a–2] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act''), and rule 204–2 [17 CFR 275.204–2] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the ''Advisers Act'').[2]

Executive Summary

The federal securities laws require registered investment companies (''funds''), registered investment advisers (''advisers''), and others to make and keep books and records. The recordkeeping requirements are a key part of the Commission's investment company and investment adviser regulatory program because they allow us to monitor the operations of funds and advisers and to evaluate their compliance with the federal securities laws.

Last year, Congress passed the Electronic Signatures in Global and National Commerce Act (''Electronic Signatures Act,'' ''Act,'' or ''ESIGN'') to

[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Unless otherwise noted, all references to rule 31a–2 or rule 204–2, or to any paragraph of those rules, will be to 17 CFR 270.31a–2 and 17 CFR 275.204–2, respectively.

facilitate the use of electronic records and signatures in interstate and foreign commerce.[3] Consistent with the purpose and goals of the Electronic Signatures Act, we are proposing rule amendments to expand the circumstances under which funds and advisers may keep their records on electronic storage media. We are also proposing amendments to clarify and update our recordkeeping rules.

I. Discussion

A. Amendments to Rules 31a–2 and 204–2

Rules 31a–2 and 204–2 provide that funds and advisers may keep records on electronic storage media only if the records were originally created or received in an electronic format.[4] The Commission's staff has issued no-action letters that conditionally permit funds and advisers to convert records into an electronic format and retain them electronically.[5] We are proposing amendments to the recordkeeping rules that would incorporate these no-action letters, but would eliminate many of the conditions that apply only to electronic archives of non-electronic originals.[6] As a result, electronic records, regardless of how they originated, would be subject to uniform requirements.

The standards for electronic recordkeeping we are proposing for advisers and funds are different from rules we have adopted for broker-dealers, which require brokerage records to be preserved in a non-rewriteable, non-erasable (''WORM'') format.[7] We understand that use of WORM would require most advisers and funds to invest in new electronic recordkeeping technologies. Such costs may not be justified in light of the limited problems we have experienced with funds and advisers altering stored records. Moreover, most advisory and mutual fund arrangements involve multiple parties (*e.g.*, brokers, custodians, transfer agents), each with its own, often parallel, recordkeeping requirement. As a result, our compliance examiners typically have an alternative means to verify the accuracy of adviser and fund records. Comment is requested on our assessment of the costs and benefits of requiring records to be stored using WORM format.

We are also proposing to amend the recordkeeping rules to clarify the obligation of funds and advisers to provide copies of their records to Commission examiners. Currently the rules require that funds and advisers ''promptly provide'' on request any ''facsimile enlargement'' of a photographic record or ''computer printout or copy'' of a computer storage medium.[8] The proposed amendments would make clear that (i) ''provide promptly'' means in no case more than one business day after the request;[9] (ii) printouts or copies of a storage medium include legible, true, and complete printouts or copies of the records (or the information necessary to generate the records) in the medium and format in which they are stored;[10] and (iii) the adviser or fund must provide a means to access, search, view, sort, and print the records.[11] Finally, we are proposing to adopt technical amendments that incorporate the terminology used in electronic recordkeeping rules under the Securities Exchange Act of 1934 into rules 31a–2 and 204–2.[12] Comment is requested on these proposals. Should our rules be amended in other ways to accommodate electronic recordkeeping?

B. Interpretation of Electronic Signatures Act

Under the Electronic Signatures Act, an agency's recordkeeping requirements may be met by retaining electronic records that accurately reflect the information set forth in the record, and remain accessible to all persons who are entitled to access, in a format that can be accurately reproduced.[13] The Act allows us to interpret this provision pursuant to our authority under the Investment Company and Advisers Acts.[14] We anticipate that upon adoption of these amendments we will interpret the Electronic Signatures Act as requiring funds and advisers to comply with rules 31a–2 and 204–2 when they keep electronic records. As a result, compliance with rules 31a–2 and 204–2 would be the exclusive means by which funds and advisers could comply

[3] Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, 114 Stat. 464 (2000) [15 U.S.C. 7001], Preamble.

[4] Section 31(a) of the Investment Company Act authorizes the Commission to prescribe by rule the books and records that a fund and its adviser, depositor, and principal underwriter must maintain. 15 U.S.C. 80a–30(a). Rule 31a–1 [17 CFR 270.31a–1] under the Investment Company Act specifies the types of records that must be kept. Rule 31a–2 specifies where and for how long these records must be kept. Section 204 of the Advisers Act authorizes the Commission to adopt rules requiring advisers to make and keep records. 15 U.S.C. 80b–4. Rule 204–2 specifies the records that registered advisers must make and keep. Rule 31a–2(f)(2) and rule 204–2(g)(2) provide that a fund or adviser may maintain and preserve on magnetic tape, disk, or other computer storage medium records that, in the ordinary course of the entity's business, are created by the entity on electronic media or are received by the entity on electronic media or by electronic data transmission. Rule 31a–2(f)(2) also provides that records created on electronic media in the ordinary course of business on behalf of a fund, or received on behalf of a fund on electronic media or by electronic data transmission, may be maintained and preserved on a computer storage medium. Both rule 31a–2 and rule 204–2 permit many records to be reproduced and preserved on micrographic or electronic storage media. In general, if a fund or adviser uses one of these media, it must: (i) Arrange the records and index the storage medium to permit access to the records; (ii) be able to provide a facsimile enlargement of the micrographic storage medium, or computer printout or copy of the electronic storage medium; (iii) separately store a duplicate copy of the record; (iv) establish procedures for maintaining, preserving, and providing access to records stored on electronic storage media in order to safeguard them reasonably from loss, alteration, or destruction; and (v) have facilities to project and photocopy enlargements of micrographic records. Rule 31a–2(f)(1) and rule 204–2(g)(1).

[5] *See* Oppenheimer Management Corporation, SEC No-Action Letter (Aug. 28, 1995); DST Systems, Inc., SEC No-Action Letter (Feb. 2, 1993).

[6] Proposed rule 31a–2(f)(3) and proposed rule 204–2(g)(3). Funds and advisers would be required to have procedures to assure that any electronic reproduction of a non-electronic original is complete, accurate, and legible. Proposed rule 31a–2(f)(3)(iii) and proposed rule 204–2(g)(3)(iii).

[7] Rule 17a–4(f)(2)(ii)(A) under the Securities Exchange Act of 1934 [17 CFR 240.17a–4]. Non-rewriteable, non-erasable formats are also known as ''write once, read many'' or ''WORM'' formats.

[8] Rule 31a–2(f)(1)(ii) and rule 204–2(g)(1)(ii).

[9] Proposed rule 31a–2(f)(2)(ii) and proposed rule 204–2(g)(2)(ii). When rules 31a–2 and 204–2 were amended to permit funds and advisers to maintain their records electronically, we made clear that it was our expectation that, absent ''unusual circumstances'' computer-stored records would be provided within 24 hours of a request, and that there would be many circumstances in which funds and advisers would be able to, and therefore would be required to, provide records immediately or within a few hours of a request. *See* Investment Company Act; Use of Magnetic Tape, Disk, or Other Computer Storage Medium, Investment Company Act Rel. No. 15410 (Nov.13, 1986) [51 FR 42207 (Nov. 24, 1986)]; Amendment to Investment Advisers Act Recordkeeping Rule, Investment Advisers Act Rel. No. 952 (Jan. 11, 1985) [50 FR 2542 (Jan. 17, 1985)]. We have changed this requirement to one business day to take holidays and weekends into consideration. This change is not intended to alter the general requirement that records be provided within 24 hours of a request. Thus, for example, records requested at 2:00 p.m. on one business day would have to be provided no later than 2:00 p.m. on the next business day.

[10] Proposed rule 31a–2(f)(2)(ii)(A) and (B) and proposed rule 204–2(g)(2)(ii)(A) and (B). These amendments make clear that a fund or adviser that stores records electronically must provide Commission examiners, on request, an *electronic* copy of the records. An example of information necessary to generate a record would be software that is used with a relational database to generate a required record.

[11] Proposed rule 31a–2(f)(2)(ii)(C) and proposed rule 204–2(g)(2)(ii)(C). This provision would eliminate the need for the current requirement that funds and advisers have facilities for immediate, easily readable projection of micrographic storage media and for producing easily readable enlargements, and we are proposing to eliminate that requirement. *See* rule 31a–2(f)(1)(v) and rule 204–2(g)(1)(v).

[12] Rules 31a–2(f)(1) and 204–2(g)(1) currently refer to records stored on ''computer storage media'' and as ''photographs on film.'' Consistent with the terms used in rule 17a–4(f)(1), proposed rule 31a–2(f)(1) and proposed rule 204–2(g)(1) would refer to records stored on ''micrographic media'' and ''electronic storage media.''

[13] ESIGN section 101(d)(1).

[14] ESIGN section 104(b)(1).

with the Act's standards of accuracy and accessibility.

Our interpretation of the Electronic Signatures Act must be based on findings that (i) our interpreting regulations are substantially justified; (ii) the methods selected to carry out our purposes are substantially equivalent to the requirements imposed on records that are not electronic records and will not impose unreasonable costs on the acceptance and use of electronic records; and (iii) the methods selected to carry out our purposes do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.[15]

The Electronic Signatures Act's principles of accuracy and accessibility are consistent with the requirements of rules 31a–2 and 204–2. Our requirements that funds and advisers store separately duplicate copies of their records, and maintain procedures to safeguard them from loss, alteration, or destruction protect the integrity of the records and assure that the records are ''accurate.'' If a fund or adviser separately stores a duplicate copy of its records, then if one copy is altered or damaged there will still be an accurate backup copy. Procedures to safeguard records from loss, alteration, or destruction make it possible for funds, advisers, and us to be reasonably confident that the records have not been changed in ways that cannot otherwise be detected. Our requirements that funds and advisers arrange and index records, and that they be ready to provide printouts or copies of the records, make those records accessible. Funds and advisers keep many records. Those records are not truly accessible unless there is an index system that makes it possible to find a particular record. The records are also not truly accessible if they cannot be printed out or copied for later use.

We request comment on whether rules 31a–2 and 204–2, as proposed to be amended, are consistent with the requirements of the Electronic Signatures Act.

II. General Request for Comments

We request comment on the proposed rule amendments that are the subject of this release, suggestions for additional provisions or changes to the rules, and comments on other matters that might have an effect on the proposals contained in this release. We request comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation.[16]

III. Cost/Benefit Analysis

We are considering the costs and the benefits of the proposed amendments to rules 31a–2 and 204–2. We encourage commenters to discuss any costs or benefits of the proposal. The primary benefit of the amendments is the improved transparency and flexibility of our recordkeeping rules.

We do not believe the proposals will impose any costs on funds or advisers. As described above, the proposals would allow funds and advisers to maintain records in compliance with the relevant recordkeeping requirements in electronic storage media, regardless of whether the record was created or received electronically or otherwise. Electronic storage is optional under the proposals. We assume that funds and advisers will not opt for the electronic storage option provided for in the proposals unless doing so is cheaper (or otherwise more efficient and, therefore, supported by business considerations). By contrast, we believe that there may be significant benefits to the proposals. As stated, because using electronic storage media is optional, we do not believe that funds or advisers will employ such media unless the benefits conferred by the option outweigh the costs and, therefore, electronic storage makes good business sense. It is our belief, therefore, that the proposals, if adopted, would allow funds and advisers greater flexibility to make (business) decisions about recordkeeping and, when appropriate, opt for electronic storage with potential cost savings and other benefits.

We request comment on the costs and benefits of the proposed rule amendments and invite commenters to submit their own estimates of costs and benefits that would result from the proposal. In order to evaluate fully the costs and benefits associated with the proposed amendments, we request that commenters' estimates of the costs and benefits of the proposed amendments be accompanied by specific empirical data supporting their estimates.

IV. Paperwork Reduction Act

The proposals do not require a new collection of information. They affect only the manner in which registrants can store the information that must be collected under rules 31a–2 and 204–2. In connection with rules 31a–2 and 204–2, the Commission submitted to the Office of Management and Budget, pursuant to the Paperwork Reduction Act, a request for approval and received OMB control numbers for the rules, OMB Control Nos. 3235–0179 (rule 31a–2) and 3235–0278 (rule 204–2).

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding amendments to rule 31a–2 under the Investment Company Act and rule 204–2 under the Advisers Act. The following summarizes the IRFA.

Our rules under the Investment Company Act and Advisers Act require registered funds and registered advisers to retain certain books and records. Rule 31a–2 and rule 204–2 allow funds and advisers to store these records on electronic storage media, provided they were created or received in an electronic format. The Electronic Signatures Act states that federal recordkeeping requirements may be met by retaining electronic records of the information required to be maintained so long as the electronic record is accurate and accessible to those entitled to access it.[17] We are proposing to amend rules 31a–2 and 204–2 to allow funds and advisers to store non-electronic originals electronically.[18] Electronic storage of required books and records is not mandatory, rather it is an option for funds and advisers who find it cost-effective.

The Regulatory Flexibility Act requires us to consider the potential effect of our rulemaking on small entities. For purposes of the Investment Company Act, a ''small entity'' is ''an investment company that, altogether with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent

[15] ESIGN section 104(b)(2)(C).

[16] Section 2(c) of the Investment Company Act requires the Commission, when it engages in rulemaking and is required to consider whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 80a–2(c). Both section 31 of the Investment Company Act [15 U.S.C. 80a–30], under which we are proposing to adopt amendments to rule 31a–2, and section 204 of the Advisers Act [15 U.S.C. 80b–4], under which we are proposing to adopt amendments to rule 204–2, require us to consider whether the proposed rules are necessary or appropriate in the public interest or for the protection of investors.

[17] ESIGN section 101(d)(1)(A), (B). ESIGN allows us to interpret this provision.

[18] The amendments to rule 31a–2 are proposed by the Commission under the authority set forth in sections 31 and 38(a) of the Investment Company Act and to amend rule 204–2 under the authority set forth in sections 204, 206(4), and 211 of the Advisers Act.

fiscal year.'' [19] For purposes of the Advisers Act, an investment adviser generally is a small entity if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person that had total assets of $5 million or more on the last day of the most recent fiscal year.[20]

We estimate that there are approximately (1) 3,610 active registered management investment companies, of which 203 are small entities, and (2) 762 unit investment trusts, of which 12 are small entities. We further estimate that approximately 1,500 out of 8,100 investment advisers registered with us are small entities. All registered investment companies (including management investment companies and unit investment trusts) and all registered advisers are subject to the recordkeeping requirements of rule 31a–2 and rule 204–2, respectively. They all could be affected by the amendments we are proposing.

The IRFA states that all registered advisers and funds that choose to store required records electronically will be subject to the proposed rule amendments. There are no rules that duplicate, overlap, or conflict with the proposed amendments. We anticipate that small entities will benefit from the proposed rule amendments, because electronic record maintenance may be more affordable and efficient than paper or micrographic storage. Moreover, as electronic storage is not mandated, we assume that funds and advisers will choose to store records electronically only if it would be cost-effective.

The Commission encourages comments on the matters discussed in the IRFA. Comment is requested on the number of small entities that would be affected by the proposed amendments, and the likely impact on those small entities. Specifically, commenters are requested to describe the nature of the amendments' impact on the small entities and to provide empirical data supporting the extent of the impact. We also request comment on how many small entities will choose to store their records electronically. The comments will be placed in the same public file as comments on the proposed rule amendments. A copy of the IRFA may be obtained by contacting William C. Middlebrooks, Jr., (202) 942–0690, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

[19] 17 CFR 270.0–10.

[20] 17 CFR 275.0–7.

Statutory Authority

The Commission is proposing amendments to rule 31a–2 of the Investment Company Act pursuant to authority set forth in sections 31 and 38(a) of the Investment Company Act [15 U.S.C. 80a–30 and 80a–37(a)].

The Commission is proposing amendments to rule 204–2 of the Advisers Act pursuant to authority set forth in sections 204, 206(4), and 211 of the Advisers Act [15 U.S.C. 80b–4, 80b–6(4), and 80b–11].

List of Subjects

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For reasons set forth in the preamble, title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The Authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.31a–2 is amended by:

a. Revising paragraphs (f)(1) and (f)(2);

b. Redesignating paragraph (f)(3) as (f)(4); and

c. Adding a new paragraph (f)(3) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(f)(1) *Micrographic and electronic storage permitted.* The records required to be maintained and preserved under § 270.31a–1(a) through (d) and paragraphs (a) through (c) of this section may be maintained and preserved for the required time by, or on behalf of, an investment company on:

(i) Micrographic media, including microfilm, microfiche, or any similar medium; or

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) *General requirements.* The investment company, or person that maintains and preserves records on its behalf, must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly (but in no case more than one business day after the request) any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request:

(A) A legible, true, and complete copy of the record (or the information necessary to generate the record) in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, search, view, sort, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record stored on the micrographic or electronic storage media or any medium allowed by this rule.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the investment company, or person that maintains and preserves records on its behalf, must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, the directors of the investment company, and the Commission (including its examiners and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(ii)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

4. The authority citation following § 275.204–2 is removed.

5. Section 275.204–2 is amended by revising paragraphs (g)(1) and (g)(2); and adding paragraph (g)(3), to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(g)(1) *Micrographic and electronic storage permitted.* The records required to be maintained and preserved pursuant to this section may be maintained and preserved for the required time by an investment adviser on:

(i) Micrographic media, including microfilm, microfiche, or any similar medium; or

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) *General requirements.* The investment adviser must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly (but in no case more than one business day after the request) any of the following that the Commission (by its examiners or other representatives) may request:

(A) A legible, true, and complete copy of the record (or the information necessary to generate the record) in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, search, view, sort, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record stored on the micrographic or electronic storage media or any medium allowed by this rule.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the investment adviser must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the Commission (including its examiners and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

* * * * *

Dated: March 13, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6662 Filed 3–16–01; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–003]

RIN 2115–AE47

Drawbridge Operation Regulation; Terrebonne Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operating schedules for three bridges across Terrebonne Bayou at Houma, Terrebonne Parish, LA. The proposed rule would establish the same operating schedule for all three draws to facilitate the flow of vehicular traffic during rush hours while still meeting the reasonable needs of navigation. The new schedule will provide a safe, continuous vessel passage through all three draws. This action is expected to relieve the bridge owner from the requirement to separately man each bridge by using roving drawtenders to operate the bridges when necessary.

DATES: Comments and related material must reach the Coast Guard on or before May 18, 2001.

ADDRESSES: You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address above between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at the address given above, or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–01–003), and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you would like confirmation of receipt of your comments, 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 proposed rule in view of comments received.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a public meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place to be announced by notice in the **Federal Register**.

Background and Purpose

The S3087 Bridge, mile 33.9, the newly constructed Howard Avenue Bridge, mile 35.0, and the Daigleville Bridge, mile 35.5 all lie within a 1.6 mile section on Terrebonne Bayou. These three bridges are currently on three different operating schedules, which requires the owner to crew them at various times. Due to the close proximity of the bridges to one another and the low volume of waterway traffic, the Department of Transportation and Development (DOTD) for the State of Louisiana has requested that the Coast Guard revise the regulations in 33 CFR 117.505 that governs the S3087 and Daigleville Bridges. DOTD would like to include the Howard Avenue Bridge, which currently opens on signal at any time for the passage of vessels, and place all three bridges under the same operating schedule.

With all three bridges on the same schedule, and because they are located so close together, DOTD can operate all three bridges with a roving crew or a single draw-tender.

Discussion of Proposed Rule

Currently, all three drawbridges, the S3087 Bridge (33 CFR 117.505(c)), the Howard Avenue Bridge, and the Daigleville Bridge (33 CFR 117.505(d)) across Terrebonne Bayou are required to open on signal during the day. However, both the S3087 Bridge and Daigleville Bridge have drawbridge operation regulations that require a four-hour advance notice be given. The S3087

Bridge will open on signal if at least four hours notice is given from 5 p.m. to 9 a.m. The Daigleville Bridge will open on signal if at least four hours notice is given from 10 p.m. to 6 a.m. The Daigleville Bridge is also allowed to remain closed-to-navigation Monday through Friday, except holidays, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

The Coast Guard proposes to change the regulations in 33 CFR 117.505 to require the draws of the S3087, Howard Avenue, and Daigleville Bridges to open on signal if at least four hours notice is given, except that, the draw need not open for the passage of vessels Monday through Friday, except Federal holidays, from 6 a.m. to 8 a.m. and 4 p.m. to 6 p.m.

The Coast Guard has evaluated the bridge-opening log data from June 1998 to June 1999 for both the S3087 Bridge and the Daigleville Bridge. The Howard Road Bridge has only three months of data due to its recent construction.

MONTHLY TOTAL OF BRIDGE OPENINGS

Bridge	S3087	Daigleville	Howard Ave.
June 1998	23	83	0
July	8	62	0
August	18	70	0
September	20	109	0
October	29	83	0
November	7	57	0
December	4	42	0
January	1	23	0
February	6	30	0
March	1	41	0
April	14	60	4
May	20	87	45
June 1999	11	74	35

Because of the low yearly number of requested bridge openings, the Coast Guard has determined that the request by the bridge owner, to have the bridges open on signal after a four-hour advance notice, is reasonable and meets the needs of navigation.

Traffic counts taken over a two-week period show that 26% of the daily vehicular traffic Monday through Friday, on each bridge, occurs during the two two-hour time periods requested for closure. The table below contains the Monday through Friday opening counts for all three bridges, over a one-year time period.

BRIDGE OPENINGS

Bridge	S3087		Daigleville		Howard Ave. (3 month period)	
	6am–8am	4pm–6pm	6am–8am	4pm–6pm	6am–8am	4pm–6pm
6/98 to 6/99	0	9	17	30	2	2

The Coast Guard believes that allowing these bridges to remain closed to navigation during the time periods requested is reasonable and will still meet the needs of navigation. This conclusion is based upon the low number of opening requests received during these time periods.

This proposal will allow all three bridges to operate under the same schedule, thus providing a safe continuous passage for vessels while minimizing disruption to vehicular traffic. The new regulation will allow the bridge owner to operate all three bridges only when necessary.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This proposed rule allows commercial fishing vessels ample opportunity to transit this waterway before and after the peak vehicular traffic period which occurs between 6 and 8 a.m. and 4 and 6 p.m. according to the vehicle traffic surveys.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule has considered the needs of the local commercial fishing vessels and it has been determined that, under 5 U.S.C. 605(b), it would not have a significant economic impact on a substantial number of small entities.

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

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule would 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 proposed rule would not impose an unfunded mandate.

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 proposed rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lC, 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 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, 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. In § 117.505, paragraph (d) is removed; paragraph (e) is re-designated as paragraph (d); and paragraph (c) is revised to read as follows:

§ 117.505 Terrebonne Bayou.

* * * * *

(c) The draws of the S3087 Bridge, mile 33.9, the Howard Ave Bridge, mile 35.0, and the Daigleville Bridge, mile 35.5 at Houma, shall open on signal if at least four hours notice is given; except the draws need not open for the passage of vessels Monday through Friday, except Federal holidays, from 6 a.m. to 8 a.m. and from 4 p.m. to 6 p.m.

* * * * *

Dated: March 5, 2001.

K.J. Eldridge,

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

[FR Doc. 01–6741 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990927266-0240-02; I.D. 072699A]

RIN 0648-AM62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS has received an application from the U.S. Navy requesting a Letter of Authorization (LOA) for the take of small numbers of marine mammals by harassment incidental to Navy operations of the Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) Sonar. By this document, NMFS is proposing regulations to govern that take. In order to issue the LOA and issue final regulations governing the take, NMFS must determine that the taking will have a negligible impact on the affected species and stocks of marine mammals, will (if appropriate through implementation of appropriate mitigation measures) be at the lowest level practicable, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS invites comment on the application, and the regulations.

DATES: Comments must be postmarked no later than May 3, 2001. A petition requesting NMFS to hold a public hearing must be submitted no later than April 3, 2001. Comments will not be accepted if submitted via e-mail or the Internet.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

ADDRESSES: Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application, a list of references used in this document and a list of principal commenters on this action, are available and may be obtained by writing to this address or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2322, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will be small, have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On August 12, 1999, NMFS received an application from the U.S. Navy requesting a small take exemption under section 101(a)(5)(A) of the MMPA for the taking of marine mammals incidental to operation of the SURTASS LFA sonar for a period of time not to exceed 5 years, beginning in FY 2000. SURTASS LFA sonar will operate a maximum of 4 ship systems in the 10 geographic operating regions in which SURTASS LFA sonar could potentially operate. There would be a maximum of four SURTASS LFA sonar systems with a nominal maximum of two systems at sea at any one time.

Description of the Activity

The SURTASS LFA sonar system is a long-range, low frequency (between 100 and 500 Hertz) sonar that has both active and passive components. It does not rely on detection of noise generated by the target. The active component of the system is a set of low frequency (LF) acoustic transmitting source elements (called projectors) suspended from a cable from underneath a ship. The projectors are devices that produce the active sound or pulse.

The purpose of SURTASS LFA sonar is to provide the Navy with a reliable and dependable system for long-range detection of quieter, harder-to-find submarines. LF sound travels in seawater more effectively and for greater distances than higher frequency sound used by most other active sonars. The SURTASS LFA sonar system would meet the Navy's need for improved detection and tracking of new-generation submarines at a longer range. This would maximize the opportunity for U.S. armed forces to safely react to, and defend against, potential submarine threats while remaining a safe distance beyond a submarine's effective weapons range.

The typical SURTASS LFA sonar signal is not a constant tone, but rather a transmission of various waveforms that vary in frequency and duration. A complete sequence of sound transmissions is referred to as a ''ping'' and can last for as short as 6 seconds (sec) to as long as 100 sec. The time between pings is typically from 6 to 15 minutes. Average duty cycle (ratio of sound ''on'' time to total time) can be controlled but is less than 20 percent; typical duty cycle is between 10 and 20 percent.

The passive or listening component of the system is SURTASS, which detects returning echoes from submerged objects, such as submarines, through the use of hydrophones. The hydrophones are mounted on a horizontal array that is towed behind the ship. The SURTASS LFA sonar ship maintains a minimum speed of 3.0 knots (5.6 km/hr; 3.4 mi/hr).

The Navy anticipates that a nominal SURTASS LFA sonar deployment schedule for a single vessel would involve about 270 days/year at sea (underway). A nominal at-sea mission would occur over a 30-day period, made up of two 9-day exercise segments. Active sonar operations could be conducted up to 20 hrs during an exercise day, although the system would actually be transmitting for only a maximum of 4 hrs/day (resulting in 432 hrs of active transmission time per year for each SURTASS LFA sonar system in operation based on a maximum duty cycle of 20 percent). The remaining 12 days of the at-sea mission would be spent in transit or repositioning the vessel. In a nominal year there could be a maximum of 9 missions, six of which would involve the employment of SURTASS LFA sonar in the active mode and three of which would employ the SURTASS LFA sonar in the passive mode. Between missions, an estimated 95 days would be spent in port for upkeep and repair. With two vessels in the Pacific-Indian Ocean area and two vessels in the Atlantic Ocean-Mediterranean Sea area, there could be up to 12 operations in each of these oceanic areas per year.

At present, only one SURTASS LFA sonar system is available for deployment. A second SURTASS LFA sonar system is expected to be available in FY 2001. The third and fourth systems are tentatively planned for FY 2003 and FY 2004, but their delivery may be postponed until after FY 2005. With 4 systems, a nominal maximum of two vessels would be at sea at any one time. As a result, under 5-year regulations NMFS proposes to authorize marine mammal harassment takings for 2 SURTASS LFA sonar vessels for FY 2000 through FY 2002, 3 vessels for FY 2003, and 4 vessels for FY 2004, recognizing, however, that there may not be more than 2 vessels operating within the 5-year window of these proposed regulations.

Comments and Responses

On October 22, 1999 (64 FR 57026), NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on the U.S. Navy application and invited interested persons to submit comments, information, and suggestions concerning the application and the structure and content of regulations, if the application is accepted. During the 30-day comment period on that notice, significant comments were received from several organizations and individuals. A list of organizations and individuals whose comments are analyzed in this document is available upon request. Additionally, a large number of letters, form letters, and petitions were received. Comments regarding NMFS' responsibilities under the MMPA, the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA) are addressed in this document. Comments to the Navy regarding the Navy's draft Overseas Environmental Impact Statement/Environmental Impact Statement (OEIS/EIS) that were attached to the comments on the ANPR, and those comments regarding the scope, content, and adequacy of the Navy draft OEIS/EIS, and the Navy's marine mammal scientific research program have been addressed in the Navy's Final OEIS/EIS.

Activity Concerns

Comment 1: Numerous commenters were concerned that the Navy's SURTASS LFA sonar was not viable, or was not practicable and that the Navy's small take application for an LOA should be denied, for those reasons.

Response: Whether a project is viable or practical is not a criterion under the MMPA for determining whether to authorize marine mammal takings incidental to an activity. The authority for authorizing operations and deployment of the Navy SURTASS LFA resides with the Secretary of the Navy, not NMFS.

Comment 2: Many commenters were concerned regarding a conflict between the ANPR and the draft OEIS/EIS. The ANPR states that the 180 dB (i.e., 180 dB re 1 microPa(rms) RL (180 dB)) sound field is 2 km (1.1 nm) from the sound source. The draft OEIS/EIS states that the sound field is 1 km (0.54 nm) from the sound source. The commenters felt that if the ANPR was in error, it should be withdrawn and republished and the public comment period extended.

Response: The draft OEIS/EIS is correct; the ANPR was in error. A correction notice was published as quickly as possible once that error was detected. That notice was published on November 22, 1999 (64 FR 63783). Because the error did not affect the scope of the ANPR, and led only to speculation on the sound pressure level (SPL) of the SURTASS LFA sonar, and because NMFS is publishing in this document for public comment and review the same action as noticed in the ANPR, NMFS determined that no benefit would have been achieved by

reopening the public comment period on the ANPR.

Comment 3: One commenter notes that the Navy application is for all SURTASS LFA sonar operations, whereas the draft OEIS/EIS addressed only SURTASS LFA sonar operations for training and testing, not for actual military operation. If ''hostile'' operations are not included in the schedule of operations, then the actual take projections must be recalculated to account for such missions.

Response: The LOA application clearly states that the request is for the taking of marine mammals incidental to the employment of SURTASS LFA sonar during training, testing, and routine military operations. The authorization will not cover use of the system in armed conflict or direct combat support operations, nor during periods of heightened national threat conditions, as determined by the National Command Authorities. NMFS does not have a role in making these determinations. Therefore, takings during these situations would not be covered by the regulations or the LOAs. The recalculation of takings outside of the LOA in advance is neither necessary nor possible without knowing where the ''hostile'' activity will take place and how long that situation would last.

MMPA Concerns

Comment 4: Several commenters recommended that NMFS should extend the comment period to allow more time for review of the application.

Response: The ANPR is only the first of two public comment periods on NMFS' action. ANPRs are not required by the MMPA, but are utilized by NMFS to provide the public with early notification and to assist NMFS in the drafting of proposed regulations. The ANPR stated that, if NMFS proposes rulemaking (as we are doing here), as required by section 101(a)(5)(A)(ii) of the MMPA, NMFS will offer the public a second comment period. For this rulemaking, NMFS is providing a comment period of 45 days.

Comment 5: A commenter questioned why NMFS did not publish the ANPR until October 27, 1999, when the application was received from the Navy on August 12, 1999.

Response: NMFS published the ANPR as expeditiously as possible.

Comment 6: Several commenters wanted more time for review of the application and ANPR because of the detail of the draft OEIS/EIS.

Response: Because the application submitted by the U.S. Navy closely follows the information and data provided by the Navy in its draft OEIS/EIS for SURTASS LFA sonar (which had a 90-day public comment period), and comments on that document were due 3 weeks prior to the close of the ANPR comment period, NMFS believes that little additional effort should be required by those members of the public interested in reviewing both documents in order to respond adequately to the U.S. Navy application for the small take authorization within the 30-day comment period.

Comment 7: NMFS should hold public hearings because the Navy application is unprecedented. Among other things, the application contemplates a world-wide scale for its activities, far exceeding the limits of what the small take exemption was meant to cover. It subjects marine mammals * * * to levels of exposure well above anything NMFS has heretofore allowed for non-impulsive noise.

Response: The Navy held public outreach meetings on the draft OEIS/EIS in Washington, DC, Boston, MA, Miami, FL, Los Angeles, CA, Honolulu, HI, and Seattle, WA. In addition, public hearings on the draft OEIS/EIS were held by the U.S. Navy on September 29, 1999, in Norfolk, VA; on October 12, 1999, in San Diego, CA; and on October 14, 1999, in Honolulu, HI. NMFS attended these meetings. NMFS believes the opportunity to respond to this notice of proposed rulemaking provides the public with an adequate degree of participation in this process. However, if a petition is submitted to NMFS within 15 days of the date of publication of this document that it hold a public hearing, and that petition demonstrates that relevant information exists which can only be presented at a hearing (and cannot be presented in writing in response to this document), NMFS will hold a public hearing during the 45-day comment period on this document.

Comment 8: Under the MMPA, NMFS has an obligation to reject a proposal prior to rulemaking if the agency cannot make an affirmative finding that the project's impacts are ''negligible.''

Response: NMFS does not interpret the MMPA to require NMFS to reject an application submitted, under section 101(a)(5)(A) of the MMPA, prior to publishing proposed rulemaking, unless the applicant has not provided, as part of its application on the activity, sufficient documentation on those marine mammals affected, and the anticipated impact of the activity on marine mammals. Using the information provided by the Navy in its application and draft OEIS/EIS, NMFS believes that it has sufficient information to move forward and propose rulemaking. This decision, however, does not preclude NMFS from requesting additional information from the Navy during the rulemaking process. However, a final rule will not be promulgated by NMFS unless the Agency makes a finding of negligible impact based on all relevant information acquired during the rulemaking process.

Comment 9: Commenters were of the opinion that SURTASS LFA sonar activities proposed by the Navy are not eligible for a ''small take'' exemption.

Response: For maritime activities conducted by U.S. citizens (other than commercial fishing, activities permitted under section 104 of the MMPA or activities otherwise exempted from the MMPA), there are two means to obtain an exemption to the MMPA's moratorium on taking marine mammals. The first is the small take exemption under section 101(a)(5) of the MMPA, and the second is a waiver of the moratorium under section 101(a)(3)(A) of the MMPA. If the Navy does not qualify for a small take authorization under section 101(a)(5)(A) of the MMPA, then the Navy would need to obtain a waiver under section 101(a)(3)(A) of the MMPA.

Comment 10: The scope of the activity contemplated by the Navy exceeds any reasonable interpretation of the statutory language for authorizing a small take exemption for a ''specified geographic region.''

Response: When Congress enacted the 1981 Amendments to the MMPA, which first authorized the Secretary to exempt specific activities from the MMPA's moratorium on takings without waiving the moratorium under section 101(a)(3), certain restrictions were placed on the circumstances under which the Secretary may issue an exemption. One of these requirements is that the activity must take place within ''a specified geographic region.'' The Legislative history for this provision states: ''It is the intention of the Committee that both the specified activity and the specified region referred to in section 101(a)(5) be narrowly identified so that the anticipated effects will be substantially similar.'' '' * * [T]he specified geographical region should not be larger than is necessary to accomplish the specified activity, and should be drawn in such a way that the effects on marine mammals in the region are substantially the same. Thus, for example, it would be inappropriate to identify the entire Pacific coast of the North American Continent as a specified geographic region, but it may be appropriate to identify particular segments of that coast having similar characteristics, both biological and otherwise, as

specified geographic regions'' (H. Rept 97–228, September 16, 1981, p 19).

NMFS believes that the regions described in this proposed rule are in keeping with Congress' legislative intent in enacting this provision. Although SURTASS LFA sonar requires fairly large geographic regions because of the Navy's need to deploy the system on a world-wide basis, these areas have been selected so as to retain similar biological characteristics within each region. As a result, NMFS believes that these areas are large enough to accomplish the specified activity without being so large that the effects on marine mammals will not be substantially the same.

It should be noted that the regions described in this proposed rule differ from those contained in the Navy's original application and described in the ANPR. Based on a suggestion made by NMFS in the ANPR, the U.S. Navy revised its original proposal for 10 regions to one that proposes to adopt, with modification, the United Nation Food and Agriculture Organization's (FAO) division of the world's oceans into 16 distinct areas as shown in this document as Figure 1. (See FAO, 1971. The Fish Resources of the Ocean. Fishing News Books (Ltd). Surry England). These regions are described later in this document. Additionally, coastal areas and Arctic and Antarctic waters would be excluded from SURTASS LFA sonar operations. NMFS proposes to issue an LOA for each individual SURTASS LFA sonar system which will list the area(s) in which the deployment vessel plans to operate. As a result, NMFS believes the designated areas closely approximate the distribution of affected marine mammal species and will allow NMFS to implement appropriate mitigation and monitoring measures. One aspect of marine mammal distribution not taken into account by these areas is the shift in marine mammal distribution due to changes in oceanographic physiography. However, NMFS believes that it would be impractical to attempt to structure regulations specifying migratory corridors. While NMFS believes that little would be accomplished by further subdivision of the world's oceans, it welcomes additional comments on this preliminary determination.

NMFS also disagrees with the commenters' suggestion that the application should not be accepted because it is world-wide in scope and thus is more extensive than any activity previously authorized. Although no world-wide authorizations have previously been granted, NMFS does accept applications, and issue authorizations, for similar activities in more than a single geographic region. For example, seismic surveys for oil and gas exploration may be conducted concurrently in the U.S. Beaufort Sea, southern California waters, and, in the Gulf of Mexico. Similar to SURTASS LFA sonar operations, each seismic survey employs a large vessel slowly towing a high-intensity, LF sound source. If warranted, small take authorizations should be available to these activities.

NMFS does not believe that Congress intended NMFS to issue separate regulations governing taking for each ''specific geographic region,'' as would be one alternative. While it would be possible for NMFS to do so, NMFS believes that these regulations would be redundant and unnecessary. As a result, the proposed incidental, small take regulations for SURTASS LFA sonar have been designed to be generic; LOAs issued under these regulations, would be tailored to the vessel's specific geographic operating area and would include any appropriate prohibitions and mitigation or monitoring requirements.

Comment 11: One commenter wanted NMFS to acknowledge that the draft OEIS/EIS definitions for ''non-serious injury'' and ''non-serious harassment'' are unique and unsupported in the statutory context of the MMPA, or in definitions from NMFS.

Response: NMFS understands that the Navy's draft OEIS/EIS definition caused confusion to reviewers. The Navy has modified these terms in the final OEIS/EIS. NMFS will continue to define takings by harassment as they are defined in section 3 of the MMPA (i.e., Level A and Level B harassment).

Small Take Concerns

Comment 12: Because the abundance of marine mammals within identified species and stocks that may be taken by SURTASS LFA sonar exceeds any reasonable interpretation of the MMPA's ''small numbers'' provision, NMFS should reject the Navy's application.

Response: The definition of the term ''small numbers'' at 50 CFR 216.103 differs from the commenters' interpretation of ''small numbers.'' NMFS believes it was unfortunate that Congress was unable to provide more specific guidance on what it meant by the term ''small.'' The Legislative history for this provision (H. Rept 97–228, September 16, 1981) stated that the Committee recognized ''the imprecision of the term . . ., but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits'' NMFS agrees with that Congressional statement. NMFS believes that by defining ''small numbers'' to mean a portion of a marine mammal species or stock whose taking would have a negligible impact as in the definition of ''small'' found in § 216.103, an upper limit is placed on the term, and the phrase effectively implements the Congressional intent underlying the rule.

Negligible Take Concerns

Comment 13: The Navy's draft OEIS/EIS ignored and/or did not adequately address the negative effects of LFA testing, including stranding of beaked whales in the Mediterranean, 3 abandoned cetacean calves in the Hawaii sonar test area, 80 percent of humpback whales stopping singing during tests, blue and fin whales decreasing vocalizations, and gray whales changing their migration route.

Response: The Navy has addressed these events in the Navy's final OEIS/EIS. However, while NMFS recognizes that there is some potential for marine mammals to be affected by SURTASS LFA sonar signals (otherwise an incidental, small take authorization would not be needed), NMFS notes that: (1) detailed analyses of data from Phase I research indicated that there were no significant differences in vocal activity by blue and fin whales between those periods when SURTASS LFA sonar was not transmitting and when it was; (2) gray whale research was specifically designed to elicit an avoidance response, but was not conducted similar to SURTASS LFA sonar operations (in fact the research indicated that when SURTASS LFA sonar operated offshore, there was little or no avoidance response); and (3) the Navy acknowledges that while some singing humpback whales showed some apparent avoidance responses and cessation of song, an equal number showed no cessation of song. Also, there is no evidence linking SURTASS LFA sonar transmissions to any stranding event, and further the Navy's proposed long-term monitoring (LTM) program will have a component to investigate any correlation between SURTASS LFA sonar transmissions and stranding events.

Comment 14: The Navy underestimates the extent and cumulative impacts of its deployment because it fails to consider operations undertaken for purposes of surveillance, deployments in direct support of combat, and deployments during periods of heightened threat conditions, as determined by the National Command Authorities.

Response: NMFS must make a determination that the total taking incidental to an applicant's specified activity, during the proposed 5-year period of authorization of the regulations, will have no more than a negligible impact on affected marine mammal populations. The application for the authorization specifically requests an authorization for employment of the SURTASS LFA sonar during training, testing, and routine military operations. It will not cover use of the system in other conflict situations mentioned by the commenter. Recognizing that certain mitigation, monitoring, and reporting requirements could not be met by the Navy in wartime situations, NMFS believes the approach taken by the Navy to be appropriate.

Comment 15: One commenter stated that, given that cetaceans are accepted as ''people,'' it follows that NMFS, which treats them as stocks subject to sustainable ''harvest'' is promulgating the fiction that the cetaceans are to be treated in the same category as fish, when in fact, they are the oldest and most intelligent sentient creatures on Earth and fully worthy of our protection and respect.

Response: The MMPA prohibits the taking of marine mammals unless exempted or permitted. NMFS disagrees with the commenter that marine mammals are treated similar to fish. Fish are considered, among other things, a resource that may be harvested in a sustainable manner for consumption while the United States has affirmed that marine mammals should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management.

Comment 16: Several commenters criticized the Navy statement in the application that ''research conducted to date is sufficient to assess impacts on marine mammals.'' Some recommended that on this basis, NMFS deny the Navy a small take permit. Another questioned how NMFS could make a negligible impact determination without having all relevant facts at its disposal.

Response: When the U.S. Navy first discussed whether an incidental, small take authorization was required for its SURTASS LFA sonar, NMFS determined that insufficient information existed to make a negligible impact determination. NMFS suggested the U.S. Navy conduct a scientific research program on marine mammals to determine potential effects of SURTASS LFA sonar on marine mammals. In making a finding as to whether an action will have a negligible impact on marine mammals, NMFS is required to use the best scientific information available. This information should be available to applicants either publically or through NMFS. However, Congress clarified in the Legislative history on this provision (H. Rept 97-228, September 16, 1981) that for situations where a negligible impact finding cannot be made (either because the proposed project or activity is hypothetical or the impact on the marine environment from the activity has not been investigated), the applicant would need to conduct research on the potential impacts of the proposed project or activity on marine mammals. For SURTASS LFA sonar, independent scientists focused their research efforts on 3 of the 4 species of marine mammals identified in a public workshop as most likely to be impacted by LF sound. Research conducted under an MMPA section 104 scientific research permit has been completed and the findings have been made available to the public. A preliminary determination on whether information is sufficient to make a determination that SURTASS LFA sonar is having no more than a negligible impact is a part of this rulemaking process.

Marine Mammal Impact Concerns

Comment 17: The LOA request excludes several species of marine mammals because their ranges purportedly do not overlap with the potential geographic operating regions of SURTASS LFA sonar.

Response: Preliminarily, the Navy and/or NMFS have determined that the following species should be added to the list of species that may potentially be affected. These species are the beluga whale (*Delphinapterus leucas*), the harbor porpoise (*Phocoena phocoena*), and the hooded seal (*Cystophora cristata*). Additional species may be added in the future based upon information obtained during the LTM Program or by other means. Adding species to the list, however, will require rulemaking to correct the list proposed in § 216.180(b). Until an amendment is made effective, the taking of marine mammal species not listed in § 216.180(b) remain prohibited. However, some species of marine mammals listed by one commenter, specifically bowhead whales, narwhals, and Arctic and Antarctic seals, while occupying the same geographic region as the SURTASS LFA sonar proposes to operate, are pagophilic (ice loving), and, therefore, would be unlikely to occupy the same region at the same time as SURTASS LFA sonar would be capable of operating in that region. Another species mentioned by the same commenter, *Balaenoptera bonarensis*, is a small minke whale. Without more information on the species, for management purposes in this document, NMFS considers it a minke whale. Noting the typographical error in the Navy application, mixing the scientific and common names for sei whales and Bryde's whales, NMFS considers *B. edeni* and *B. brydei*as synonomous, as noted in Rice (1998).

Dugongs are not under the jurisdiction of NMFS. If the Navy believes that SURTASS LFA sonar may incidentally take dugongs by harassment, they should apply to the U.S. Fish and Wildlife Service for a small take authorization for this species. However, NMFS notes that the text referenced by the commenter (Jefferson et al., 1993) states that this species is found in the Indo-Pacific in coastal and inshore waters, areas where SURTASS LFA sonar will not operate.

Comment 18: Unless the 180 dB criteria is dramatically reduced (given proven impacts of sounds at far lower amplitudes), all species of excluded coastal cetaceans (the remaining species of porpoises as well as coastal ''river'' dolphins) will have to be included.

Response: The 180 dB criterion delineates an area around the source wherein scientists have determined that, at an SPL somewhere above that level, some marine mammal species may incur a permanent shift, or elevation, in hearing sensitivity (referred to as permanent threshold shift (PTS)). For that reason, NMFS encourages small take applicants, if possible, to design, establish and monitor an appropriate area around a loud noise source. Terminating sound transmissions whenever marine mammals enter a zone where their hearing may be affected, will prevent, to the greatest extent practicable, marine mammals from potentially incurring an impairment to hearing. For this proposed action, scientists have determined that a single-ping received level of 180 dB can be considered a scientifically precautionary level to prevent the potential onset of injury to a marine mammal. As a result, the Navy has proposed to establish a 180 dB safety zone for SURTASS LFA sonar operations, that would protect marine mammals that enter this area because the SURTASS LFA source transmissions would be terminated upon detection of the animal. The Navy calculates that this safety zone will encompass an area with a radius of approximately 1 km (0.54 nm). The Navy has stated that, as a mitigation measure, the 180 dB isopleth would remain at least 22 km

(12 nm) from all coastlines. Because sound normally attenuates more quickly on a shoaling bottom (that would be expected in coastal areas), than it does in the open ocean, the Navy does not expect marine mammals in coastal or riverine areas to be taken (by harassment) by SURTASS LFA sonar while the animals are in these areas.

Comment 19: Marine mammals may be killed incidental to SURTASS LFA sonar operations due to stranding, and due to increased risk to predation and starvation through masking.

Response: The potential for masking and increased predation have been discussed in the Navy application and the draft OEIS/EIS. Please refer to those documents for additional information. While masking could possibly occur for those species of marine mammals that use the same frequency as SURTASS LFA sonar, masking would be minor and temporary (i.e., 80–90 percent of the time a whale would be able to perceive predator or prey through LF sounds), because the SURTASS LFA sonar bandwidth is very limited (approx. 30 Hz), signals do not remain at a single frequency for more than 10 seconds, and the system is off at least 80 percent of the time.

Because of the offshore nature of SURTASS LFA sonar operations, the Navy does not believe that there is a potential for SURTASS LFA sonar to result in marine mammal stranding incidents. Under the Navy's LTM program however, the Navy plans to coordinate with principal world-wide marine mammal stranding networks and report any correlations between SURTASS LFA sonar operations and stranding events to NMFS. However, because the Navy has not requested an incidental take by mortality (as in a stranding event), an LOA, if issued, would not authorize this form of taking. Under regulations found at § 216.106(e), an LOA may be modified, suspended or revoked if a marine mammal is taken by a method that is not authorized.

Comment 20: Commenters noted that the Navy has deflated its assessment of serious injury (to marine mammals) to near zero with an untested monitoring program. Another commenter believes that the draft OEIS/EIS assumes 100-percent detection within the safety zone. This commenter believes it is unacceptable (for marine mammals to incur an SPL greater than 180 dB) and could even be fatal.

Response: The Navy has assessed the efficiency of its tripartite monitoring system (discussed later in this document) at approximately 80 percent (70-percent high-frequency marine mammal monitoring (HFM3) sonar and 5 percent each for visual and passive acoustic monitoring). Based upon that level of efficiency, the Navy has indicated that incidental harassment takes would be as indicated in Tables 4–12 and 4–13 of its application. NMFS recognizes that the Navy should provide supporting evidence of the efficiency of the HFM3 sonar based on documentation of its effectiveness or field testing results. As a result, until such time as the Navy provides verifiable test results on the HFM3 sonar, NMFS will need to base its determination of negligible impact solely on the effectiveness of geographic mitigation.

However, NMFS does not agree that the proposed incidental takings would result in more than minimal levels of serious injury. Because serious injury is unlikely to occur unless a marine mammal is well within the 180 dB SURTASS LFA sonar safety zone and close to the source, and because the closer the mammal is to the vessel, the more likely it will be detected, and the SURTASS LFA sonar operation suspended, the potential for serious injury to occur is minimal.

For mitigation effectiveness for harassment and non-serious injury, NMFS recommends reviewers study the last column of Table 4–10 of the application (Table 4.2–10 of the OEIS/EIS). The last column lists the reduction of potential for effects on marine mammals.

Long-Term and Cumulative Effects Concerns

Comment 21: We know almost nothing about the long term effects of LFA sonars on marine life, and the Navy fails to consider the full range of cumulative effects that SURTASS LFA sonar would have together with other noise sources. The Navy has also neglected to measure the foreseeable effects of proliferation once this technology is deployed. All this must be considered by NMFS. Another commenter believes the scenario of more than two vessels being at sea in the same sea simultaneously conducting exercises has not been given full consideration.

Response: NMFS believes that the issue of cumulative impact of increasing use of LFA sonar technologies by non-U.S. nations and other LF sources is a subject for the Navy to address under NEPA. However, under section 101(a)(5)(A) of the MMPA, NMFS is required only to make a determination that the total of the incidental taking of marine mammals by the specified activity being authorized during the 5-year period concerned will have no more than a negligible impact on such species or stock of marine mammal. In this case, NMFS must assess the potential impacts on marine mammals from no more than four SURTASS LFA vessels transmitting 432 hrs/vessel/yr.

In its application, the Navy states that there is a remote possibility that two sources may be operating in the same geographic area at the same time. NMFS intends to base its negligible impact assessment on that scenario. If LOAs are issued, the use of more than two SURTASS LFA sonar sources operating at the same time within the same specific geographic area would be considered a violation of the LOA.

Mitigation Concerns

Comment 22: If NMFS moves forward with rulemaking, it is obligated under the MMPA to prescribe methods and means of effecting the least practicable adverse impact.

Response: NMFS agrees that measures to mitigate the impact to the lowest level practicable is a requirement of the MMPA. However, NMFS cannot require compliance with impractical methods and means. Specific mitigation measures are discussed in the following 9 comments and responses.

Comment 23: Several commenters questioned the use of a 180 dB criterion for suspension of transmissions, since far lower SPLs have been demonstrated to cause clear short-term behavioral impacts on cetaceans. If an LOA is issued, a much lower level of exposure for protected species should be required.

Response: As mentioned previously, based on information provided at two public workshops (HESS Workshop, June 12-13, 1997, NMFS Acoustic Criteria Workshop, September, 1998), in general, 180 dB is the level above which scientists caution a PTS injury has the potential to occur in marine mammals. The distance from the SURTASS LFA sonar source to the 180 dB isopleth is approximately 1 km (0.54 nm). Thus, the 180 dB SURTASS LFA sonar mitigation zone is the proposed safety zone that will prevent, to the greatest extent practicable, both PTS and temporary hearing impairment (termed temporary threshold shift (TTS)) to marine mammals.

While the commenter is correct that behavioral modifications can be expected at lower SPLs, the proposed monitoring (visual, passive acoustic and active acoustic), is not likely to be as effective at the greater distances where these impacts are likely to occur. As a result, NMFS prefers to require the Navy to concentrate monitoring in an area wherein marine mammals are more

likely to incur an injury, than at distances wherein the incidental taking will be limited to short-term behavioral modifications. Since monitoring is less likely to be effective at distances much greater than the 180-dB isopleth, and because the Navy has requested a small take authorization for the incidental harassment of marine mammals, NMFS has preliminarily determined that the establishment of a safety zone at the 180 dB isopleth is the distance that is most practicable for reducing potential impacts on marine mammals to the lowest level.

Comment 24: One commenter recommended that, if an LOA is issued, no transmissions at night or in sea conditions greater than Beaufort 4 be allowed, to maximize the probability of detecting protected species.

Response: NMFS concurs with the U.S. Navy that in order for training to be effective it must simulate, to the greatest extent practicable, conditions that would be expected during periods of heightened readiness. Hostile situations do not diminish with sunset or high sea states. As a result of poor nighttime and high sea state visibility for detecting marine mammals, the Navy will use the HFM3 sonar and passive sonar to improve marine mammal detection.

Comment 25: Commenters recommended additional mitigation measures, such as geographical restrictions above and beyond those proposed by the Navy, including an extension of the coastal exclusion zone beyond the limits of the U.S. territorial sea and the territorial seas of other countries, expansion of the Southern Ocean whale sanctuary, the addition of the Indian Ocean whale sanctuary, and the addition of biologically significant offshore areas; and a timely, transparent, and publicly accountable procedure for supplementing the initial list of restrictions.

Response: In this proposed rule, NMFS is proposing to establish a system for government agencies, non-government organizations, and the public to be able to propose areas for NMFS to consider adding to the list of offshore biologically important areas (OBIAs) for marine mammals. NMFS emphasizes that, in order for designation, an area must be of particular importance for marine mammals as an area for primary feeding, breeding, or migration, and not simply an area occupied by marine mammals. The proposed area should not be within a previously designated exclusion area nor rationalized simply because of previous designations for geopolitical reasons.

In order for NMFS to begin the rulemaking process for designating areas of biological importance for marine mammals, proponents must petition NMFS and submit the information described in § 216.191(a). If NMFS makes a preliminary determination that the petitioners have provided sufficient information that the area is of significant biological importance for marine mammals, NMFS will propose rulemaking to add the recommended area to the list of previously designated areas. Through notice in the **Federal Register**, NMFS will invite information, suggestions, and comments on the proposal for a period of time not less than 45 days from the date of publication in the **Federal Register**. After review of the comments, and relevant data and information, NMFS will make a final decision on whether to add the recommended area to the list found in § 216.183(d). NMFS will either issue a final rulemaking on the proposal or provide notice in the **Federal Register** on its determination. It should be understood, however, that proposals for designation of areas would not affect the status of LOAs while the rulemaking is in process. NMFS anticipates that the time between nominating an area and publication of a final determination is likely to take 8-12 months. However, in order to provide proper notice and comment to interested parties, NMFS will not accept recommendations for additional OBIAs until after the present rulemaking has been completed.

To extend the list of restrictions (referred to in this document as mitigation measures), found in § 216.184, an individual or organization would need to petition NMFS under the Administrative Procedure Act (APA) to add additional mitigation measures. Petitions would need to provide sufficient information for NMFS to determine that new rulemaking is warranted and practical.

Comment 26: One commenter noted that only 2 examples of offshore OBIAs are presented in the draft OEIS/EIS. Have other OBIAs been designated? If not, it seems that such designations would be required before the public and government agencies would be able to appropriately review the potential impacts of this action on offshore species. Another commenter was of the opinion that we do not have sufficient knowledge about OBIAs to state where these might be in the ocean.

Response: In a recent letter to NMFS, the Navy added the Costa Rica Dome in the eastern Pacific Ocean to the list of OBIAs and expanded the Antarctic Convergence Zone OBIA. Also, NMFS, at the request of NOAA's National Ocean Service, has proposed to add Penguin Bank, off the Island of Kauai, Hawaii, inside the NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS). These additions are reflected in the rulemaking at the conclusion of this document. However, NMFS does not agree that more designations are necessary before it can review the Navy small take application. As mentioned in response to the previous comment, a system has been proposed by NMFS to afford the public an opportunity to propose new OBIAs. As knowledge about offshore areas increases over the next few years, new areas can be nominated if they are determined to provide a critical need for marine mammals. It should be noted that determinations regarding the impact of the proposed activities will be based on operation of SURTASS LFA sonar without any OBIAs that might be proposed in the future.

Comment 27: NMFS should ensure that the coastal exclusion zone applies to islands as well as continents, regardless of size, as these waters contain some of the rarest and bio-rich marine habitat in the world.

Response: The Navy proposes to restrict the 180 dB isopleth from the SURTASS LFA sonar to outside 12 nm (22 km) of any coastline in the world. This would include coastlines of offshore islands, such as Hawaii.

Comment 28: One commenter recommended NMFS impose a condition, if the authorization is granted, limiting received sound levels to 150 dB or less in Hawaii State waters and in additional areas in the HIHWNMS lying outside of state waters.

Response: The Navy believes that, by imposing a mitigation measure of an SPL no greater than 180 dB for SURTASS LFA sonar at 12 nm (22 km) of any coastline in the world, SPLs greater than 150 dB (from the SURTASS LFA sonar) should not occur within Hawaiian State waters. If a state or other organizations can provide documentation that state waters need additional protection, they can provide the documentation and petition NMFS proposing such restrictions as a mitigation measure, as described in response to previous comments. NMFS notes, however, that there are numerous other sources of anthropogenic noise within coastal waters that far exceed 150 dB for which states have not required similar restrictions.

Similarly, if more protection is needed for the marine mammals inhabiting the HIHWNMS than would be provided by making Penguin Bank an OBIA, interested parties can petition

NMFS to either impose additional mitigation measures to protect a National Marine Sanctuary's marine mammal resources, or to establish that portion of the HIHWNMS (or any other National Marine Sanctuary) that extends beyond 12 nm (22 km) of the coast as an OBIA.

Comment 29: One commenter recommended mitigation measures include reductions in source level, duty cycle, and annual transmission hours, none of which, the commenter believes, has as yet been operationally justified as having the least practicable adverse impact on marine mammals.

Response: As stated previously, NMFS does not authorize the activity and does not have the expertise to determine what source levels, transmission hours or duty cycles would be appropriate for SURTASS LFA sonar mitigation without affecting the efficiency of the system. Similar concerns have been provided to the Navy as comments to the draft OEIS/EIS and have been addressed in the final OEIS/EIS. NMFS will review the final OEIS/EIS for the Navy's response to these suggestions prior to making a final determination on whether the incidental harassment takings by SURTASS LFA sonar is at the lowest level practicable.

Comment 30: One commenter recommended the use of ramp-up procedures to protect marine mammals.

Response: The Navy proposed in its application to employ a 5-minute ramp-up during the HFM3 sonar transmissions. Since the HFM3 sonar will be operating for a minimum of 30 minutes prior to initiation of SURTASS LFA sonar, ramp-up of the SURTASS LFA sonar is not necessary.

Comment 31: One commenter recommended that mitigation measures include replacement of LFA to the extent practicable with new passive acoustic technologies, such as the Advanced Deployable System (ADS) which is currently being tested off the California coast.

Response: The ADS is not a mitigation measure for SURTASS LFA but is an entirely different system that is not under consideration for takings under this proposed rulemaking. The Navy has addressed other acoustic technologies in greater detail in the final OEIS/EIS. NMFS must state again that it does not authorize the activity, only the taking of marine mammals incidental to the activity. For SURTASS LFA sonar, that activity is authorized by the Secretary of the Navy. It is for the Navy to decide, through its decision-making process, one step of which is the NEPA process, whether to deploy the SURTASS LFA sonar system.

Monitoring and Reporting Concerns

Comment 32: Passive acoustic monitoring to detect marine mammals is questionable. Will only audible frequencies be monitored, and if so, how will species which vocalize above our hearing range be detected? To evaluate the validity of acoustic monitoring for cetaceans, the proportion of the time each species vocalizes . . . will need to be determined. There are some species of cetaceans (particularly beaked whales) for which nothing is known about the frequency range produced by vocalizing animals.

Response: NMFS believes these comments developed because there was insufficient information on passive acoustic monitoring in the draft OEIS/EIS. Passive acoustic monitoring will be accomplished using the SURTASS LFA sonar horizontal towed array whose detection capabilities are in the same general frequency range as that of the transmit array (i.e., below 500 Hz). As a result, it will not detect vocalizations from all marine mammal species, and is the reason why the Navy only considers this monitoring method at 5 percent efficiency. The Navy anticipates that the passive acoustic monitoring program will be used simply to cue the HFM3 sonar to the presence of vocalizing mammals. It should be understood that an operator need not be able to distinguish species by vocalizations here, only that they be capable of distinguishing between these sounds and those of other underwater sounds. Highly trained Navy sonar technicians are very proficient at distinguishing between the two sounds. NMFS believes, moreover, that the LTM program will provide needed data on the adequacy of the monitoring methodology over the first few years of operation.

Comment 33: Research and development of passive acoustic and other technologies for monitoring marine mammals within a wide radius of the source; and verification of Navy's as-yet unproven and potentially harmful HFM3 system, should be accomplished before operations begin. One commenter questioned whether the HFM3 sonar should have an OEIS/EIS of its own (i.e., be subject to NEPA).

Response: First, NMFS questions the commenter's statement that the HFM3 sonar is potentially harmful. Table 4–11 of the application compares the HFM3 sonar with other standard ''fish finding'' sonars. Due solely to a 10–20 kHz lower frequency and lower reverberation, the HFM3 has an increased range for detecting marine mammals and other sea life. At this time, NMFS has no evidence that ''fish-finding'' sonars are harmful to marine mammals. Because the HFM3 sonar is fully discussed in the draft OEIS/EIS, NMFS does not believe that the Navy's use of fish-finding-type sonars, like the HFM3, are subject to NEPA, separate from the draft (and final) OEIS/EIS.

Second, NMFS has stated previously in this document that, until the Navy provides documentation supporting its claim that the HFM3 is 70 percent effective, NMFS plans to calculate incidental take levels using just the geographic mitigation. The Navy has the option to provide additional information on the effectiveness of the HFM3 sonar during this rulemaking that NMFS may use during its final determination on this action.

NMFS does not believe the MMPA requires a delay in the issuance of an authorization until mitigation or alternative technology proves effective (as long as a negligible impact determination can be made), only that the taking be reduced to the lowest level practicable. However, NMFS encourages the Navy and others to undertake research into more effective passive acoustics.

Comment 34: Given the long dive times of many species of marine mammals, 30 minutes of monitoring prior to start up is inappropriate. The commenter recommends 1-2 hours prior to starting up the SURTASS LFA.

Response: NMFS does not believe that a time period greater than 30 minutes should be required for visual, passive and active acoustic monitoring considering the relatively small area of the SURTASS LFA sonar safety zone, and because, unlike many other activities which (in order to mitigate marine mammal takings) employ only visual monitoring, SURTASS LFA sonar operations will also employ acoustic systems to locate marine mammals within this safety zone. Therefore, NMFS proposes here to make a condition of the LOA that visual monitoring must start no less than 30 minutes prior to starting SURTASS LFA sonar transmissions, whenever visibility allows such monitoring.

Comment 35: Monitoring should include post-transmission monitoring. This would allow for the detection of changes in behavior subsequent to transmission.

Response: NMFS agrees and is proposing that the LOA contain a condition requiring the Navy to conduct visual and passive acoustic monitoring for a period of time no less than 15 minutes after the last SURTASS LFA sonar transmission of the sequence

(monitoring will also continue between ''pings'').

Comment 36: Will NMFS demand that the LTM program data be readily available to scientists not associated with the LFA or the Office of Naval Research?

Response: Reports will be provided by the Navy annually to NMFS under § 216.186. These documents will contain LTM data and will be available to the public for review.

Comment 37: One commenter recommended establishment of an extramural, independent board of scientists, policymakers, environmental advocates, and citizen representatives to review monitoring data and relevant research and to make recommendations to NMFS, as well as the Navy, for reducing the system's impacts.

Response: NMFS does not believe that a formal board is necessary for reviewing monitoring and research reports, and applications for annual LOAs. Because such a board would probably come under the Federal Advisory Council Act (FACA) and the requirements under FACA, NMFS recommends that interested individuals meet as a non-governmental organization and remain independent from the Federal Government. Members of this board could independently or jointly comment to NMFS, based on annual reports, or petition NMFS under the APA to amend regulations based on their interpretation of the reports.

Research Concerns

Comment 38: One commenter recommended the establishment of a clear timetable for additional research, especially of SURTASS LFA's long term impacts; and a secure budget for research over the expected life of the program.

Response: NMFS cannot require the Navy to undertake a particular level and type of research, outside the purview of this proposed Authorization. NMFS can however, and does, strongly encourages the Navy to undertake research to determine impacts on species of marine mammals that may potentially be affected by LF sounds. NMFS notes that its preliminary negligible impact determination is based on research conducted by independent scientists, funded by the U.S. Navy, on 3 species of balaenopterid whales, that were determined most likely to be affected by SURTASS LFA sonar noise. The Navy has provided information in the final OEIS/EIS on the potential effects of SURTASS LFA sonar on additional species, including, to the extent practicable, sperm whales, beaked whales, other odontocetes and pinnipeds. NMFS expects the Navy will provide NMFS with a detailed plan for research.

LOA Concerns

Comment 39: One commenter questioned whether NMFS' proposal to issue an LOA to each vessel as it becomes operational would mean that each LOA for each ship will consist of a 5-year permit for the taking of marine mammals, making the effective permit for LFA operations a total of 10 years if the last vessel becomes operational in FY 2004. This is not acceptable and the ANPR should be withdrawn as it was not analyzed as such in the draft OEIS/EIS. Another commenter considers it inappropriate for the Navy to request a 5-year authorization for up to 4 vessels, in part because procurement and development schedules are not sufficiently guaranteed. This commenter recommended issuing LOAs for each vessel just prior to operational status.

Response: These regulations are proposed to be effective for a period of 5 years, from the date of issuance. An LOA cannot be issued until the regulations are effective and cannot exist beyond the expiration date of the regulations. Under the proposed regulations, LOAs would be issued for 1 year and would be renewed annually. An LOA would be issued for each SURTASS LFA sonar system, once that system becomes operational and is deployed on a vessel.

Comment 40: One commenter recommended use of an annual system of reporting and reauthorization that requires the Navy to specify, pursuant to the MMPA, each geographical region to be affected by its intended operations.

Response: NMFS concurs and has established a system for an annual submission of a list of geographic areas for operations and for reporting annually on their activity.

Comment 41: One commenter recommended that each LOA must specify a maximum number of takes by species, population and region for each vessel, establish a monitoring system to warn of impending maximums, and include restrictions on the further use of LFA for any purpose if the maximum take is reached.

Response: Establishing and enforcing quotas under an LOA is practical only when timely reporting of incidental takings can be accomplished, when NMFS can conduct an analysis of the data within the period of validity of an LOA, and when the affected marine mammal stocks would be disadvantaged by exceeding a certain level. In the case of SURTASS LFA sonar, the Navy has stated that the data from the LTM program cannot be available in real-time because of post-mission analysis requirements including declassification of sensitive national security information. In its application, the Navy has proposed that this information be provided to NMFS annually. NMFS intends to review this information (in addition to other information) to ensure that the determinations made during this rulemaking (i.e., that the taking is small and having no more than a negligible impact on affected species and stocks of marine mammals) are appropriate.

In addition, as noted in the application, incidental take levels are estimated as a percentage of the population, and not as individual numbers of animals, and the monitoring proposed by the Navy is to ensure that Level A harassment is reduced to the lowest level practicable. As a result, as presently designed, NMFS does not consider it practical to establish, and enforce, a quota system.

ESA Concerns

Comment 42: Commenters were concerned that the Navy did not also request that threatened and endangered marine turtle species, and endangered fish species be included under the MMPA authorization.

Response: Other than marine mammals, threatened and endangered species of marine life are not protected under the MMPA; however, they are provided protection under the ESA. Under section 7 of the ESA, the U.S. Navy requested initiation of formal consultation with NMFS on October 4, 1999. This consultation will be concluded prior to a determination on issuance of a final rule and any MMPA authorization. If appropriate, NMFS will authorize takings of marine species listed as threatened or endangered under the ESA incidental to SURTASS LFA sonar to the Navy through an Incidental Take Statement issued under section 7 of the ESA.

NEPA Concerns

Comment 43: The U.S. Navy has submitted an application for an incidental take of marine mammals, and NMFS has accepted that application, prior to close of the comment period of the draft OEIS/EIS under NEPA. Processing the Navy application should be delayed until after the Navy has completed its NEPA responsibilities.

Response: NMFS does not believe that delaying the incidental small take authorization process until completion of NEPA documentation would be appropriate. Both the Council on Environmental Quality (CEQ)

regulations (40 CFR 1502.5(d)) and NOAA's NEPA guidelines provide for proposed regulations to accompany a draft NEPA document. As a cooperating agency in the preparation of the OEIS/EIS, which NMFS may adopt as its own NEPA document, the Navy draft OEIS/EIS is the key NEPA document for the NMFS action. Not beginning the small take authorization/ regulatory process until completion of NEPA requirements would lead to unnecessary and potentially extensive delays in processing applications, a key problem previously recognized by Congress in 1994, when it amended the MMPA to expedite authorizations under the small take program. Under NEPA, NMFS may not make final regulations governing the taking of marine mammals effective for at least 30 days after an action agency releases a Final EIS on the action. However, because publication of this rulemaking document was delayed for several months, the Navy's final OEIS/EIS was released prior to release of this rulemaking.

Comment 44: What exactly constitutes NMFS being a cooperating agency on a project where NMFS is legally mandated to play a regulatory role?

Response: CEQ regulations (40 CFR 1501.6) stipulate that any Federal agency having either jurisdiction by law, or expertise on subject matter that should be addressed in the draft EIS, may be a cooperating agency whenever requested. For the Navy's draft OEIS/EIS for SURTASS LFA sonar, NMFS, as a Federal agency, meets both those criteria. For this action NMFS' role under NEPA is explained in the letter to the Navy on April 1, 1998 (see Appendix A, draft OEIS/EIS) and was limited to review and comment on the draft OEIS/EIS during its preparation. In addition, because the regulations contained in this notice also constitute a federal action, NMFS also has a NEPA responsibility. NMFS anticipates that this responsibility will be satisfied by adopting the Navy's final OEIS/EIS, in whole or in part, as its own NEPA document when making the final decision on the issuance of the small take authorization, in accordance with 40 CFR 1506.3.

Comment 45: There appears to be a conflict of interest when the same person listed in **FOR FURTHER INFORMATION CONTACT** is also listed as a preparer of the draft OEIS/EIS.

Response: NMFS disagrees, noting that as a Federal agency, NMFS has NEPA responsibilities for the proposed issuance of a small take authorization to the U.S. Navy. Knowing that the Navy's SURTASS LFA sonar had the potential to take marine mammals incidental to it operation, and, that there was consideration being given at the time that an incidental, small take application would be submitted by the U.S. Navy, NMFS, on April 1, 1998, agreed to be a cooperating agency, as defined by the CEQ regulations (40 CFR 1501.6), on the preparation of the U.S. Navy draft OEIS/EIS on SURTASS LFA sonar. NMFS provided guidance to the U.S. Navy on the OEIS/EIS preparation so that the document could satisfy both agency's NEPA responsibilities. Whether it has done so will be determined upon NMFS' review of the final OEIS/EIS.

Comment 46: Several commenters concluded that it would be irresponsible for NMFS to issue regulations and authorizations based on the insufficiency, and unsubstantiated claims in the draft OEIS/EIS.

Response: NMFS must make its determinations under section 101(a)(5)(A) of the MMPA based on the best scientific information available. At this time, most, if not all, of that information is contained in the draft (and final) OEIS/EIS. NMFS expects that necessary corrections that were brought to the Navy's attention during the comment period on the draft OEIS/EIS will be addressed and, if necessary, updated in the final OEIS/EIS. NMFS will not promulgate final regulations nor make any determinations under section 101(a)(5)(A) of the MMPA until the Navy and NMFS have both met their NEPA responsibilities.

Other Concerns

Comment 47: On what basis does NMFS state that this proposed action is not significant for purposes of Executive Order (E.O.) 12866? The draft OEIS/EIS does not refer to any costs whatsoever, yet the Navy has been reported as having spent from $350 million to $1.45 billion on SURTASS LFA sonar to date. Until the true costs of the entire program are stated, and a cost-benefit analysis conducted per E.O. 12866, the ANPR should be withdrawn.

Response: E.O. 12866, ''Regulatory Planning and Review,'' among other things, requires a Federal agency to determine whether a regulation it is proposing is significant. This regulation has been determined to be significant. For a regulation to require a cost-benefit analysis, the regulation (not the activity itself) must have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Since NMFS is promulgating regulations regarding the incidental taking of marine mammals, and these regulations materially affect only the U.S. Navy, NMFS has determined that these regulations do not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. NMFS has determined that these regulations do not require a full cost-benefit analysis (see Classification).

Affected Marine Mammal Species

In the Navy draft OEIS/EIS analysis and small take application, the Navy excluded from take consideration those marine mammal species that either do not inhabit the areas wherein SURTASS LFA sonar would operate or do not possess sensory mechanisms that allow the mammal to perceive LF sounds. Where data were not available or were insufficient for one species, comparable data for a related species were used, if available. Because all species of baleen whales produce LF sounds, and anatomical evidence strongly suggests that their inner ears are well adapted for LF hearing, all balaenopterid species are considered sensitive to LF sound and at risk from exposure to LF sounds. The ten species of baleen whales that may be affected by SURTASS LFA sonar are blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera edeni*), sei (*Balaenoptera borealis*), humpback (*Megaptera novaeangliae*), northern right (*Eubalaena glacialis*), southern right (*Eubalaena australis*), pygmy right (*Capera marginata*), and gray (*Eschrichtius robustus*) whales.

The odontocetes (toothed whales) that may be affected because they inhabit the deeper, offshore waters where SURTASS LFA sonar might operate include both the pelagic (oceanic) whales and dolphins and those coastal species that also occur in deep water including harbor porpoise, beluga, *Stenella spp.*, Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp.*), *Lagenorhynchus spp.*, *Cephalorhynchus spp.*, bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), melon-headed whale (*Peponocephala spp.*), beaked whales (*Berardius spp.*, *Hyperoodon spp.*, *Mesoplodon spp.*, Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's

beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

Potentially affected pinnipeds include hooded seals, harbor seals (*Phoca vitulina*), spotted seal (*P. largha*), ribbon seal (*P. fasciata*), gray seal (*Halichoerus grypus*), elephant seals (*Mirounga angustirostris*and *M. leonina*), Hawaiian monk seals (*Monachus schauinslandi*), Mediterranean monk seals (*Monachus monachus*), northern fur seals (*Callorhinus ursinus*); southern fur seals (*Arctocephalus spp.*), Steller sea lion (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), Australian sea lions (*Neophoca cinerea*), New Zealand sea lions (*Phocarctos hookeri*), and South American sea lions (*Otaria flavescens*).

A description of affected marine mammal species, their biology, and the criteria used to determine those species that have the potential for taking by harassment are provided and explained in detail in the Navy application and draft OEIS/EIS and, although not be repeated here, are considered part of the record of decision on this matter.

Impacts to Marine Mammals

The effects of underwater noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the noise may be audible but not strong enough to elicit any overt behavioral response; (3) the noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any human-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics, echolocation sounds of odontocetes, and environmental sounds such as surf noise; and (6) very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity.

The analysis of potential impacts on marine mammals from SURTASS LFA sonar was developed by the Navy based on the results of a literature review, the Navy's LF Sound Scientific Research Program (LFS SRP), and a complex, comprehensive program of underwater acoustical modeling. To assess the potential impact on marine mammals by the SURTASS LFA sonar source operating at a given site, it was necessary for the Navy to predict the sound field that a given marine mammal species could be exposed to over time. This is a multi-part process involving (1) the ability to measure or estimate an animal's location in space and time, (2) the ability to measure or estimate the three-dimensional sound field at these times and locations, (3) the integration of these two data sets to estimate the total acoustic exposure for each animal in the modeled population, (4) converting the resultant cumulative exposures for a modeled population into an estimate of the risk from a significant disturbance of a biologically important behavior, and (5) converting these estimates of behavioral risk into an assessment of risk in terms of the level of potential biological removal.

Next, as discussed later in this document, a relationship for converting the resultant cumulative exposures for a modeled population into an estimate of the risk to the entire population of a significant disruption of a biologically important behavior and of injury was developed. This process assessed risk in relation to received level (RL) and repeated exposure. The resultant ''risk continuum'' is based on the assumption that the threshold of risk is variable and occurs over a range of conditions rather than at a single threshold.

Taken together, the LFS SRP results, the acoustical modeling, and the risk assessment, provide an estimate of potential environmental impacts to marine mammals.

The acoustical modeling process was accomplished using the Navy's standard acoustical performance prediction transmission loss model-Parabolic Equation (PE) version 3.4. The results of this model are the primary input to the Acoustic Integration Model (AIM). AIM was used to estimate marine mammal sound exposures and essentially integrates simulated movements (including dive patterns) of marine mammals, a schedule of SURTASS LFA sonar transmissions, and the predicted sound field for each transmission to estimate acoustic exposure during a hypothetical SURTASS LFA sonar operation. Description of the PE and AIM models, including AIM input parameters for animal movement, diving behavior, and marine mammal distribution, abundance, and density are described in detail in the Navy application and the draft OEIS/EIS and are not discussed further in this document. NMFS recommends reviewers read these documents if additional information is desired.

Using the AIM model, the Navy developed 31 acoustic modeling scenarios for the major ocean regions (which are described in the application and draft OEIS/EIS). Locations were carefully selected by the Navy to represent the highest potential effects for each of the three major ocean acoustic regimes where SURTASS LFA sonar would be employed. These acoustic regimes were: (1) Deep-water convergence propagation zone, (2) near surface duct propagation zone, and (3) shallow water bottom interaction propagation zone. These scenarios represent the condition under which, on average, the greatest number of animals could be exposed to the greatest number of pings at the highest RLs and were considered the most severe conditions that could be expected from operation of the SURTASS LFA sonar system. Thus, if SURTASS LFA sonar operations were conducted in an area that was not acoustically modeled, the Navy believes the potential effects would most likely be less than those obtained from the most similar scenario in the analysis. The modeled scenarios were then used by the Navy to estimate the percentages of marine mammal stocks potentially affected.

Risk Analysis

In order to determine the potential impacts that exposure to LF sound from SURTASS LFA sonar operations could have on marine mammals, biological risk standards were defined by the Navy with associated measurement parameters. Based on the MMPA, the potential for biological risk was defined as the probability for injury or behavioral harassment of marine mammals. In this analysis, behavioral harassment is defined as a significant disturbance of a biologically important behavior. The potential for biological risk is a function of an animal's exposure to a sound that would potentially cause hearing, behavioral, psychological or physiological effects. The measurement parameters for

determining exposure were RLs in dB, the length of the signal (ping), and the number of pings received.

The Navy interprets the results of the LFS SRP to justify use of unlimited exposure during a mission to 120 dB as the lowest value for risk. Below this level, the risk of a biologically significant response from marine mammals approaches zero. It is important to note that risk varies with both level and number of exposures.

In the draft OEIS/EIS and small take application, the Navy calculated the risks for take by non-serious injury based on criteria of 180 dB, which, based on Ridgway *et al.* (1997), is a conservative value for the onset of a minor TTS in hearing. Ridgway *et al.*'s (1997) measurement at one-second duration implies that the TTS threshold for a 100-second signal would be between 182 and 172 dB, depending upon the formula used (Navy, 1999). The Navy believes that the 180-dB single ping equivalent (SPE) criterion can be considered conservative. However, as mentioned previously in this document, in order for marine mammals to incur serious injury, the RL would need to be significantly higher, and therefore, the marine mammal would have to be much closer to the SURTASS LFA sonar array than the 1 km (0.54 nm) radius around the vertical array which delineates the 180 dB sound field. With three levels of mitigation monitoring for detecting marine mammals (described later in this document (see Mitigation)), it is unlikely that any marine mammal would get that close before either turning away from the annoyance, or being detected and the SURTASS LFA sonar shut down. However, because the probability is not zero, the Navy has included this scenario in its authorization request.

Because the LFS SRP failed to document any extended biologically significant response at maximum RLs up to 150 dB, the Navy determined that there was a 2.5-percent value of a risk of an animal incurring a disruption of biologically important behavior at an SPL of 150 dB, a 50-percent risk at 165 dB, and a 95-percent risk at 180 dB.

This analysis of risk is used by the Navy as an alternative to an all-or-nothing use of standard thresholds for the onset of either behavioral change or injury. The subsequent discussion of risk function emphasizes the advantages of using a smoothly varying model of biological risk in relation to sound exposure. However, for the purposes of estimating the number of individuals that could potentially be injured from SURTASS LFA sonar operations, this document uses a simpler calculation. Given the low numbers of individual marine mammals that could potentially experience high received levels, the added complexity of an ''injury continuum'' was not deemed necessary by the Navy.

When SURTASS LFA sonar transmits, there is a boundary which will enclose a volume in which received levels exceed 180 dB, and a volume outside this boundary which experiences received levels below 180 dB. In this analysis, the 180-dB boundary is emphasized because it represents a single-ping RL that can be considered to be a scientifically reasonable estimate for the potential onset of harm or injury. Therefore, the level of risk for marine mammals depends on their location in relation to SURTASS LFA sonar. As mentioned previously, the Navy scientific team established the threshold for risk of harm as a single ping at 180 dB (Navy, 1999b). Harm was defined in this context as onset TTS. Under the Navy proposal, a marine mammal would have to receive one ping greater than, or equal to 180 dB or many pings at a slightly lower RL to potentially incur non-serious injury. For serious injury, the animal would have to be well within the 180-dB sound field at the onset of a transmission.

However, NMFS scientists and other scientists are in general agreement that TTS is not an injury (i.e., does not result in tissue damage) but is an impairment to hearing (resulting in an increased elevation in hearing sensitivity) that may last for a few minutes to a few days, depending upon the level and duration of exposure. In addition, there is no evidence that TTS would occur in marine mammals at an SPL of 180 dB, and, in fact, Schlundt *et al.* (2000) indicates that onset TTS, for at least some species, occurs at significantly higher SPLs. Therefore, in this document, NMFS makes clear that, although TTS is not an injury (i.e., Level A harassment), because PTS is considered an injury (Level A harassment), and because scientists have noted that a range of only 15–20 dB may exist between the onset of TTS and the onset of PTS, TTS is considered by NMFS to be in the upper portion of the Level B harassment zone (near the lower end of the Level A harassment zone). Therefore, onset PTS, not onset TTS, is considered by NMFS to be the lower end of Level A harassment. NMFS believes that establishing TTS at the upper end of the Level B harassment zone is both precautionary and warranted by the science. However, mitigation measures, such as establishing safety zones, should be applied whenever a marine mammal has the potential to incur a TTS in hearing in order to prevent an animal incurring a PTS injury.

While, the Navy believes that the probability of a marine mammal occurring within the 180-dB sound field at the onset of a transmission is nearly zero because of the proposed monitoring program (described later in this document), because the monitoring is not 100 percent effective, some Level A harassment takings still need to be considered possible.

Before the biological risk standards could be applied to realistic SURTASS LFA sonar operational scenarios, two factors had to be considered by the Navy which resulted in the development of the risk continuum approach: (1) How does risk vary with repeated sound exposure? and (2) how does risk vary with RL? These questions have been addressed by the Navy by developing a function that translates the history of repeated exposures (as calculated in the AIM) into an equivalent RL for a single exposure with a comparable risk. This approach is similar to those adopted by previous studies of risk to human hearing (Richardson *et al.*, 1995; Crocker, 1997).

Effects of Repeated Exposure

It is intuitive to assume that effects would be greater for repeated exposures than for a single ping. However, because no published data on repeated exposures of LF sound on marine mammals exist, the Navy turned to the most applicable human data. Based on the analysis of Richardson *et al.* (1995) and Kryter (1985), the potential for effects of repeated exposure on marine mammals was modeled on the extensive data available for human subjects. Based on discussion in Richardson et al. (1995) and consistent with Crocker (1997), the Navy determined that the best scientific information available is based on human model and, therefore, the formula $L + 5\log_{10}(N)$ (where L = ping level in dB and N is the number of pings) defines the single ping equivalent (SPE). This formula then is considered appropriate for assessing the risk to a marine mammal from a significant disturbance of a biologically important behavior from LF sound like SURTASS LFA sonar transmissions.

Estimation of Potential Effect to Marine Mammal Stocks

The potential effects on marine mammals from operation of SURTASS LFA sonar will not cause the direct removal of animals, but may result in a small reduction of an affected individual animal's overall reproductive

success. Based on AIM modeling results, the primary effects are from the potential for a significant disturbance of a biologically important behavior.

To estimate the percentage of marine mammal stocks affected on a yearly basis, the typical annual operating schedule for SURTASS LFA sonar was correlated by the Navy to the modeled site scenarios. Even though the Navy may not have the maximum number of systems operating during the next 5 years, its analysis incorporated four systems with six operations each annually. With two vessels in the Pacific/Indian Ocean area and two vessels in the Atlantic/Mediterranean area, the Navy estimates there could be up to 12 operations in each of these oceanic basin areas. Using a total of 12 operations in each large geographic area (e.g., Eastern North Pacific, Western North Atlantic), the Navy calculated take estimates based on a 20-day exercise (actually under the nominal schedule mentioned previously in this document the Navy proposes two 9-day exercises or a total of 18 days, not 20 days of exercise). NMFS concurs with this approach but notes that because only 2 SURTASS LFA sonar vessels will be available through 2002, possibly 3 vessels during 2003, and possibly 4 vessels during 2004 and 2005, the Navy's projected incidental harassment levels found in the draft OEIS/EIS and application are overestimates of potential harassment levels during the early period of these regulations. NMFS estimates, therefore, that there would be a total of 12 active missions annually during the first two years of these regulations (6 in each ocean basin), 18 during the third year (6 in one ocean basin, 12 in the other), and the maximum of 24 active missions during the last 2 years of these regulations (12 in each of the two ocean basins).

AIM Modeling in Table 4–10 in the application (Table 4.2–10 in the draft OEIS/EIS) provides estimates of the percentage of stocks potentially affected for single SURTASS LFA sonar operations. Tables 4–12 and 4–13 in the application (Tables 4.2–12 and 4.2–13 in the draft OEIS/EIS) provide an example of annual total estimates of percentages of marine mammal stocks potentially affected by a total of 24 operations (12 in each of the two ocean basins). As mentioned previously however, this number of operations are unlikely until the latter part of the effectiveness period of these regulations. Also, because each oceanic area is assumed to contain one or more discrete stocks of each affected species, these estimates are not additive when determining effects on marine mammal stocks. It should also be recognized that the scenarios chosen by the Navy are not the only possible combinations of where the SURTASS LFA sonar will operate. The potential effects from other scenarios can be estimated by those so wishing to do so by presupposing the areas in which the Navy would conduct SURTASS LFA sonar operations annually in each oceanic basin area, determining from Table 4–10 the percentage of each stock that may potentially be affected, and adding those percentages together for each affected stock. This is what NMFS proposes to do annually for each LOA issued. Also, as pertinent new information becomes available that would improve the Navy model, NMFS anticipates that the Navy could rerun the AIM models and recalculate take estimates. For this document however, NMFS is preliminarily adopting the Navy estimates shown in Tables 4–12 and 4–13 as the best information available in that they are based on the most likely scenario with two systems operating in each of the two oceanic areas. As indicated either by using these two tables, or by choosing a different combination of potential geographic areas for SURTASS LFA sonar operations derived from Table 4–10, NMFS believes that the potential effect by SURTASS LFA sonar operations will be limited to only small percentages of the affected stocks of marine mammals and that potential effect will be limited to incidental harassment that will not adversely affecting the stock through annual rates of recruitment or survival.

Mitigation for Marine Mammals

This document preliminarily adopts the Navy proposal to use visual, passive acoustic, and active acoustic monitoring of the area surrounding the SURTASS LFA sonar array to prevent the incidental injury of marine mammals that might enter the 1 km (0.54 nm) safety zone. The three monitoring systems are described in the following section of this document. If a marine mammal (or sea turtle) was detected within the 1 km (0.54 nm) safety zone SURTASS LFA sonar transmissions would be immediately delayed or suspended. Transmissions could commence/resume 15 minutes after the marine mammal/sea turtle had left the area of the 180 dB sound field or there was no further detection of the animal within the 180 dB sound field. The protocol established by the Navy for implementing this temporary shut-down is described in the application (pages 10–11). SURTASS LFA sonar operators would be required to estimate SPLs prior to and during each operation to provide the information necessary to modify the operation, including delay or suspension of transmissions, in order not to exceed the mitigation sound field criteria.

The Navy has proposed that the SURTASS LFA sonar operations would be conducted to ensure that the sound field does not exceed 180 dB (i.e., the zone of potential for injury to marine mammals) within 12 nm (22 km) of any coastline, including islands, nor in OBIAs that are outside the 12 nm (22 km) zone during the biologically important season(s) for that particular area. It should be noted that the 12 nm (22 km) safety zone restriction includes almost all marine-related critical habitats and National Marine Sanctuaries. Areas critical for marine mammals that are outside this safety zone can be nominated as an OBIA. This process was described earlier in this document.

In addition, to establishing a safety zone at 180 dB to protect marine mammals and other noise sensitive marine animals, the Navy has proposed to establish a safety zone for human divers at 145 dB re 1 microPa(rms) around all known human commercial and recreational diving sites. Although this geographic restriction is intended to protect human divers, its imposition will also reduce the LF sound levels received by marine mammals that are located in the vicinity of known dive sites.

The Navy has proposed establishing OBIAs for marine mammal protection. These areas are defined as those areas of the world's oceans where marine mammals congregate in high densities to carry out biologically important activities such as feeding, migration, breeding, and calving. To date, the U.S. Navy has proposed three sites as OBIAs for SURTASS LFA sonar under these regulations. These areas are: (1) the North American East Coast between 30° N and 50°N from west of 40°W to the 200–m (656 ft) isobath; (2) the Antarctic Convergence Zone, from 20°E to 120°E, south of 55°S, from October through March; and (3) the Costa Rica Dome, centered at 9°N and 88°W, year-round. Also, an area included in this document, at the request of NOAA's National Ocean Service, is Penguin Bank off the Island of Kauai, Hawaii, inside the HIHWNMS. In addition, the Navy in its application, and NMFS in this document, is proposing a system for expanding the list of OBIAs. This process is described in more detail in NMFS' response to comment 25 earlier in this document.

It should be recognized however, that the establishment of OBIAs is not

intended to apply to other Navy activities and sonar operations, but is proposed here as a mitigation measure to reduce incidental takings by SURTASS LFA sonar because it is practical considering SURTASS LFA sonar's offshore operation.

Monitoring

In order to minimize risks to potentially affected marine mammals that may be present in waters surrounding SURTASS LFA sonar, the Navy has proposed to: (1) Conduct visual monitoring from the ship's bridge during daylight hours, (2) use passive SURTASS LFA sonar to listen for vocalizing marine mammals; and (3) use high frequency active sonar (i.e., similar to a commercial fish finder) to monitor/locate/track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

Through observation, acoustic tracking and establishment of shut-down criteria, the Navy will ensure, to the greatest extent practicable, that no marine mammals approach the SURTASS LFA sonar source closely enough to be subjected to potentially harmful sound levels (inside the 180 dB sound field; approximately 1 km (0.54 nm) from the source). The Navy estimates that the probability of detecting a marine mammal within the 180 dB sound field of the source array by at least one of these monitoring methods is between 70 and 99 percent. However, nominally, an effectiveness of 80 percent is used in the take calculations. The Navy's assumption incorporates the 70-percent effectiveness of the HFM3 sonar, and an additional conservative 5-percent contribution each for visual and passive monitoring. In general, the Navy believes that small, solitary marine mammals would be the most difficult to detect, while large whales and dolphin schools would be much easier to detect. However, as stated previously in this document, NMFS will not consider the effectiveness of the HFM3 sonar in reducing the incidental take of marine mammals by the SURTASS LFA sonar until such time as the Navy has demonstrated its effectiveness. In the meantime, NMFS will adopt only the geographic mitigation as being effective in reducing takes.

NMFS has reviewed this Navy proposal and believes that the proposal can be modified to provide additional protection for marine mammals. Because the HFM3 has the capability to detect marine mammals, and track them, to a distance of 2 km (1.1 nm) from the source, NMFS is proposing to require the Navy to terminate transmissions whenever a marine mammal can receive a calculated SPE of 180 dB within the zone of detectability. This will require, however, both that the marine mammal remains within the zone of detectability between ''pings'' while the vessel is underway, and for the Navy to continue to monitor the 2 km (1.1 nm) zone between pings. Because the time between ''pings'' is 6–15 minutes, and the Navy has already committed to visual and acoustic monitoring for no less than 30 minutes prior to a ''ping,'' monitoring will continue during the interim period and marine mammals will continue to be tracked.

Reporting

During routine operations of SURTASS LFA sonar, technical and environmental data would be collected and recorded. These would include data from visual and acoustic monitoring, ocean environmental measurements, and technical operational inputs. This information would become part of the data required from the LTM Program.

Research

The Navy proposes to provide a LTM program to conduct annual assessments of the potential cumulative impact of SURTASS LFA sonar operations on the marine environment, provide the necessary reporting to increase knowledge of the species, and to coordinate research opportunities and activities. This would include cumulative impact analyses of the annually tabulated injuries (if any) and harassments over the next 5 years. The purpose of the LTM program would be to continue scientific data collection once SURTASS LFA sonar is deployed.

While NMFS believes that research conducted to date is sufficient to assess impacts on those species of marine mammals that were identified in public meetings as most susceptible to LF noise, it believes that it would be prudent to continue research over the course of the period of effectiveness of these regulations.

Proposed LOA Conditions

The proposed regulations have been designed to allow many of the mitigation, monitoring and reporting requirements to be detailed in the LOA, rather than in these regulations. This has been done to provide NMFS the ability to change these protective measures in a prompt manner to changing conditions. While public comment will be provided for substantial modifications to LOA requirements before being made effective, modifications can be implemented in a shorter period of time if contained in LOAs than would be possible if rulemaking were required for each modification. It should be understood that the public would be provided a comparable length of time for commenting on LOA modifications (except when NMFS determines that an emergency exists which impacts on the health and welfare of the marine mammal), whether or not those requirements were contained in regulations. However, for security reasons, locations and times for certain operations may need to be classified and not provided to the public.

In the past, NMFS has promulgated rulemakings for small take authorizations that did not clearly describe LOA conditions. For this activity NMFS plans the following conditions (in addition to, or in clarification of, those found in these regulations).

(1) Prior to each exercise, the marine mammal safety zone will be measured to determine the distance from the source to the 180-dB isobleth. That distance will be the established safety zone for that exercise; and

(2) The Navy must test the effectiveness of HFM3 at detecting marine mammals within 0.5 km (0.3 nm), 1 km (0.54 nm) and 2 km (1.1 nm) of the source. A report must be provided to NMFS not later than 120 days prior to the expiration of the first LOA.

Designation of Biologically Important Marine Mammal Areas

NMFS is proposing to establish a system under this proposed rule for the public to be able to propose areas for NMFS to consider adding to the list of biologically important areas for marine mammals. NMFS emphasizes that, in order for designation, an area must be of particular importance for marine mammals as an area for primary feeding, breeding, or migration, and not simply an area occupied by marine mammals. The proposed area should also not be within a previously designated area. In order for NMFS to begin the rulemaking process for designating areas of biological importance for marine mammals, proponents must petition NMFS and submit the information described in § 216.191(a). If NMFS makes a preliminary determination that the area is biologically important for marine mammals, NMFS will propose rulemaking to add the recommended area to the list of previously designated areas. Through notice in the **Federal Register**, NMFS will invite information, suggestions, and comments on the proposal for a period of time not less

than 45 days from the date of publication in the **Federal Register**. After review of the comments and information, NMFS will make a final decision on whether to add the recommended area to the list found in § 216.183(d). NMFS will either issue a final rulemaking on the proposal or provide notice in the **Federal Register** on its determination. It should be understood however, that proposals for designation of areas will not affect the status of LOAs while the rulemaking is in process. NMFS anticipates that the time between nominating an area and publication of a final determination is likely to take 8-12 months.

Preliminary Conclusions

Based on the scientific analyses detailed in the Navy application and further supported by information and data contained in the Navy's draft OEIS/EIS for SURTASS LFA sonar operations, NMFS concurs with the Navy that the incidental taking of marine mammals resulting from SURTASS LFA sonar operations would result in only small numbers (as the term is defined in § 216.103) of marine mammals being taken, have no more than a negligible impact on the affected marine mammal stocks or habitats and not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals. These conclusions are particularly supported by the proposed mitigation measures that would be implemented for all SURTASS LFA sonar operations and the proposed LTM program. This includes geographic operation restrictions, mitigation measures to prevent injury to any marine mammals, monitoring and reporting and supplemental research that will result in increased knowledge of marine mammal species, and the potential impacts of LF sound on these species. The latter measures offer the means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing the incidental taking of marine mammals from anthropogenic underwater sound, and evaluating the possible long-term effects from exposing marine mammals to anthropogenic underwater sound.

In addition to the mitigation measures described previously, the following factors need to be considered when determining whether a taking would be negligible: (1) The small number of SURTASS LFA sonar systems that will be operating world-wide; (2) the vessel must be underway while transmitting (in order to keep the receiver array deployed); (3) the low duty cycle and short mission periods; and (4) the possibility of a marine mammal being within the 180-dB sound field during sonar transmissions is unlikely.

Information Solicited

NMFS requests interested persons and organizations to submit comments, information, and suggestions concerning the content of the proposed regulations to authorize the taking. All commenters are requested to review the application prior to submitting comments and not submit comments solely on this **Federal Register** document. Comments on issues not relevant to either the potential impact of SURTASS LFA sonar on marine mammals or NMFS' responsibilities under the MMPA will not be considered.

NEPA

On July 30, 1999 (64 FR 41420), the Environmental Protection Agency (EPA) announced receipt of a draft OEIS/EIS from the U.S. Navy on the deployment of SURTASS LFA sonar. The public comment period on the Draft EIS ended on October 28, 1999. On February 2, 2001 (65 FR 8788), EPA announced receipt of a final OEIS/EIS from the U.S. Navy on the deployment of SURTASS LFA sonar. NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of these documents.

ESA

NMFS will be consulting with the U.S. Navy under section 7 of the ESA on this action. In that regard, on October 19, 1999, the Navy has submitted to NMFS a Biological Assessment under the ESA. This consultation will be concluded prior to a determination on issuance of a final rule and exemption.

Classification

This action has been determined to be significant for purposes of E.O. 12866. NMFS has preliminarily determined that this rule, if implemented, will provide NMFS and the public, through the Navy's monitoring and research program, with information on the SURTASS LFA sonar system's effect on the marine environment, especially on marine mammals. Without an authorization under the MMPA, NMFS and the public are unlikely to receive this information. NMFS believes that obtaining this information is extremely important because SURTASS LFA sonar is not the only LF noise source in the world's oceans, and the scientific findings resulting from monitoring and research is likely to be directly applicable to other activities. In addition, this rule, if implemented, and any LOAs issued thereunder, would impose appropriate mitigation measures for protecting marine mammals, sea turtles and other marine life. Without these regulations and LOAs, mitigation measures could not be required to be undertaken by the U.S. Navy.

While a determination to eventually deploy the SURTASS LFA sonar system will be made by the Navy, NMFS notes that additional benefits for implementing this proposed rule is an increased level of national defense, and improved survivability of U.S. armed forces at sea, and the Navy's associated multi-billion dollar naval assets. The cost to the Navy cannot be fully determined at this time but these costs would be incurred through implementation of the LTM and LTR programs that will be required under this proposed rule. Preliminarily, NMFS believes that this cost would be approximately $ 1 million annually.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. If implemented, this proposed rule would affect only the U.S. Navy which, by definition, is not a small business. It will also affect a small number of contractors providing services related to reporting the impact of SURTASS LFA sonar on marine mammals. Some of the affected contractors may be small businesses, but the number involved would not be substantial. Further, since the research and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648-0151, and include applications for LOAs, and an annual report. Other information requirements in the rule are not subject to the PRA since they apply only to a single entity and therefore are not contained in a rule of general applicability.

The reporting burden for the approved collections-of-information are preliminarily estimated to be approximately 80 hours for each annual application for a LOA (total of 2 in FY2001-FY2002, 3 in FY 2003, and 4 in FY 2004), and 80 hours each for interim and final reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: March 12, 2001.

Rolland A. Schmitten,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. A definition for ''single ping equivalent'' is added in alphabetic order to § 216.103 to read as follows:

§ 216.103 Definitions.

* * * * *

Single ping equivalent means the summation of the intensities for all received brief acoustic sound into an equivalent exposure from one ping, which is always at a higher level than the highest individual ping received. It is a methodology used during acoustic modeling of potential impacts to marine mammals exposed to sonar signals. This method estimates the total exposure of each individually modeled mammal, which was exposed to multiple pings over an extended period of time.

3. Subpart Q is added to part 216 to read as follows:

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

Sec.
216.180 Specified activity and specified geographical region.
216.181 Effective dates.
216.182 Permissible methods of taking.
216.183 Prohibitions.
216.184 Mitigation.
216.185 Requirements for monitoring.
216.186 Requirements for reporting.
216.187 Applications for Letters of Authorization.
216.188 Letters of Authorization.
216.189 Renewal of Letters of Authorization.
216.190 Modifications to Letters of Authorization.
216.191 Designation of Biologically Important Marine Mammal Areas.

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

§ 216.180 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, engaged in the operation of SURTASS LFA sonar operations, in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§ 216.106 and 216.188, include the transmission of low frequency sounds from the SURTASS LFA sonar, and the transmission of high frequency sounds from the mitigation sonar, described in § 216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas specified in § 216.183(d), the incidental taking by harassment may be authorized in the following areas as specified in a Letter of Authorization:

(1) North Atlantic Ocean,

(i) Western North Atlantic, from 35° N. lat. north to a line between Cape Chidley, Labrador northeast to Nuuk, Greenland, and from the North American continent east to 41° W. long. (Area A),

(ii) Eastern North Atlantic, from 35° N. lat. north to 72° N. lat. and 41° W. long. east to the European continent (Area B),

(2) Mediterranean Sea (Area C),

(3) North Pacific Ocean,

(i) Western North Pacific, from 20° N. lat. north to the Aleutian Island chain and the Sea of Okhotsk, and from the Asian continent east to 175° W. long. (Area D),

(ii) Eastern North Pacific, from 42° N. lat. north to Alaska and the south side of the Aleutian Islands and from the North American continent west to 175° W. long. (Area E),

(4) Central Atlantic Ocean,

(i) Eastern Central Atlantic, from 7° S. lat. north to 35° N. lat. and from the African continent west to 40° W. long. between 5° N. lat. and 35° N. lat., to 30° W. long. between 0° lat. and 5° N. lat., and to 20° W. long. between 7° S. lat. and 0° lat. (Area F),

(ii) Western Central Atlantic, from 5° N. lat. north to 35° N. lat., and from the American continent, east to 40° W. long. (Area G),

(5) Indian Ocean,

(i) Eastern Indian Ocean, from 60° S. lat. north to the Bay of Bengal, and Asian continent, and from 80° E. long. east to the Asian continent, the Sunda Islands and Australia and to 150° E. long. (Area H1),

(ii) Western Indian Ocean, from 60° S. lat. north to the Arabian Sea, and from 30° E. long. east to 80° E. long. (Area H2),

(6) Central Pacific Ocean,

(i) Western Central Pacific, from 175° W. long., east to the Asian continent and Indonesia, and from 10° S. lat., north to 20° N. lat. (Area I),

(ii) Central Pacific, from 10° S. lat., north to 42° N. lat. between 175° W. long. and 130° W. long. (Area J1),

(iii) Eastern Central Pacific, from 5° S. lat. north along the American coastline to 42° N. lat., from 130° W. long. along 10° S. lat. to 105° W. long., from 10° S. lat. along 105° W. long. to 5° S. lat., from 105° W. long. along 5° S. lat. to the South American coastline, from 130° W. long. along 42° N. lat. to the North American coastline and from 42° N. lat. to 10° S. lat. along the 130° W. long. line (Area J2),

(7) South Pacific Ocean,

(i) Western South Pacific from 60° S. lat. north to 10° S. lat. and from the east coast of Australia in the north and 150° E. long. south of Australia east to 105° W. long. (Area K),

(ii) Eastern South Pacific from 60° S. lat. north to 5° S. lat. and from the 105° W. long. east to the South American coastline in the north and 70° W. long. in the south (Area L),

(8) South Atlantic Ocean,

(i) Western South Atlantic, from 60° S. lat. north to 5° N. lat. in the area west of 30° W. long., and from 60° S. lat. north to 0° lat. in the area east of 30° W. long. and from the South American continent east to 30° W. long. between 0° and 5° N. lat. and east to 20° W. long. between 0° and 60° S. lat. (Area M), and

(ii) East South Atlantic from 50° S. lat. north to 7° S. lat. and from 20° W. long. east to the African coastline in the north and 30° E. long. south of the continent (Area N).

(b) The incidental take by harassment and non-serious injury of marine

mammals under the activity identified in this section is limited to the following species and species groups:

(i) Mysticete whales, including, blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera novaeangliae*), northern right whale (*Eubalaena glacialis*), southern right whale (*Eubalaena australis*), pygmy right whale (*Capera marginata*), and gray whales (*Eschrichtius robustus*).

(ii) Odontocete whales, including Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp.*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), beluga whale (*Delphinapterus leucas*), *Stenella spp.*, *Lagenorhynchus spp.*, *Cephalorhynchus spp.*melon-headed whale (*Peponocephala spp.*), beaked whales (*Berardius spp.*, *Hyperoodon spp.*, *Mesoplodon spp.*), Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

(iii) Pinnipeds, including harbor seals (*Phoca vitulina*), spotted seals (*P. largha*), ribbon seals (*P. fasciata*), gray seals (*Halichoerus grypus*), hooded seal (*Cystophora cristata*), elephant seals (*Mirounga angustirostris* and *M. leonina*). Hawaiian monk seals (*Monachus schauinslandi*), Mediterranean monk seals (*Monachus monachus*), northern fur seals (*Callorhinus ursinus*); southern fur seals (*Arctocephalus spp.*), Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), Australian sea lions (*Neophoca cinerea*), New Zealand sea lions (*Phocarctos hookeri*), and South American sea lions (*Otaria flavescens*).

§ 216.181 Effective dates.

Regulations in this subpart are effective from May 1, 2001, through April 30, 2006.

§ 216.182 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.188, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by harassment and non-serious injury within the area described in § 216.180(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.180 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

§ 216.183 Prohibitions.

Notwithstanding takings authorized by § 216.180 and by a Letter of Authorization issued under §§ 216.106 and 216.188, no person in connection with the activities described in § 216.180 shall:

(a) Take any marine mammal not specified in § 216.180(b);

(b) Take any marine mammal specified in § 216.180(b) other than by incidental, unintentional harassment or non-serious injury;

(c) Take any marine mammal while operating under a Letter of Authorization in either a non-operating area, indicated in Figure 1, or in a geographic operating area for which an authorization for taking has not been issued under a Letter of Authorization;

(d) Operate the SURTASS LFA sonar while under a Letter of Authorization, such that the SURTASS LFA sonar sound field exceeds 180 dB (re 1 micro Pa(rms)) within 12 nautical miles (22 kilometers) of any coastline, including offshore islands, or any designated offshore area that is biologically important for marine mammals that exist outside the 12 nautical miles (22 kilometers) zone during the biologically important season for that particular area.

(e) The following areas have been designated by NMFS as offshore areas of critical biological importance for marine mammals (by season if appropriate):

Name of Area	Location of Area	Months of Importance
(1) 200-m isobath North American East Coast	From 30° N to 50° N west of 40° W	Year-Round
(2) Antarctic Convergence Zone	30° E to 80° E:45° S 80° E to 1500 E:55° S 150° E to 50° W:60° S 50° W 30° E:50° S	October through March
(3) Costa Rican Dome	Centered at 9° N and at 88° W	Year-round; no resident population
(4) Penguin Bank	Centered at 22° N and at 159°	November 1 through May 1

(f) Take a marine mammal specified in § 216.180(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(g) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.188.

§ 216.184 Mitigation.

The activity identified in § 216.180(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.180, the mitigation measures described in this paragraph and in the Letter of Authorization issued under §§ 216.106 and 216.188 must be implemented.

(a) Through monitoring described under § 216.185, the Holder of a Letter of Authorization will ensure, to the greatest extent practicable, that no marine mammal is subjected to a single ping equivalent of 180-dB within the 180-dB re 1 micro Pa(rms) sound field.

(b) If a marine mammal is detected within the 180-dB safety zone, SURTASS LFA sonar transmissions will be immediately suspended. Transmissions will not resume earlier than 15 minutes after:

(1) All marine mammals have left the area of the 180-dB re 1 micro Pa(rms) sound field; and

(2) There is no further detection of the animal within the 180-dB re 1 micro Pa(rms) sound field as determined by the visual and/or passive or active acoustic monitoring described in § 216.185.

(c) The HFM3 source, described in § 216.185 will be ramped-up slowly to operating levels over a period of no less than 5 minutes:

(1) No later than 30 minutes before the first SURTASS LFA sonar transmission;

(2) Prior to any SURTASS LFA sonar calibrations or testings that are not part of regular SURTASS LFA sonar transmissions described in paragraph (c)(1) of this section; and

(3) Anytime after the HFM3 source has been powered down for a period of time greater than 2 minutes.

§ 216.185 Requirements for monitoring.

(a) In order to mitigate the taking of marine mammals by SURTASS LFA sonar to the greatest extent practicable, the Holder of a Letter of Authorization must:

(1) Conduct visual monitoring from the ship's bridge during daylight hours;

(2) Use low frequency passive SURTASS LFA sonar to listen for vocalizing marine mammals; and

(3) Use high frequency active sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

(b) Pursuant to (a)(1)-(3) of this section monitoring must:

(1) Commence no later than 30 minutes before the first SURTASS LFA sonar transmission;

(2) Continue between transmission pings; and

(3) Continue for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise;

(c) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.188 for activities described in § 216.180 are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization issued pursuant to § 216.106 and § 216.188.

(e) Holders of Letters of Authorization must conduct all monitoring and/or research required under the Letter of Authorization.

§ 216.186 Requirements for reporting.

(a) The Holder of a Letter of Authorization must submit an interim report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 90 days prior to expiration of the Letter of Authorization. This report must contain all the information required by the Letter of Authorization.

(b) A final comprehensive report must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations. This report must contain all the information required by any final year Letter of Authorization.

§ 216.187 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Navy authority that is conducting the activity identified in § 216.180, must apply for and obtain a Letter of Authorization in accordance with §§ 216.106 and 216.188.

(b) The application for an initial, or a renewal of, a Letter of Authorization must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, at least 90 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the specified geographical region where the vessel's activity described in § 216.180 will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each specified geographical region;

(3) The type of incidental taking authorization that is being requested (i.e., take by Level A and/or Level B harassment);

(4) The estimated percentage of marine mammal species/stocks potentially affected in each specified geographic region and for the 12-month period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals.

(d) NMFS will review an application for a Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, issue a Letter of Authorization for a period of time not to exceed 1 year.

§ 216.188 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked will be valid for a period of time not to exceed one year, but may be renewed annually subject to annual renewal conditions in § 216.189.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, its habitat, and on the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental takes.

(c) Issuance of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity, specified in § 216.180, as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.189 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.188 for the activity identified in § 216.180 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under § 216.187 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Notification to the National Marine Fisheries Service of the information items identified in § 216.187(c), including the planned geographic area(s), and anticipated duration of each SURTASS LFA sonar operation;

(3) Timely receipt of the monitoring reports required under § 216.185, which have been reviewed by the National Marine Fisheries Service and determined to be acceptable;

(4) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under §§ 216.184 and 216.185 and the Letter of Authorization were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(5) Renewal of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity continues to be small, that the total number of marine mammals taken by the activity, specified in § 216.180, as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.188 indicates that a substantial modification to the described work, mitigation or monitoring will occur during the upcoming season, or if the National Marine Fisheries Service proposes a substantial modification to the Letter of Authorization, the National Marine Fisheries Service will provide the public a period of 30 days for review and comment on the requested modification. Amending the list of areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.190 Modifications to Letters of Authorization.

(a) In addition to complying with the provisions of §§ 216.106 and 216.188, except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization issued pursuant to §§ 216.106 and 216.188 and subject to the provisions of this subpart shall be made by the National Marine Fisheries Service until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.189, without modification, except for the period of validity and a listing of planned operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, are not considered substantive modifications.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.180(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

§ 216.191 Designation of Biologically Important Marine Mammal Areas.

In order for the National Marine Fisheries Service to designate areas that are considered of biological importance for marine mammals under this rule, proponents must petition the Agency by requesting an area be added to the list of biologically important areas in § 216.183(d) and submitting the following information:

(a) Geographic region proposed for consideration (including geographic boundaries) as an area of importance,

(b) A list of marine mammals, within the proposed geographic region,

(c) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation, and

(d) Detailed information on the biology of marine mammals within the area including estimated population size, distribution, density, status; and principal biological activity during the proposed period of designation of the area sufficient for the National Marine Fisheries Service to make a preliminary determination that the area is biologically important for marine mammals.

(e) In order for the National Marine Fisheries Service to designate an area as an offshore area of biological importance for marine mammals under this subpart, the petitioner will need to provide detailed information on the area in regards to its importance for marine mammals for either primary feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(f) Proposed areas that are within 12 nautical miles (22 kilometers) of any coastline including offshore islands, or within non-operating areas for SURTASS LFA sonar shown in Figure 1 will not be eligible for consideration under this section;

(g) If the National Marine Fisheries Service makes a preliminary determination that the area is biologically important for marine mammals and, that area is not located within a previously designated area, the National Marine Fisheries Service will propose rulemaking to add the recommended area to § 216.183(d).

(h) Through notice in the **Federal Register**, the National Marine Fisheries Service will invite information, suggestions, and comments on the proposal for a period of time not less than 45 days from the date of publication in the **Federal Register**.

(i) After review of the comments and information, the National Marine Fisheries Service will make a final decision on whether or not to add the recommended area to the list found in § 216.183(d). The National Marine Fisheries Service will either issue a final rulemaking on the proposal or provide notice in the **Federal Register** on its determination.

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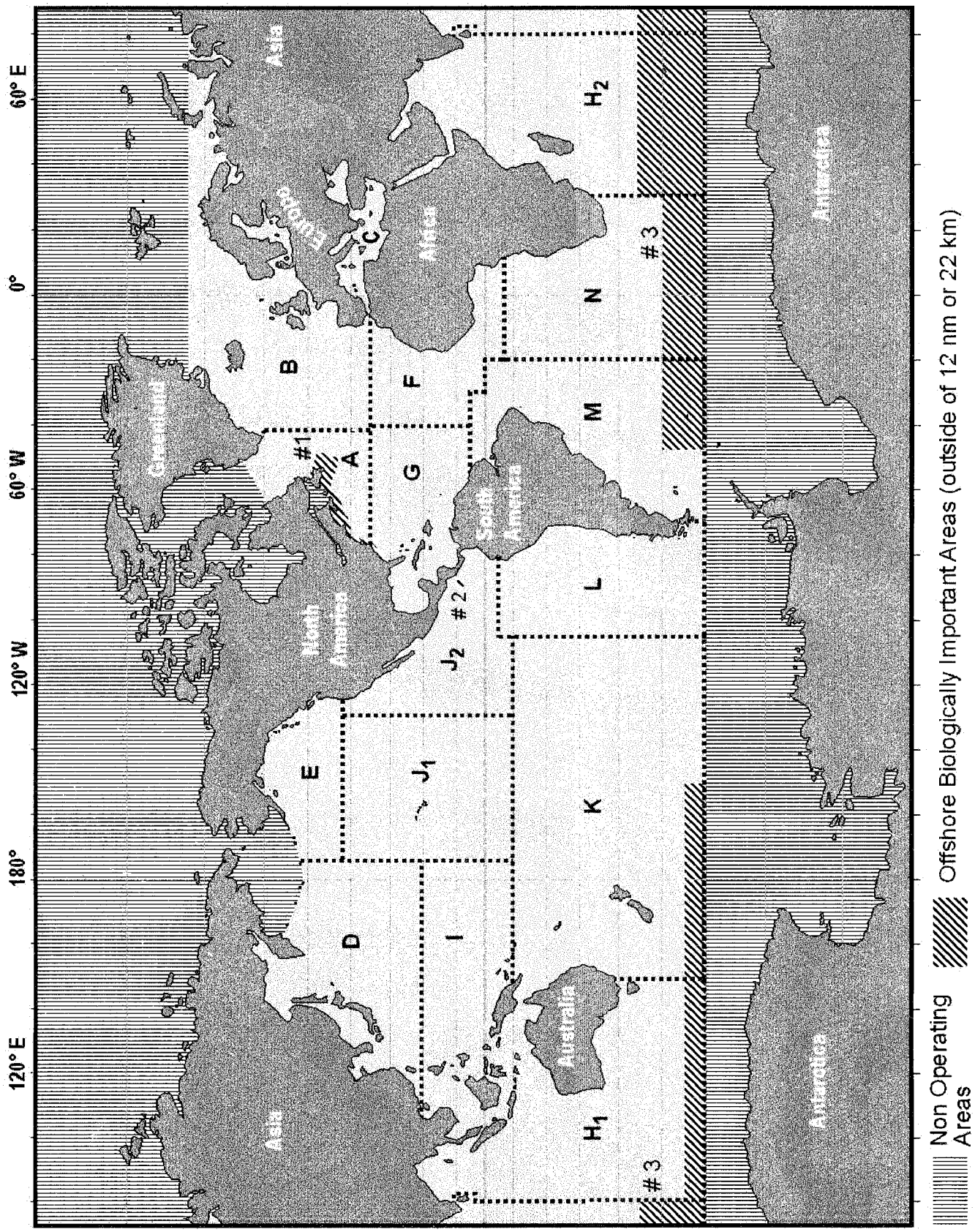

Figure 1-1. SURTASS LFA Sonar Potential Operating Areas.

[FR Doc. 01–6751 Filed 3–16–01; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 030101F]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination to issue EFPs that would allow two vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The Manomet Center for Conservation Sciences (Manomet) submitted a complete application for the issuance of EFPs to two commercial fishing vessels, which warrants further consideration. The experiment would be conducted in a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area (GOM/GB RMA). The EFPs would be issued to two federally permitted groundfish vessels to conduct trawl net gear trials with two modified excluder devices and the associated small-mesh codend cover to target mixed groundfish species—primarily cod, yellowtail flounder, winter flounder (blackback), summer flounder (fluke), American plaice (dab) and grey sole (witch flounder), for the purpose of establishing selectivity parameters of trawl nets with and without the excluder device. EFPs would allow for exemptions to the gear restrictions, temporary possession of catch in excess of the landing limits for the purposes of data collection, and entry into the seasonal area closures in the GOM. The study is intended to determine the selective efficiency of two excluder device designs for the most effective exclusion of small cod and other sub-legal sized fish. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this notification must be received at the appropriate address or fax number (see **ADDRESSES**) on or before April 3, 2001.

ADDRESSES: Written comments should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: Manomet submitted an industry cooperative proposal on February 5, 2001, for two EFPs to conduct gear selectivity studies to address bycatch and discard of incidental catch and sub-legal sized fish, cod in particular, in the mixed-groundfish fisheries of the Northeast. The study would be conducted with two federally permitted multispecies vessels within the following four areas, excluding portions that overlap year-round closure areas (Western GOM Closure Area and Closed Area I) and including some Canadian territorial waters as follows:

TABLE 1

Point	N. Latitude	W. Longitude
1		from the Maine shoreline at 69°55′ (east from the Western GOM Closure Area)
2	south to 42° 30′	69° 00′
3	44°00′	69° 08′ (Maine shoreline)

TABLE 2

Point	N. Latitude	W. Longitude
1	from the Massachusetts shoreline at 42°50′	69°30′
2	42°05′	69°08′

TABLE 3

Point	N. Latitude	W. Longitude
1	from 42°00′	68°30′
2	41°00′	67°20′
3	42°00′	68°30′

TABLE 4

Point	N. Latitude	W. Longitude
1	41°10′	70°30′ east to 69°00′
2	40°50′	70° 30′
3	41°10′	70° 30′

This collaborative study involves Manomet, the Massachusetts Division of Marine Fisheries, and the Maine Department of Marine Resources as co-principal investigators. In addition, project tasks will be coordinated with the Canadian Department of Fisheries and Oceans to ensure compatibility with existing methodology and data format. A bycatch reduction device called EX-it was developed by the Icelandic fishing industry, with scientific and Governmental collaboration. The EX-it device is now used by over 60 percent of the inshore fishing fleet in Icelandic waters and has been demonstrated to reduce effectively the bycatch of undersized fish in fisheries from Iceland to Namibia.

The main objective of the experiment is to field test two modifications of the EX-it devices, which consist of a net tube in the shape of an hourglass, and steel grids. The EX-it device is inserted in the top panel of a codend (industry-standard mesh) within a trapezoidal steel frame. The grid system is made of eight smaller grids that are joined together. The field trials would deploy two EX-it devices, one with a grid bar spacing interval of 60 mm (2.36 inch), and the other of 55-mm (2.17-inch) spacing, combined with a retainer bag made of 1-7/8 inch (4.78-cm) mesh, which is attached to the EX-it devise, as well as additional 1-7/8 inch (4.78-cm) mesh cover surrounding the codend mesh itself. The retainer bag would retain all the fish that were excluded by each design of the EX-it device, and the codend covers would sample the portion of the catch that would have escaped the codend to obtain a selectivity curve, which requires the length-frequency distribution of the population sampled, as well as that of the population retained.

The purpose of the study is to develop a size-selective trawl gear configuration through modifications to the grid bar spacing of the EX-it device to release sub-legal sized cod and flatfish species incidental to the catch, while retaining fish of marketable size. The catch data for each sample (tow) would be used to prepare gear-specific mesh selectivity curves. Video observations would be performed in conjunction with the gear trials for use in behavioral analyses to ascertain the presence/absence of species-specific behavioral patterns that may explain observed differences in the selective efficiency of the gear modifications.

The field trials would take place over a period of approximately 5 days, with a total sample size of 20 tows; 10 tows (1 hour tow length) for each of the two EX-it device bar spacings tested, at four tows per day. These commercial gear trials would operate in the four areas designated (Tables 1–4) outside the Western GOM Year Round Closure Area and Closed Area I beginning in March 2001, until the 20 tows are obtained. Access to the GOM seasonal closures areas is necessary to maximize sampling and data return, while minimizing the need for a lengthy study and exhaustive fishing efforts. The GOM seasonal closures that may correspond in time and location with the proposed study are as follows: Rolling Closure Area I (March 1 to March 31), Rolling Closure Area II (April 1 to April 30), Rolling Closure Area III (May 1 to May 31), Rolling Closure Area IV (June 1 to June 30), and the Cashes Ledge Closure Area (July 1 to October 31). The study will continue for up to 6 months to allow for weather contingencies and to capture seasonal variability in target species distribution and abundance.

The experimental sampling design (use of a codend cover and the retainer bag) is intended to minimize greatly the number of tows necessary to yield the necessary amount of catch information; a minimum of 10 tows (1 hour in length maximum) is required for satisfactory selectivity curve results. The target species are yellowtail flounder, winter flounder (blackback), summer flounder (fluke), American plaice (dab) and cod. The main incidental species are expected to be skates, smooth and spiny dogfish, sculpins, sea raven and sea robin. Any sub-legal sized fish would be processed by the researcher (e.g., measured) and returned immediately to the water. During the experimental trials, participating vessels would be instructed to conduct normal fishing operations. Therefore, the vessels may only retain fish for commercial sale in the amount allowed under their respective Federal fishery permits and days-at-sea allocations.

NMFS-certified observers will collect fisheries data from each tow conducted during the course of the experiment. All the data reports will be forwarded to NMFS, the New England Fishery Management Council, various fishermen's and industry organizations, Sea Grant offices and other interested parties. It is hoped that this experiment could serve as an example for future cooperative ventures between the U.S., Canada, and Iceland.

EFPs would be issued to two participating federally permitted Northeast multispecies vessels to exempt them from the gear restrictions, temporary possession of catch in excess of the landing limits for the purposes of data collection, and the GOM seasonal area closures of the Northeast Multispecies Fishery Management Plan, found at 50 CFR part 648, subpart F.

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

Dated: March 13, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–6750 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 031401D]

Atlantic Highly Migratory Species; Advisory Panel Meeting; Public Hearing

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

ACTION: Advisory Panel meeting and public hearing.

SUMMARY: NMFS will hold a joint meeting of the Atlantic Highly Migratory Species Advisory Panel (HMS AP) and the Atlantic Billfish Advisory Panel (Billfish AP), April 2 through 4, 2001, in Silver Spring, MD. NMFS will also hold a public hearing to receive comments from fishery participants and other members of the public regarding proposed regulations open for public comment at that time. Instructions on submitting written comments will be published with the respective proposed regulations.

DATES: The joint HMS-Billfish AP meeting will be held from 1 p.m. to 5 p.m. on Monday, April 2; from 8 a.m. to 5 p.m. on Tuesday, April 3; and from 8 a.m. to 3:30 p.m. on Wednesday, April 4.

The public hearing will be held from 7 p.m. until 10 p.m. on Tuesday, April 3, 2001.

ADDRESSES: The AP meeting and the public hearing will be held in the NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

Materials related to the AP meeting and public hearing are available from Othel Freeman, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald G. Rinaldo, 301–713–2347.

SUPPLEMENTARY INFORMATION: The actions to be discussed by the APs and

the proposed rules that are the subject of the hearing are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act and to implement recommendations of the International Commission for the Conservation of Atlantic Tunas as required by the Atlantic Tunas Convention Act, for the conservation and management of highly migratory species.

Special Accomodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Rinaldo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

Authority: 16 U.S.C. 961 *et seq.*, and 16 U.S.C. 1801 *et seq*.

Dated: March 14, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–6764 Filed 3–14–01; 4:24 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 53

Monday, March 19, 2001

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Food Security Advisory Committee; Board for International Food and Agricultural Development; One Hundred and Thirty Fourth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the meeting of the Food Security Advisory Committee (FSAC). The meeting will be held from 8:30 a.m. to 5:00 p.m. on March 28th, 2001 in the NASULGC Meeting Room, 1307 New York Avenue, NW, Washington, DC.

The agenda calls for FSAC to review options for recommendation to the Interagency Working Group (IWG) on Food Security regarding priorities for use in developing the U.S. position for the World Food Summit Plus Five (WFS+5). The Committee will also review important opportunities to promote food security and adopt a strategy to expand public and private sector contributions to domestic and international food security.

Those wishing to attend the meeting, or to obtain additional information about FSAC, should contact Ms. Jennifer J. Douglas, the Designated Federal Officer for FSAC, in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–061, Washington, DC 20523–2110 or telephone her at (202) 712–1687 or fax (202) 216–3060.

Jennifer J. Douglas,

USAID Designated Federal Officer for FSAC, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs.

[FR Doc. 01–6649 Filed 3–16–01; 8:45 am]

BILLING CODE 6116–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on March 29, 2001, at the Renaissance Atlanta Hotel, 590 West Peachtree Street, NW., Atlanta, Georgia 30308. The purpose of the meeting is to plan the State Symposium on the ''Status of Civil Rights in Georgia.''

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 7, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–6631 Filed 3–16–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 p.m. on Wednesday, March 28, 2001, at the Radisson Inn Harbourwalk, 223 Gaslight Circle, Racine, Wisconsin. The purpose of the meeting is to hold a press conference to release the Committee's report, Community Forum on Race Relations in Racine County, Wisconsin. Also, the Committee will discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 8, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–6632 Filed 3–16–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409, Public Law 96–523, and Public Law 97–375), we are giving notice of a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows: 1. Presentation of the results and recommendations arising from the Brookings Institutions' Workshops on Output and Productivity Measurement in the Service Sector. 2. Discussion of new price measures that might be integrated into the national accounts, such as those for security dealers and semiconductors. 3. Review of the North American Industry Classifications System (NAICS) implementation schedule as it affects BEA. 4. Brief discussion of the treatment of consumer durables in the national accounts. 5. Brief presentation of alternatives for the treatment of the statistical discrepancy. 6. Discussion of topics for future agendas.

DATES: On Friday, May 11, 2001, the meeting will begin at 9:15 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at BEA, 2nd floor, Conference Room

C&D, 1441 L Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: J. Steven Landefeld, Director, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone: 202–606–9600

PUBLIC PARTICIPATION: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Colleen Ryan of BEA at 202–606–9603 in advance. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Colleen Ryan at 202–606–9603.

SUPPLEMENTARY INFORMATION: The Committee was established on September 2, 1999, to advise the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's national, regional, and international economic accounts. This will be the Committee's third meeting.

Dated: March 12, 2001.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 01–6661 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–801]

Electrolytic Manganese Dioxide From Greece: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On January 10, 2001, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece. The review covers one producer/exporter, Tosoh Hellas, during the period of review April 1, 1999, through December 31, 1999.

We gave interested parties an opportunity to comment on the preliminary results. We did not receive any comments. The review indicates the existence of no dumping margins for Tosoh Hellas during this period.

EFFECTIVE DATE: March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Richard Rimlinger, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3477 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act, by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2000).

Background

On January 10, 2001, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. See *Preliminary Results of Antidumping Duty Administrative Review: Electrolytic Manganese Dioxide from Greece*, 66 FR 1950 (January 10, 2001) (Preliminary Results).

Scope of Review

Imports covered by this review are shipments of EMD from Greece. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms (powder, chip, or plate) and two grades (alkaline and zinc chloride). EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

Analysis of Comments Received

We received no comments from interested parties as a result of our preliminary results of review.

Sunset Revocation

On April 20, 2000, the International Trade Commission (ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on EMD from Greece would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Therefore, because the order was revoked on May 31, 2000, as a result of the ITC's determination with an effective date of January 1, 2000, no deposit requirements are effective for shipments entered, or withdrawn from warehouse, for consumption on or after January 1, 2000.

Final Results of Review

We have determined that a weighted-average margin of zero percent exists for Tosoh for the period April 1, 1999, through December 31, 1999. The Department will issue appraisement instructions directly to the Customs Service.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 12, 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade.

[FR Doc. 01–6757 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia: Notice of Extension of Time Limits for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limits of the preliminary results of the antidumping duty administrative review on extruded rubber thread from Malaysia. The review covers three producers/exporters of the subject merchandise to the United States. The period of review is October 1, 1999, through September 30, 2000.

EFFECTIVE DATE: March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin at (202) 482–0656, Office of AD/

CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act, the Department is extending the time limit for completion of the preliminary results. In this review, the respondents will not have their audited financial statements ready until after the scheduled date for the preliminary results. Because the Department intends to incorporate the auditors' adjustments into its calculations, we have extended the deadline until October 31, 2001.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)) and 19 CFR 351.213(h)(2).

Dated: March 12, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–6758 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–866]

Initiation of Antidumping Duty Investigation: Certain Folding Gift Boxes From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR Part 351 (2000).

The Petition

On February 20, 2001, the Department received a petition on imports of certain folding gift boxes from the People's Republic of China (PRC) filed in proper form by Harvard Folding Box Company, Inc., and Field Container Company, L.P., hereinafter referred to as ''the petitioners.'' On February 26, 2001, the Department requested clarification of certain areas of the petition and received responses on March 1, 2001, and March 5, 2001.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain folding gift boxes from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigation they are requesting the Department to initiate (see ''Determination of Industry Support for the Petition'' below).

Scope of the Petition

The merchandise subject to this petition is certain folding gift boxes. Folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the petition excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache.

Folding gift boxes are typically decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope of the petition excludes folding cartons that have a retailer's name, logo, trademark or similar company information printed prominently on the folding carton's top exterior (such folding cartons may be known as ''not-for-resale'' gift boxes or ''give-away'' gift boxes and may be provided by department and specialty stores at no charge to their retail customers). Imports of the subject merchandise are classified under U.S. Harmonized Tariff Schedule subheadings 4819.20.00.40 and 4819.50.40.60. These subheadings also cover products that are outside the scope of this petition. Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Period of Investigation

Section 351.204(b) of the Department's regulations states that, in the case of a nonmarket-economy (NME) country, in an investigation, the Department normally will examine merchandise sold during the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed. The regulations further state that the Department may examine merchandise sold during any additional or alternate period it concludes is appropriate.

Following the above-noted guidelines from section 351.204(b) of the Department's regulations, the two most

recently completed fiscal quarters as of the month preceding the month in which the petition was filed would be the third and fourth fiscal quarters of 2000, July through December 2000.

For this investigation, the petitioners have requested that the Department expand the period of investigation (POI) to include the first two fiscal quarters of 2000, January through June 2000. According to the petitioners, the subject merchandise is sold using long-term contracts that require delivery to be made six to nine months after the contract is signed. The petitioners also contend that the folding gift box industry is highly seasonal and that the volume of folding gift box shipments is linked to the Christmas and Hanukkah holidays. The petitioners argue that, because of these two facts, most sales of folding gift boxes are made during January through April. Therefore, the petitioners claim that the normal POI would only capture a few non-representative sales that will greatly distort the Department's conclusions.

The Department is considering the petitioners' arguments on this matter and will make a determination on whether to expand the normal POI as established by section 351.204(b)(1) of the Department's regulations, July 1 through December 31, 2000, as the investigation proceeds.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, we have adopted the definition of the domestic like product defined in the ''Scope of Investigation'' section, above. That definition was developed n in consultation with the petitioners.

The petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Industry Support Attachment to the Initiation Checklist.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production are also discussed in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

Based on their knowledge and experience in the market place and on their examination of publicly available ship manifest data, the petitioners identified the following PRC companies as producers of certain folding gift boxes in the PRC: Bigfield Goldenford Holdings, Ltd., Century Distributing, Inc., China Arts Huajia Import & Export, Chung Tai Printing Company, Ltd., Dexon Workshop Company, Fangyuan International Economy and Trade Co., Gold Mile Enterprise, Ltd., Homay Paper Products Company, Ltd., Hong Kong Dasan Paper Products Co., Ltd., Hung Hing Off-Set Printing Company, Ltd., K.C. (Hong Kong), Ltd., Leo Paper Products, Ltd., Luk Ka Printing Company, Ltd., Man Sang Envelope Manufacturing Co., Ltd., Max Fortune Industrial, Ltd., Ningbo Jude Trading Company, Ltd., Rank Sharp Investments, Ltd., and Red Point Paper Products Company, Ltd. Of these 18 companies the petitioners identified Bigfield Goldenford Holdings, Ltd., Luk Ka Printing Company, Ltd., Max Fortune Industrial, Ltd., and Red Point Paper Products Company, Ltd., as the producers of a large quantity of certain folding gift boxes exported to the United States.

The petitioners based export price on the price of Chinese-manufactured folding gift boxes from a Chinese exporter. In order to obtain ex-factory prices, the petitioners deducted foreign inland freight and foreign port charges from the sales value. According to an affidavit from a person familiar with the folding gift box industry in the PRC, folding gift boxes are transported to the port by truck. To calculate foreign inland freight, the petitioners used a surrogate value based on information developed by the Department in prior cases and inflated this value to current prices using the Department's normal methodology. To calculate foreign port

[1] See *Algoma Steel Corp. Ltd.,* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

charges, the petitioners used a price quote from a shipping company for port charges from Hong Kong. We reviewed the information provided regarding export price and have determined that it represents information reasonably available to the petitioners and have reviewed it for adequacy and accuracy. See Initiation Checklist.

The petitioners assert that the Department considers the PRC to be an NME country and, therefore, constructed normal value based on the factors-of-production methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that the PRC is an NME country. See *e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the People's Republic of China (Cold-Rolled Steel from China),* 65 FR 34660 (May 31, 2000). In accordance with section 771(18)(c)(i) of the Act, the NME status remains in effect until revoked by the Department. The NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product appropriately is based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

As required by 19 CFR 351.202(b)(7)(i)(C), the petitioners provided a dumping margin calculation using the Department's NME methodology described in 19 CFR 351.408. For the normal value calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and overhead), for certain folding gift boxes on the quantities of inputs used by a U.S. producer of certain folding gift boxes. Based on our analysis of the data in the petition, we believe that the petitioners' normal value calculations to be reasonable and accurate. See Initiation Checklist.

The petitioners selected Indonesia as their surrogate country. The petitioners stated that Indonesia is comparable to the PRC in its level of economic development and is the only producer of certain folding gift boxes among the ten countries most comparable to the PRC. Based on the information provided by the petitioners, we believe that the petitioners' use of Indonesia as a surrogate country is appropriate for purposes of initiation of this investigation. See Initiation Checklist.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production for certain folding gift boxes, where possible, on reasonably available, public surrogate-country data. To value paperboard, the petitioners used the value for exports as reported in the World Trade Atlas, Indonesian Export Statistics published by the Government of Indonesia. To value ink, glue, shrinkwrap, corrugated boxes, and casing tape, the petitioners used the value for imports as reported in the World Trade Atlas, Indonesian Export Statistics published by the Government of Indonesia. To value labels, the petitioners used the value for exports as reported in the World Trade Atlas, Indonesian Export Statistics published by the Government of Indonesia. The petitioners valued labor using the regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). For factory overhead expenses, the petitioners used a rate derived from the experience of the producer of certain folding gift boxes used for the factors of production. Based on information provided in exhibit 13 of the petition, we have found that this is a conservative estimate for purposes of this initiation. For selling, general and administrative expenses and profit, the petitioners applied rates derived from the publicly available annual report of an Indonesian producer of comparable merchandise, PT Pabrik Kertas Tjiwi Kimia Tbk.

The petitioners provided two sets of calculations of CV: one calculation includes packing expenses in the cost of manufacture of the folding gift boxes and the other follows our normal practice of not including packing expenses in the cost of manufacture. The petitioners argued that, unlike other manufactured products where the packaging material is simply an addition to the finished product, folding gift boxes are sold in units of ''retail packs'' which incorporate the packaging materials as an integral part of the product. For purposes of this initiation, however, we have used the calculation that follows our normal methodology. As noted above, should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine this issue and revise the margin calculations accordingly.

Based on comparisons of export price to normal value, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for certain folding gift boxes from the PRC range from 65.00 percent to 87.68 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of certain folding gift boxes from the PRC are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value. The petitioners contend that the industry's injured condition is evident in the declining trends in the following: (1) U.S. market share, (2) domestic production, (3) shipments, (4) capacity utilization, (5) employment, and (6) profit margins.

The allegations of injury and causation are supported by relevant evidence including ITC section 332 import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Attachments to Initiation Checklist, Re: Material Injury).

Initiation of Antidumping Investigation

Based upon our examination of the petition on certain folding gift boxes from the PRC, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain folding gift boxes from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than April 6, 2001, whether there is a reasonable indication that imports of certain folding gift boxes from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties the Assistant Secretary for Import Administration.

Dated: March 12, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, AD/CVD Enforcement II.

[FR Doc. 01–6756 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Texas at Austin, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 01–002. *Applicant:* University of Texas at Austin, Austin, TX 78712. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 66 FR 9557, February 8, 2001. *Order Date:* November 20, 2000.

Docket Number: 01–003. *Applicant:* Children's Medical Center of Dallas, Dallas, TX 75235. *Instrument:* Electron Microscope, Model H–7500–1. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 66 FR 9557, February 8, 2001. *Order Date:* September 18, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–6759 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On March 9, 2001, Cinsa, S.A. de C.V. (''CINSA'') and Esmaltaciones de Norte America, S.A. de C.V. (''ENASA'') filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty 13th administrative review determination made by the International Trade Administration, respecting Porcelain-on-Steel Cookware from Mexico. This determination was published in the **Federal Register** (66 FR 12926) on March 1, 2001. The NAFTA Secretariat has assigned Case Number USA–MEX–2001–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on June 8, 2000, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is April 9, 2001);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 23, 2001); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 13, 2001.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 01–6694 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–GT–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.021201A]

Fisheries of the Caribbean; Essential Fish Habitat Generic Amendment to the Fishery Management Plans of the U.S. Caribbean

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

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); request for comments.

SUMMARY: NMFS announces the intent of the Caribbean Fishery Management Council (Council) to prepare a SEIS for its Essential Fish Habitat (EFH) Generic Amendment to the Fishery Management Plans (FMPs) of the U.S. Caribbean (EFH Generic Amendment). The SEIS would evaluate alternatives to the designation of EFH and habitat areas of particular concern (HAPCs) for the fisheries and fishery resources under the Council's jurisdiction. The SEIS also would evaluate the environmental impacts associated with such EFH and HAPC designations and with measures needed to mitigate impacts related to both fishing and non-fishing activities. The purpose of this notice is to solicit public comments on the scope of the issues to be addressed in the SEIS.

DATES: Written comments on the scope of the DEIS must be received on or before April 18, 2001.

ADDRESSES: Written comments on the scope of the SEIS and requests for additional information on the EFH Generic Amendment should be sent to Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: 787–766–5926; fax: 787–766–6239.

FOR FURTHER INFORMATION CONTACT: Muguel Rolón, 787–766–5926, or Rickey Ruebsamen, 727–570–5317.

SUPPLEMENTARY INFORMATION: In 1998, the Council completed its preparation of the EFH Generic Amendment that proposed appropriate amendments to all of the Council's fishery management plans (FMPs) for Puerto Rico and the U.S. Virgin Islands. These FMPs are for the following fisheries or fishery resources: Spiny lobster; shallow water reef fish; coral and reef associated invertebrates; and Queen conch. After conducting Secretarial review of the EFH Generic Amendment, NMFS partially approved it in 1999. NMFS published a notice of the agency decision on March 29, 1999 (64 FR 14884).

The Council prepared the EFH Generic Amendment in response to provisions of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996, and 50 CFR 600.815 (guidelines regarding EFH and the contents of FMPs). The EFH Generic Amendment identified and described as EFH for species managed under the Council's FMPs as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity for species managed under the FMPs. Among other factors, the EFH Generic Amendment also identified threats to EFH from both fishing and non-fishing activities, evaluated conservation and enhancement opportunities, including the possibility of new fishery management measures, and specified HAPCs, which are especially important, sensitive, threatened, or rare subset areas of EFH.

NMFS and the Council, following the judicial decision in *American Oceans Campaign* v. *Daley* (Civil Action No. 99–982), now are proposing to prepare a SEIS for the EFH Generic Amendment that will supersede the environmental assessment (EA) previously prepared in support of this amendment. Since the EFH Generic Amendment amended the Council's FMPs, the SEIS would supplement the original final environmental impact statement (FEIS) and any subsequent SEIS prepared for each of the Council's FMPs. Consistent with the findings of the Court, the SEIS would identify and discuss relevant areas of concern, fully consider alternatives to the designation of EFH, and analyze the environmental impacts of the proposed action(s) and identified alternatives.

Alternatives that would be considered in the SEIS include, at a minimum, no action, the preferred alternative identified in the EFH Generic Amendment, and multiple alternatives to the description and identification of EFH and HAPCs for the managed fisheries. Action alternatives would evaluate, on the basis of the life stages of the managed fisheries, the description and identification of both larger and smaller EFH/HAPC areas than specified in the EFH Generic Amendment. Any adverse effects on EFH and HAPCs caused by fishing activities, as described in the SEIS, would form the basis for the identification of appropriate alternatives to minimize these effects to the extent practicable. These alternatives may include fishing gear restrictions, time or area closures, harvest limits, or other appropriate conservation practices. Other actions to encourage the conservation and enhancement of EFH and HAPCs also would be included.

The Council prepared the EFH Generic Amendment and associated EA in 1998 in consultation with NMFS, the National Ocean Service in NOAA, and representatives of a variety of fishing and non-fishing interests through the Council's committees and advisory panels. The Council conducted six public hearings in 1998 in the U.S. Virgin Islands and Puerto Rico to solicit public input on the draft EFH Generic Amendment and draft EA. The Council also provided extensive opportunity for the submission of written public comments on the draft EFH Generic Amendment and draft EA. Information gathered through these previous outreach efforts, as well as future additional public comment, will be considered fully in preparing the SEIS.

On behalf of the Council, NMFS is requesting, by this notice, written comments on the scope of issues that should be addressed in the SEIS. Also, NMFS invites specific comment on the appropriate extent of EFH and HAPCs for Council-managed species and on the scientific basis for EFH and HAPC designations. NMFS also solicits any new information related to the impacts of fishing and non-fishing activities on EFH and HAPCs for fishery resources managed under the Council's FMPs and to possible management measures that may mitigate adverse fishing impacts.

To provide additional opportunity for public comment on the issues to be considered in the SEIS, the Council intends to conduct public scoping meetings. Under the National Environmental Policy Act (NEPA) and regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), scoping is an early and open process for determining the scope of issues to be addressed by an environmental impact statement and for identifying the significant issues related to the proposed action. The Council will provide advance notification of the dates, times, and places of any scheduled public scoping meetings through publication of an appropriate notice in the **Federal Register** as well as through mailings and newspaper notices. Such notifications will also indicate the availability of any scoping documents before or at the meetings.

Once the Council completes the draft SEIS, it will submit the document to NMFS for filing with the Environmental Protection Agency (EPA). EPA will then publish in the **Federal Register** a notice

of availability of the draft SEIS for public comment during a 45-day period. The Council intends to conduct public hearings on the draft SEIS and will announce pertinent information about these hearings through notice in the **Federal Register**. The public review procedures for the draft SEIS will be pursuant to the CEQ regulations (see earlier reference) and to NOAA's Administrative Order 216-6 regarding the agency's implementation of NEPA.

Copies of the EFH Generic Amendment may be obtained by contacting the Council (see **ADDRESSES** above).

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

Dated: March 12, 2001.

Bruce C. Morehaed,

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

[FR Doc. 01–6749 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.021201B]

Fisheries of the Gulf of Mexico; Generic Amendment Addressing Essential Fish Habitat Requirements of the Fishery Management Plans of the Gulf of Mexico

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

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); request for comments.

SUMMARY: NMFS announces the intent of the Gulf of Mexico Fishery Management Council (Council) to prepare a SEIS for its Generic Amendment Addressing Essential Fish Habitat (EFH) Requirements of the Gulf of Mexico (EFH Generic Amendment). The SEIS would evaluate alternatives to the designation of EFH and habitat areas of particular concern (HAPCs) for the fisheries and fishery resources under the Council's jurisdiction. The SEIS also would evaluate the environmental impacts associated with such EFH and HAPC designations and with measures needed to mitigate impacts related to both fishing and non-fishing activities. The purpose of this document is to solicit public comments on the scope of the issues to be addressed in the SEIS.

DATES: Written comments on the scope of the SEIS must be received on or before April 18, 2001.

ADDRESSES: Written comments on the scope of the SEIS and requests for additional information on the EFH Generic Amendment should be sent to Dr. Richard L. Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619–2266; phone: 813–228–2815; fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Council staff contact, 813–228–2815, or Rickey Ruebsamen, NMFS staff contact, 727–570–5317.

SUPPLEMENTARY INFORMATION: In 1998, the Council completed its preparation of the EFH Generic Amendment that proposed appropriate amendments to all of the Council's fishery management plans (FMPs) for the Gulf of Mexico. These FMPs are for the following fisheries or fishery resources: Coral reef resources; coastal migratory pelagics; red drum; reef fish; shrimp; spiny lobster; and stone crab. After conducting Secretarial review of the EFH Generic Amendment, NMFS partially approved it in 1999. NMFS published a notice of the agency decision on March 18, 1999 (52 FR 13363).

The Council prepared the EFH Generic Amendment in response to provisions of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996, and 50 CFR 600.815 (guidelines regarding EFH and the contents of FMPs). The EFH Generic Amendment identified and described as EFH for species managed under the Council's FMPs as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity for species managed under the FMPs. Among other factors, the EFH Generic Amendment also identified threats to EFH from both fishing and non-fishing activities, evaluated conservation and enhancement opportunities, including the possibility of new fishery management measures, and specified HAPCs, which are especially important, sensitive, threatened, or rare subset areas of EFH.

NMFS and the Council, following the judicial decision in *American Oceans Campaign* v. *Daley* (Civil Action No. 99–982), now are proposing to prepare a SEIS for the EFH Generic Amendment that will supersede the environmental assessment (EA) previously prepared in support of this amendment. Since the EFH Generic Amendment amended the Council's FMPs, the SEIS would supplement the original final environmental impact statement (FEIS) and any subsequent SEIS prepared for each of the Council's FMPs. Consistent with the findings of the Court, the SEIS would identify and discuss relevant areas of concern, fully consider alternatives to the designation of EFH, and analyze the environmental impacts of the proposed action(s) and identified alternatives.

Alternatives that would be considered in the SEIS include, at a minimum, no action, the preferred alternative identified in the EFH Generic Amendment, and multiple alternatives to the description and identification of EFH and HAPCs for the managed fisheries. Action alternatives would evaluate, on the basis of the life stages of the managed fisheries, the description and identification of both larger and smaller EFH/HAPC areas than specified in the EFH Generic Amendment. Any adverse effects on EFH and HAPCs caused by fishing activities, as described in the SEIS, would form the basis for the identification of appropriate alternatives to minimize these effects to the extent practicable. These alternatives may include fishing gear restrictions, time or area closures, harvest limits, or other appropriate conservation practices. Other actions to encourage the conservation and enhancement of EFH and HAPCs also would be included.

The Council prepared the EFH Generic Amendment and associated EA in 1998 in consultation with NMFS, the National Ocean Service in NOAA, the Gulf States Marine Fisheries Commission, fishery agencies of the States of Texas, Louisiana, Mississippi, Alabama, and Florida, and representatives of a variety of fishing and non-fishing interests through the Council's committees and advisory panels. The Council conducted eight public hearings in 1998 throughout the southeastern U.S. to solicit public input on the draft EFH Generic Amendment and draft EA. The Council also provided extensive opportunity for the submission of written public comments on the draft EFH Generic Amendment and draft EA. Information gathered through these previous outreach efforts, as well as future additional public comment, will be considered fully in preparing the SEIS.

On behalf of the Council, NMFS is requesting, by this notice, written comments on the scope of issues that should be addressed in the SEIS. Also, NMFS invites specific comment on the appropriate extent of EFH and HAPCs for Council-managed species and on the scientific basis for EFH and HAPC designations. NMFS also solicits any new information related to the impacts of fishing and non-fishing activities on EFH and HAPCs for fishery resources managed under the Council's FMPs and

to possible management measures that may mitigate adverse fishing impacts.

To provide additional opportunity for public comment on the issues to be considered in the SEIS, the Council intends to conduct public scoping meetings. Under the National Environmental Policy Act (NEPA) and regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), scoping is an early and open process for determining the scope of issues to be addressed by an environmental impact statement and for identifying the significant issues related to the proposed action. The Council will provide advance notification of the dates, times, and places of any scheduled public scoping meetings through publication of an appropriate notice in the **Federal Register** as well as through mailings and newspaper notices. Such notifications will also indicate the availability of any scoping documents before or at the meetings.

Once the Council completes the draft SEIS, it will submit the document to NMFS for filing with the Environmental Protection Agency (EPA). EPA will then publish in the **Federal Register** a notice of availability of the draft SEIS for public comment during a 45-day period. The Council intends to conduct public hearings on the draft SEIS and will announce pertinent information about these hearings through notice in the **Federal Register**. The public review procedures for the draft SEIS will be pursuant to the CEQ regulations (see earlier reference) and to NOAA's Administrative Order 216-6 regarding the agency's implementation of NEPA.

Copies of the EFH Generic Amendment may be obtained by contacting the Council (see **ADDRESSES** above).

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

Dated: March 12, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–6640 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022701D]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

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

ACTION: Notice of proposed modification and annual renewal of a letter of authorization; request for comments.

SUMMARY: On February 5, 2001, the 30th Space Wing, U.S. Air Force, requested a modification to their Letter of Authorization (LOA) issued on May 31, 2000. The letter requests modifications to the launch schedule and revisions to the LOA's current monitoring requirements. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to amend the LOA issued to the 30th Space Wing in order to make modifications to the launch schedule and to authorize changes to current monitoring requirements at Vandenberg Air Force Base (VAFB) and on the Northern Channel Islands. In addition, the 30th Space Wing requests renewal of their annual LOA for the year 2001-2002. The U.S. Air Force has not requested, and NMFS does not propose, to increase the number of annual launches from Vandenberg that are authorized to take marine mammals under the new LOA.

DATES: Comments and information must be received no later than April 18, 2001.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the request for modification, the LOA and the supporting documentation, including a list of references cited in this notice, are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: FURTHER INFORMATION CONTACT: Simona P. Roberts, Office of Protected Resources, NMFS, (301) 713–2322, ext. 106 or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg were published on March 1, 1999 (64 FR 9930), and remain in effect until December 31, 2003.

In accordance with the MMPA, as amended, and implementing regulations, a 1-year LOA to take small numbers of seals and sea lions was issued on May 31, 2000, to the 30th Space Wing (65 FR 37361). On February 5, 2001, the 30th Space Wing requested that NMFS revise the rocket launch schedule, rocket launch location, and monitoring requirements in the current LOA to reflect the results of on-going scientific research and monitoring requirements designed to assess the potential cumulative effects on the haul-out behavior, population dynamics, and hearing abilities of pinnipeds from space vehicle launches at Vandenberg Air Force Base (VAFB). This research has found that there have been no long-term adverse effects on the behavior or hearing of harbor seals at VAFB from space vehicle launches. In addition to these revisions, the 30th Space Wing has requested a 1-year renewal of the current LOA that expires on May 31, 2001.

Requested Modifications to Specified Activities

The number of rocket launches of each type of launch vehicle (Titan II, Titan IV, Lockheed-Martin, Delta II, Taurus, Atlas, and Minotaur) varies from year to year and space launches originate from both North and South Vandenberg. The 30th Space Wing requests a change in the current authorization to reflect the variable nature of the launch vehicle type by eliminating the number of launches per individual rocket program. The authorization will remain for no more than 20 rocket launches per year. They also request eliminating ''South'' to clarify that space launches occur from both North and South Vandenberg. Three years of monitoring have shown that this variable rocket launch schedule and launch location have not affected harbor seal distribution or behavior at VAFB.

Because the elimination of the number of launches per individual rocket program will not result in an increase in the number of launches authorized to take pinnipeds under the LOA, NMFS does not expect additional cumulative impacts to occur and, therefore, NMFS has preliminarily determined that the takes will remain small and not have more than a negligible impact on seals and sea lions at Vandenberg.

Requested Modifications to Monitoring Requirements

During the last 3 years, the 30th Space Wing, U.S. Air Force has undertaken a scientific research project (NMFS, Scientific Research Permit No. 859-1373) to assess potential cumulative effects on the haul out behavior, population dynamics, and hearing abilities of pinnipeds from space vehicle launches at VAFB. The most common species of pinniped utilizing the Vandenberg coastline is the harbor seal, *Phoca vitulina*; therefore, the focus of much of this research has been on this one species. Findings of this scientific research and the monitoring required under the LOA have shown that there have been no long-term adverse effects on the behavior of harbor seals at VAFB, including no changes in haul out patterns and no permanent or temporary threshold shifts (Thorson *et al*, 2000). Given these findings, the 30th Space Wing has requested four modifications to the current LOA monitoring requirements, three of which can be accommodated in this LOA modification.

The fourth requested change is inconsistent with the 5-year programmatic permit and its implementing regulations (64 FR 9930). Due to this discrepancy, NMFS has determined that the fourth request will require modification to the current regulations governing space vehicle and test flight activities (50 CFR 216.120-128) before modification of the LOA can be considered.

First, the 30th Space Wing requests an increase in the observation period prior to launches from 48 hours before any planned launch time to 72 hours before any planned launch time. This change would make the current LOA consistent with monitoring requirements contained in the 5-year programmatic permit (64 FR 9930).

Second, the 30th Space Wing requests an expansion of the current post-monitoring requirement for any Titan II and Titan IV launches during pinniped pupping seasons, to include all government and commercial space launch vehicles. This requirement states that there must be a minimum of 4 censuses over a 2-week period following launches.

Third, the 30th Space Wing requests to change the criteria for monitoring pinnipeds on the Northern Channel Islands from when sonic booms are predicted to be ''focused'' or greater than 2 pounds per square foot (psf) to criteria for monitoring pinnipeds on the Northern Channel Islands when predicted sonic booms are greater than 1 psf. This change will eliminate the ''focused'' sonic boom criteria. The 30th Space Wing notes that there is very little biological difference between the ''focused'' and the carpet or normal sonic booms. Although the focused sonic booms have the potential to be five to eight times greater than normal sonic booms, the biological significance of the sound is not determined by the type of sonic boom but the amplitude of the sonic boom. Based on data collected in 1999, the sonic boom from an Athena 2 rocket launch reached a sound monitoring site on San Miguel Island 4 minutes after lift-off and had an A-weighted sound exposure level (ASEL) of 68.3 dB (re 20 μPa-seconds) and a maximum amplitude of 0.96 psf (Thorson *et al*, 1999). At these levels, behavioral reactions from pinnipeds on San Miguel Island ranged from the slow and calm movement of California sea lions into the water to a heads-up response in 10 percent of the observed northern elephant seals (Thorson *et al*, 1999). Based on this information, the 30th Space Wing requests that monitoring and assessment of impacts at haul out sites in the Northern Channel Islands be conducted when sonic booms are predicted to be greater than 1 psf, regardless of whether or not they are ''focused'' or normal booms.

Fourth, the 30th Space Wing requests a modification to conduct observations on harbor seal and other pinniped activity at the nearest occupied haul out(s) in the vicinity of the appropriate launch platform only during the harbor seal pupping season (March-June). The LOA currently requires that observations be conducted at the nearest occupied haul out(s) during any launch. This revision is proposed based on data collected from 1997-2000 showing that the harbor seal population at VAFB has been increasing annually (adults at 9.4 percent per year and pups at 13.1 percent per year). Radio-telemetry has also shown that long-term haul out behavior at VAFB is identical to seal haul out patterns in areas not exposed to launch noise. In addition, hearing acuity measurements made prior to and following Titan IV launches have shown no detectable changes. Only short-term responses to launches by the harbor seals, demonstrated by their entrance into the water for 2-30 minutes, have been observed (Thorson *et al*, 2000).

On February 21, 2001, NMFS notified the 30th Space Wing that the fourth LOA modification request cannot be accommodated at this time because it is inconsistent with the 5-year programmatic permit and its implementing regulations (64 FR 9930). These regulations, effective from March 1, 1999, through December 31, 2003, contain specific monitoring and reporting requirements for all space vehicle and test flight activities on VAFB and the waters off southern California. One of the monitoring requirements in this regulation is that observations must be initiated before and after any planned launch at locations nearest the launch platform where pinnipeds are present (50 CFR 216.125(a)(1)). Therefore, limiting observations to only the harbor seal pupping season at VAFB, as the February 5, 2001, letter requests, would be less restrictive than these general regulations. Due to this discrepancy, a request for a change in the regulations needs to be made before this requested modification to the LOA can be considered.

Renewal of Annual LOA

As of May 31, 2001 the 30th Space Wing's annual LOA will expire. In recognition of the timely receipt and acceptance of the reports required under 50 CFR 216.125(d) and a determination that the mitigation measures required pursuant to 50 CFR 216.124 and the LOA have been undertaken, NMFS proposes renewal of the LOA for 1 year.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**). Issuance of a modified LOA will be based on a finding that the total takings will have no more than a negligible impact on the seal and sea lion populations off the Vandenberg coast and on the Northern Channel Islands.

Dated: March 12, 2001.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–6747 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031301D]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 1 through April 6, 2001. The Council meeting will begin on Tuesday, April 3, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 8:30 a.m. on Tuesday, April 3 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Red Lion's Sacramento Inn, 1401 Arden Way, Sacramento, CA 95815; telephone: 916-922-8041.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions,
2. Roll Call
3. Executive Director's Report
4. Approve Agenda
5. Approve November Meeting Minutes

B. Salmon Management

1. Report on Federal Regulation Implementation
2. Identification of Stocks Not Meeting Escapement Goals for Three Consecutive Years
3. Methodology Reviews for 2001
4. Tentative Adoption of 2001 Ocean Salmon Management Measures for Analysis
5. Clarify Council Direction on 2001 Management Measures
6. Final Action on 2001 Measures
7. Clarification of Final Action on 2001 Measures

C. Groundfish Management

1. Status of NMFS Regulatory and Other Nonregulatory Activities
2. Exempted Fishing Permit Applications
3. Groundfish Strategic Plan Implementation
4. Future Groundfish Management Process and Schedule
5. Status of Fisheries and Consideration of Inseason Adjustments
6. Discard Adjustment for Bocaccio and Lingcod
7. Rebuilding Plan Status Report
8. Observer Program
9. Bycatch Full Retention Options
10. Reconsideration of 1997 Huntington Flats Decision

D. Habitat Issues

Council Letters of Comment on External EFH Issues

E. Coastal Pelagic Species Management

1. Status of NMFS Regulatory and Nonregulatory Activities
2. Review Capacity Goal and Related Issues
3. Update on Squid MSY Methodologies Workshop

F. Marine Reserves

Channel Island National Marine Sanctuary Program (CINMSP)

G. Pacific Halibut Management

Proposed 2001 Incidental Catch Regulations for the Troll Salmon Fishery and Sablefish Longline Fishery North of Point Chehalis

H. Administrative and Other Matters

1. Appointments to Council Advisory Bodies or Ad-Hoc Positions
2. Council Staff Workload Priorities
3. June 2001 Council Meeting Agenda

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, APRIL 1, 2001	
Groundfish Management Team	2:30 p.m.
Klamath Fishery Management	3 p.m.
MONDAY, APRIL 2, 2001	
Council Secretariate	7 a.m.
Salmon Advisory Subpanel	8 a.m.
Scientific and Statistical Committee	8 a.m.
Salmon Technical Team	8 a.m.
Habitat Steering Group	9 a.m.
Budget Committee	9 a.m.
Groundfish Advisory Subpanel	9:30 a.m.
Groundfish Management Team	As necessary
Klamath Fishery Management	As necessary
Tribal Policy Meetings	As necessary
Tribal and Washington	As necessary
TUESDAY, APRIL 3, 2001	
Council Secretariate	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Scientific and Statistical Committee	8 a.m.
Groundfish Management Team	As necessary
Klamath Fishery Management Council	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Meetings	As necessary
Tribal and Washington	As necessary
Enforcement Consultants	5:30 p.m.
WEDNESDAY, APRIL 4, 2001	
Council Secretariate	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	As necessary
Groundfish Management Team	As necessary
Klamath Fishery Management	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Meetings	As necessary
Tribal and Washington	As necessary
Enforcement Consultants	As necessary
THURSDAY, APRIL 5, 2001	
Council Secretariate	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Management Team	As necessary
Klamath Fishery Management	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Meetings	As necessary
Tribal and Washington	As necessary
Enforcement Consultants	As necessary
FRIDAY, APRIL 6, 2001	
Council Secretariate	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Klamath Fishery Management	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Meetings	As necessary
Tribal and Washington Enforcement Consultants	As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 13, 2001.

Richard W. Surdi,

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

[FR Doc. 01–6624 Filed 3–13–01; 4:24 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031301C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session, which is open to the public.

DATES: The HMSPDT will meet on Monday, April 9, through Friday, April 13, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The work session will be held in the large conference room at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D-203, La Jolla, CA 92038–0271;, telephone: (619) 546–7000.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The HMSPDT will meet on Monday, April 9, 2001, 8 a.m. to 5 p.m.; Tuesday, April 10, 2001, 8 a.m. to 5 p.m.; Wednesday, April 11, 2001, 8 a.m. to 5 p.m.; Thursday, April 12, 2001, 8 a.m. to 5 p.m.; and Friday, April 13, 2001, 8 a.m. until business for the day is completed.

The primary purpose of the work session is to revise the draft fishery management plan (FMP) for highly migratory species (HMS) per Council guidance stemming from the March 2001 Council meeting. The second draft of the FMP is scheduled for review at the June 2001 Council meeting.

Although nonemergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during this meeting. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 13, 2001.

Richard W. Surdi,

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

[FR Doc. 01–6639 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 010307056–1056–01]

RIN 0651–AB36

Request for Comments on the International Effort to Harmonize the Substantive Requirements of Patent Laws

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of request for public comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is seeking comments to obtain the views of the public on the international effort to harmonize substantive requirements of patent laws, and the subsequent changes to United States law and practice. Comments may be offered on any aspect of this effort.

DATES: Comments will be accepted on a continuous basis until April 30, 2001. See discussion of ''Text'' in the **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Persons wishing to offer written comments should address those comments to the Director of the United States Patent and Trademark Office, Box 4, United States Patent and Trademark Office, Washington, DC 20231, marked to the attention of Mr. Jon P. Santamauro.

Comments may also be submitted to Mr. Santamauro by facsimile transmission to (703) 305–8885 or by electronic mail through the internet at *scpcomments@uspto.gov.* All comments will be maintained for public inspection in Room 902 of Crystal Park II, at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Jon P. Santamauro by telephone at (703) 305–9300, by fax at (703) 305–8885 or by mail marked to his attention and addressed to Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

1. Background

The United States has been involved in an effort to harmonize the substantive patent laws in the different countries of the world. The Standing Committee on the Law of Patents (SCP), meeting under the auspices of the World Intellectual Property Organization (WIPO), is developing treaty articles, rules and practice guidelines that attempt to harmonize the different substantive requirements associated with obtaining patent protection throughout the world.

Upon conclusion, these treaty articles, rules and practice guidelines will provide a truly harmonized system governing not only the substantive law of patents, but also the practice to implement that law. This will allow for uniform treatment of patent applications and patent grants and will reduce costs for patent owners in obtaining and preserving their rights for inventions in many countries of the world.

The next SCP meeting will take place at WIPO in May 2001. It is likely that an additional meeting will be held in November 2001 and regular meetings will continue thereafter.

The United States Patent and Trademark Office, leading the negotiations for the United States, is interested in obtaining comprehensive comments to assess support for the effort.

2. Issues for Public Comment

Written comments may be offered on any aspect of the draft treaty articles, rules or practice guidelines or expected implementation in the United States. The purpose of this notice is to identify and briefly outline important issues that have arisen and are likely to arise during the meetings of the SCP. A brief summary of some of these issues is provided below. Any comments provided with regard to the particular items identified below should be numbered in correspondence with the numbering of these items as shown. Comments offered on other aspects should be provided under the heading ''Other Comments.''

(1) As to priority of invention, the United States currently adheres to a first-to-invent system. The remainder of the world uses a first-to-file rule in determining the right to a patent. Please comment as to which standard is the ''best practice'' for a harmonized, global patent system. It is noted that while the current draft of the treaty does not address this issue explicitly, it is likely that it will be raised in future meetings.

(2) As to what inventions may be considered patentable subject matter, the United States currently provides a test of whether the invention is within one of the statutory categories of 35 U.S.C. 101 and within the ''useful arts'' as expressed in the United States Constitution. The ''useful arts'' test requires that the claimed invention have a practical application providing a ''useful, concrete and tangible result,'' *see State Street Bank & Trust Co.* v. *Signature Financial Group, Inc.,* 149 F.3d 1368 (Fed. Cir. 1998). In contrast, the patent laws of some countries require that the invention provide a ''technical contribution'' in order to be eligible to be patented. The ''technical contribution'' requirement is generally considered to be more restrictive in determining what inventions may be patented.

(3) United States law currently provides for an enablement requirement, a written description requirement and a best mode requirement for patent disclosures. As to enablement, the standard of ''undue experimentation'' is applied. Regarding written description, United States law requires that the description convey to one of ordinary skill in the art that the applicant had possession of the invention as of the filing date of the application. The best mode requirement under United States law contains both subjective and objective components, with a subjective inquiry related to concealment on the part of the applicant. Standards vary among different patent systems as to disclosure requirements. For example, most other developed countries do not include a best mode requirement, yet many developing countries include or support a best mode requirement that is portrayed by some as a mechanism to compel technology and know-how transfer. The standard for evaluating compliance with such a requirement is an objective one; but, it is objective from the perspective of the examining authority.

(4) As to the contents of claims, some patent systems require the identification of ''technical fields'' to which the claimed invention relates. This apparently limits, to some degree, the categories of invention to which claims may be directed. There is no such requirement under current United States law.

(5) With regard to the issue of multiple inventions contained in a single patent application, most of the world uses a ''unity of invention'' standard, which is also contained in the Patent Cooperation Treaty (PCT). For national applications, the United States currently uses a restriction practice based on independence and patentable distinctness between claimed inventions.

(6) United States law currently provides a utility requirement for patentability in 35 U.S.C. 101. Utility of an invention must be specific, substantial and credible. Most other patent systems have a requirement for industrial applicability. Industrial applicability is generally considered to be a narrower standard than utility, as it requires that the invention be usable in any type of industry.

(7) Current discussions in the SCP have indicated a willingness to implement a global priority date as to the prior art effective date of patent applications that are published or granted as patents. United States law now limits the prior art effective date of United States patents and United States patent applications to their effective filing date in the United States. See In re Hilmer, 359 F.2d 859 (CCPA 1966) and 35 U.S.C. 102(e). Further, United States law currently limits the prior art date as to foreign patent publications to their publication date, although international application publications are available as of their filing date, if published in English. See 35 U.S.C. 102(e).

(8) United States practice allows patent applications to be considered prior art as to situations of both novelty and obviousness, provided the application is earlier filed and is published or granted as required by 35 U.S.C. 102(e). Some other patent systems apply this type of prior art only with respect to novelty, due to concerns of the effect of what may be considered ''secret'' prior art. Such a novelty-only system, however, may also allow for the granting of multiple patents directed to obvious variations of inventions.

(9) United States patent law provides a ''grace period''. Disclosures by the inventor during the ''grace period'' do not have a patent defeating effect. Some other systems have an ''absolute novelty'' requirement such that any disclosures, including those by an inventor himself, made prior to the date the application is filed, are considered prior art.

(10) Recent discussions at the SCP have indicated a willingness on the part of many member states to eliminate any geographical restrictions that limit the definition of prior art. Currently, United States prior art requirements limit certain types of disclosures to acts within particular geographical limitations, such as the territory of the United States.

(11) United States law provides for loss of right provisions, as contained in 35 U.S.C. 102(c) and 102(d), that discourage delays in filing in the United States. Further, 35 U.S.C. 102(b) bars the grant of a patent when the invention was ''in public use or on sale'' more than one year prior to filing in the United States. Secret commercial use by the inventor is covered by the bar in order to prevent the preservation of patent rights when there has been successful commercial exploitation of an invention by its inventor beyond one year before filing. Most other patent systems do not have such provisions.

(12) Current United States novelty practice allows, in limited

circumstances, the use of multiple references for the anticipation of a claim under 35 U.S.C. 102. These circumstances include incorporation by reference, the explanation of the meaning of a term used in the primary reference or a showing that a characteristic not disclosed in the primary reference is inherent. Some other systems have stricter requirements for the use of additional references as to the determination of novelty.

(13) United States practice in determining obviousness under 35 U.S.C. 103 follows the practice set forth in Graham v. John Deere, 383 US 1 (1966), and its progeny. Obviousness determinations vary throughout different patent systems. For example, some provide for a problem-solution approach, requiring the identification of a technical problem to be solved by the invention. There is no such requirement under United States law.

(14) Current United States practice limits the filing of multiple dependent claims in 37 CFR 1.75(c) such that these claims must refer to the claims from which they depend only in the alternative. Further, a multiple dependent claim cannot depend from another multiple dependent claim. Some other patent offices allow for multiple dependent claims without these restrictions.

(15) There has also been discussion within the SCP regarding the manner in which claims should be interpreted as to validity. It is not clear at this time whether both pre-grant and post-grant interpretation issues will be addressed. However, we are interested in comments with regard to any claim interpretation issues at this time as these issues may appear in future SCP meetings. For example, the United States generally subscribes to a peripheral claiming approach to interpretation in which the language of the claims dominates, although United States law provides that when an element in a claim is expressed as a means or step for performing a function, the claim will be construed to cover the corresponding structure, material or acts described in the specification and equivalents thereof, see 35 U.S.C. 112, paragraph 6. Other systems take a different, centrally focused view of the claimed invention that allows, in certain circumstances, for broader interpretation of the scope of the claimed invention.

(16) With further regard to claim interpretation, the United States currently applies the ''doctrine of equivalents'' when appropriate in interpreting claims in post-grant infringement cases. The ''doctrine of equivalents'' has continued to evolve in the United States, especially in view of the recently decided case of *Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co.,* 234 F.3d 558 (Fed. Cir. 2000). Furthermore, the European Patent Convention (EPC) was recently amended to provide a more explicit basis for ''doctrine of equivalents'' determinations in the text of newly added Article 2 of the Protocol on the Interpretation of Article 69 EPC. This doctrine has also been recognized in litigation in Japan. However, some systems do not provide for such equivalents.

(17) United States practice now requires that a patent be applied for in the name or names of the inventor or inventors. However, some systems allow for direct filing by assignees. Although the draft treaty text is currently silent on this issue, it may be raised at future meetings.

3. Text of the Draft Treaty, Rules and Practice Guidelines

There are preliminary drafts of both the treaty articles and regulations posted at the WIPO web site for the Standing Committee on the Law of Patents at *http://scp.wipo.int.* The proposed treaty articles currently contain two ''styles'' for the text of each article, provided as Alternatives A and B. Alternative A represents the ''old style'' type of language used by the International Bureau at WIPO for many years in previous discussions on the topic of harmonization. Alternative B is a ''new style'' that represents a departure from the ''old style''. The ''new style'' is simpler and appears to present the issues regarding patent applications and examination in a more logical, internally consistent approach. Comments on the style of text, as well as the content, are solicited.

WIPO has expressed an intent to publish multiple drafts of these documents prior to the May 2001 meeting. The USPTO plans to comment on each draft as it is made available, taking into account the expressed views of the public. To that end, the USPTO encourages the submission of comments from the public on each draft as soon as possible after it is posted on the SCP web site mentioned above. To facilitate final preparations for the May 2001 meeting, the USPTO requests that all comments be submitted no later than April 30, 2001.

Requests for paper copies of the above texts may be made in writing to Mr. Jon P. Santamauro at the above address or by telephone at (703) 305–9300.

Dated: March 12, 2001.

Nicholas P. Godici,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 01–6641 Filed 3–16–01; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Short Supply Request Under the United States—Caribbean Basin Trade Partnership Act (CBTPA)

March 14, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a request for a determination that 30 singles and 36 singles solution dyed staple spun viscose yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUMMARY:

On March 12, 2001 the Chairman of CITA received a petition on behalf of Fabrictex alleging that 30 singles solution dyed staple spun viscose yarn and 36 singles solution dyed staple spun viscose yarn, for use in knit fabric, classified in subheading 5510.11.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that the President proclaim that apparel articles of U.S. formed fabrics of such yarns be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether 30 singles solution dyed staple spun viscose yarn and 36 singles solution dyed staple spun viscose yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by April 3, 2001 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND: The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a CBTPA beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and the President has proclaimed such treatment. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On March 12, 2001 the Chairman of CITA received a petition on behalf of Fabrictex alleging that 30 singles solution dyed staple spun viscose yarn and 36 singles solution dyed staple spun viscose yarn, for use in knit fabric, classified in HTSUS subheading 5510.11.0000, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim quota- and duty-free treatment under the CBTPA for apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from U.S. formed fabric from such yarn.

CITA is soliciting public comments regarding this request, particularly with respect to whether 30 singles solution dyed staple spun viscose yarn and 36 singles solution dyed staple spun viscose yarn, for use in knit fabric, classified in HTSUS subheading 5510.11.0000, can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the yarn for purposes of the intended use. Comments must be received no later than April 3, 2001. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that 30 singles solution dyed staple spun viscose yarn and 36 singles solution dyed staple spun viscose yarn can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–6807 Filed 3–15–01; 11:56 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)/Office of the Deputy Under Secretary of Defense (Industrial Affairs), Department of Defense.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Deputy Under Secretary of Defense (Industrial Affairs) announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 18, 2001.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to: Office of the Deputy Under Secretary of Defense (Industrial Affairs), Attn: Mr. Gary Powell, 3330 Defense Pentagon, Room 3E1060, Washington, DC 20301–3330; E-mail comments submitted via the Internet should be addressed to: Gary.Powell@osd.mil.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection, or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call Mr. Gary Powell at (703) 602–4297.

Title, Associated Form, and OMB Number: Department of Defense Application for Priority Rating for Production or Construction Equipment, DD Form 691, OMB Number 0704–0055.

Needs and Uses: Executive Order 12919 delegated to DoD authority to require certain contracts and orders relating to approved Defense Programs to be accepted and performed on a preferential basis. This program helps contractors acquire industrial equipment in a timely manner, thereby facilitating development and support of weapons systems and other important Defense Programs.

Affected Public: Business or Other for-Profit; Non-Profit Institutions; Federal Government.

Annual Burden Hours: 610.

Number of Annual Respondents: 610.

Annual Responses to Respondent: 1.

Average Burden per Response: 1 Hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is used so the authority to use a priority rating in ordering a needed item can be granted. This is done to assure timely availability of production or construction equipment to meet current Defense requirements in peacetime and in case of national emergency. Without this

information DoD would not be able to assess a contractor's stated requirement to obtain equipment needed for fulfillment of contractual obligations. Submission of this information is voluntary.

Dated: March 12, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–6685 Filed 3–16–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

Coal Policy Committee of the National Coal Council Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Coal Policy Committee of the National Coal Council Advisory Committee. Federal Advisory Committee Act (Public Law 92–463,86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, April 3, 2001, 9 am to 1 pm.

ADDRESSES: The Sheraton Hotel, 301 East North Water Street, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–3867.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Coal Policy Committee of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues. The purpose of this meeting is to review the Council's draft report on increasing electricity availability from coal-fired power plants.

Tentative Agenda:

- Call to order by Mr. Malcolm Thomas, Chairman, Coal Policy Committee.
- Review and discussion of the Council's draft report on increasing electricity availability from coal-fired power plants.
- Discussion of other business properly brought before the Coal Policy Committee.
- Public comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Margie D. Biggerstaff at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 13, 2001.

Carol A. Kennedy,

Acting Advisory Committee Management Officer.

[FR Doc. 01–6686 Filed 3–16–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–83–000]

AES Medina Valley Cogen, L.L.C.; Notice of Amended Application for Commission Determination of Exempt Wholesale Generator Status

March 13, 2001.

Take notice that on March 12, 2001, AES Medina Valley Cogen, L.L.C., with its principal office located at 1823 Neal Lane, Mossville, Illinois 61552, filed with the Federal Energy Regulatory Commission, a supplement to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments 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). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before March 26, 2001, and must be served on the applicant. 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 or on the Internet at *http://www.ferc.fed.us/online/rims.htm* (please 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.*

David P. Boergers,

Secretary.

[FR Doc. 01–6655 Filed 3–16–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2852–015]

New York State Electric & Gas Corp.; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

March 13, 2001.

The license for the Keuka Project No. 2852, located on the Waneta and Lamoka Lakes, Keuka Lake, and Mud Creek, in Steuben and Schuyler Counties, New York, will expire on March 1, 2003. On February 27, 2001, an application for a new non-power license was filed. The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
May 15, 2001	Commission notifies applicant that its application has been accepted and specifies the need for additional information and due date.
May 30, 2001	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
June 30, 2001	Commission's deadline for applicant for filing a final amendment, if any, to its application.
July 15, 2001	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of any additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to William Guey-Lee at (202) 219-2808, or email at: *william.gueylee@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 01–6656 Filed 3–16–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–97–000]

Nornew Energy Supply, Inc. and Norse Pipeline, L.L.C.; Notice of Application

March 13, 2001.

Take notice that on March 1, 2001, as supplemented on March 9, 2001, Nornew Energy Supply, Inc. (Nornew), 19 Ivy Street, Jamestown, New York 14701 and Norse Pipeline, L.L.C. (Norse), 2500 Tanglewilde, Suite 250, Houston, Texas 77063, filed in Docket No. CP01–97–000 an abbreviated application pursuant to Section 7 of the Natural Gas Act (NGA) and the Commission's Rules and Regulations for a limited term certificate of public convenience and necessity authorizing Nornew and Norse to deliver gas to the City of Jamestown Board of Public Utilities (Jamestown BPU) to its repowered Samuel A. Carlson Generating Station (Carlson Generating Station), located in Jamestown, New York, and for Nornew to construct and operate a four-inch tap within the Carlson Generating Station's existing plant yard for a limited period beginning March 30, 2001 and ending once the Commission issues a permanent certificate of public convenience and necessity to Nornew, in order to provide natural gas to fuel the Carlson Generating Station to permit testing of the new gas-powered turbine and provide Jamestown BPU's customers with electric services, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.us/online/rims.htm* (call 202–208–2222 for assistance).

Norse and Nornew's request for a limited-term certificate is a result of the Commission's previous orders that ruled that Nornew's eight-inch, 7.63 mile pipeline that was constructed to serve the Jamestown BPU as well as some or all of Norse's facilities would be jurisdictional facilities requiring an NGA Section 7(c) certificate.[1] Norse will deliver to Nornew, at an existing interconnection in Mayville, New York, gas produced from wells connected to Norse's system. Nornew will deliver such gas to its only customer, the Jamestown BPU. According to Nornew, the Carlson Generating Station is currently coal-fired, but the Jamestown BPU is in the process of upgrading its equipment to provide flexibility in fuel supply and to improve environmental quality by displacing coal with cleaner burning natural gas. Nornew anticipates that it would transport approximately 3,000 Mcf/d during the testing of the new turbine. Nornew states that the cost of the tap is $160,000 plus $25,000 for installation. Additionally, Nornew states that the facilities will be financed through Nornew's credit facility.

Any person desiring to be heard or to make any protest with reference to said application on or before March 21, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any questions regarding the application should be directed to Oivind Risberg, President, Nornew Energy Supply, Inc., 2500 Tanglewilde, Suite 250, Houston, Texas 77603, telephone (713) 975–1900.

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.*

A person obtaining intervenor 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 everyone of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order at a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if

[1] National Fuel Gas Distribution Corporation, 93 FERC ¶ 61,276 (2000), reh'g denied, 94 FERC ¶ 61,136 (2001).

the Commission on its own review of the matter finds that the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Norse and Nornew to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 01–6717 Filed 3–16–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1423–000, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 12, 2001.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER01–1423–000]

Take notice that on March 7, 2001, Cinergy Services, Inc. (Provider), tendered for filing a Firm Point-to-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69550214).

This service agreement has a yearly firm transmission service with American Electric Power via the Gibson Unit Nos. 1–5 Generating Station.

Provider and Customer are requesting an effective date of April 1, 2001.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Cinergy Services, Inc.

[Docket No. ER01–1424–000]

Take notice that on March 7, 2001, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The New Power Company (New Power).

Cinergy and New Power are requesting an effective date of February 1, 2001.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER01–1425–000]

Take notice that on March 6, 2001, Cinergy Services, Inc. (Cinergy) and PG&E Power Services Company tendered for filing Notice a Cancellation of Service Agreement No. 113, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of January 1, 2001.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER01–1426–000]

Take notice that on March 7, 2001, Cinergy Services, Inc. (Provider), tendered for filing a Firm Point-to-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69550769).

This service agreement has a yearly firm transmission service with Southern Indiana Gas and Electric via the Gibson Unit Nos. 1–5 Generating Station.

Provider and Customer are requesting an effective date of April 1, 2001.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER01–1427–000]

Take notice that on March 7, 2001, Cinergy Services, Inc. (Provider), tendered for filing a Firm Point-to-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69550215).

This service agreement has a yearly firm transmission service with American Electric Power via the Gibson Unit Nos. 1–5 Generating Station.

Provider and Customer are requesting an effective date of April 1, 2001.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER01–1428–000]

Take notice that on March 7, 2001, Cinergy Services, Inc. (Provider), tendered for filing a Firm Point-to-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69550212).

This service agreement has a yearly firm transmission service with American Electric Power via the Gibson Unit Nos. 1—5 Generating Station.

Provider and Customer are requesting an effective date of April 1, 2001.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER01–1429–000]

Take notice that on March 7, 2001, Cinergy Services, Inc. (Provider), tendered for filing a Firm Point-to-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Provider and Cinergy Services, Inc. (Customer) (AREF# 69550213).

This service agreement has a yearly firm transmission service with American Electric Power via the Gibson Unit Nos. 1—5 Generating Station.

Provider and Customer are requesting an effective date of April 1, 2001.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER01–1430–000]

Take notice that on March 7, 2001, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Umbrella Service Agreements for Non-Firm and Short-Term Firm Transmission Service with Axia Energy, LP, OGE Energy Resources, Inc., and The Energy Authority, Inc. under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER01–1431–000]

Take notice that on March 7, 2001, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service Agreements and Non-Firm Point-to-Point Transmission Service Agreements between ASC and Ameren Energy, FirstEnergy Services Corp., Split Rock Energy LLC and Axia Energy, LP (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER01–1440–000]

Take notice that on March 7, 2001, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA).

PJM states that it served a copy of its filing on all parties to the RAA, and each of the state electric regulatory commissions within the PJM control area.

Comment date: March 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Transmission Company LLC

[Docket No. ER01–1457–000]

Take notice that on March 7, 2001, American Transmission Company LLC (ATCLLC), tendered for filing Short-Term Firm and Non-Firm Point-to-Point Transmission Service Agreements between ATCLLC and WPS Energy Services, Williams Energy Marketing & Trading Company, Upper Peninsula Power Company, and Axia Energy, LP, as well as Short-Term Firm Point-to-Point Transmission Service Agreements between ATCLLC and Southwestern Public Service Company and the Public Service Company of Colorado.

ATCLLC requests an effective date of February 6, 2001.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Southwest Power Pool, Inc.

[Docket No. ER01–1458–000]

Take notice that on March 7, 2001, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service, and Loss Compensation Service with McCurtain Energy Associates, LLC and Sequoyah Energy Associates, LLC (collectively, Transmission Customers).

Copies of this filing have been served on the Transmission Customers.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER01–1459–000]

Take notice that on March 7, 2001, Commonwealth Edison Company (ComEd), tendered for filing an executed Service Agreement for Network Integration Transmission Service (NSA) and associated Network Operating Agreement (NOA) between ComEd and the City of Batavia (Batavia) and an executed NSA and associated NOA between ComEd and the City of St. Charles (St. Charles). These executed NSAs and associated NOAs replace the unexecuted NSAs and NOAs between ComEd and the Cities of Batavia and St. Charles that were filed with the Commission in Docket No. ER01–546–000 and accepted for filing by the Commission on January 10, 2001.

ComEd requests an effective date of November 1, 2000 for the executed NSAs and associated NOAs to coincide with the effective date granted the unexecuted NSAs and NOAs that were previously filed with the Commission. Accordingly, ComEd requests waiver of the Commission's notice requirements.

Copies of the filing were served on Batavia and St. Charles.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER01–1460–000]

Take notice that on March 5, 2001, the New England Power Pool (NEPOOL), tendered for filing (1) the Seventieth Agreement Amending New England Power Pool Agreement (the Seventieth Agreement), which provides for changes to the Restated NEPOOL Agreement, the Financial Assurance Policy for NEPOOL Participants (the Financial Assurance Policy) and the New England Power Pool Billing Policy (the Billing Policy) related to the proposed effectiveness of ISO New England Inc.'s (the ISO) Tariff for Capital Funding (the CFT) and the proposed third party funding of the ISO's capital expenditures and capitalized project costs, and (2) the Seventy-First Agreement Amending New England Power Pool Agreement (the Seventy-First Agreement), which amends the Financial Assurance Policy and the Billing Policy to create a Late Payment Account that is to be funded by late payment fees collected under the Financial Assurance Policy and that is to be applied to shortfalls resulting from payment defaults. NEPOOL requests that the Seventieth Agreement become effective simultaneously with the effectiveness of the CFT and the applications for the ISO's thirty party financing under Section 204 of the Federal Power Act.

A May 5, 2001 effective date is requested for the Seventy-First Agreement.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment date: March 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. West Texas Utilities Company

[Docket No. ER01–1207–001]

Take notice that on March 7, 2001, West Texas Utilities Company (WTU), tendered for filing an amended letter agreement in the above-captioned proceeding to correct an inadvertent error in the text of the letter agreement.

WTU continues to seek an effective date of March 1, 2001 for the letter agreement and, accordingly, requests waiver of the Commission's notice requirements.

Copies of this filing have been served on Rayburn, LG&E Power Marketing, Inc., Tex-La Electric Cooperative of Texas, Inc., and the Public Utility Commission of Texas.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Light Company

[Docket No. ER01–775–001]

Take notice that on March 7, 2001, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing a substitute Notice of Cancellation of its FERC Rate Schedule No. 17, Wholesale Rate MW–6 with the Village of Riverton, Illinois, in compliance with the Commission order issued on February 5, 2001, in the above-referenced docket.

Copies of the filing were served on the Illinois Commerce Commission and the Village of Riverton.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER01–874–001]

Take notice that on March 6, 2001, Florida Power & Light Company (FPL), tendered for filing a revision to the January 3, 2001, in compliance with Order No. 614, FERC Stats. & Regs. 31,096 (2000).

Comment date: March 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Central Illinois Light Company

[Docket No. ER01–1137–001]

Take notice that on March 7, 2001, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing a Substitute Interconnection Agreement with the Village of Riverton.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER00–2362–001]

Take notice that on March 7, 2001, Ameren Services Company (Ameren), tendered for filing a service agreement for network integration transmission service between Ameren and the City of Newton, Illinois, in compliance with the Commission's February 7, 2001 order in the above-referenced proceeding. The sole purpose of the compliance filing is to conform the service agreement to Order No. 614.

Ameren states that a copy of the filing was served on the Illinois Commerce Commission and on all parties to this proceeding.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Pacific Gas and Electric Company

[Docket No. ER01–839–001]

Take notice that on March 7, 2001, Pacific Gas and Electric Company (PG&E), tendered for filing corrected tariff sheets to its Transmission Owner (TO) Tariff, FERC Electric Tariff Sixth revised Volume No. 5. These revisions correct the statement of certain rates and revenue requirements accepted for filing in the above-referenced docket.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Progress Energy, Inc., on behalf of Certain of Its Public Utility Subsidiaries

[Docket No. EC01–78–000]

Take notice that on March 6, 2001, Progress Energy, Inc. (Progress), on behalf of Carolina Power & Light Company (CP&L), Progress Genco Ventures, LLC, Progress Energy Ventures, Inc., Richmond County Power, LLC, Monroe Power Company (Monroe), Effingham County Power, LLC, and Rowan County Power, LLC (collectively, Applicants) tendered for filing an application requesting all necessary authorizations under section 203 of the Federal Power Act, 16 U.S.C. 824b (1996), to engage in a corporate reorganization. Applicants also seek authorization for the transfer of Monroe from CP&L to Progress.

Comment date: March 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Dominion Nuclear Holdings, Inc.

[Docket No. EG01–113–000]

Take notice that on March 9, 2001, Dominion Nuclear Holdings, Inc. (DNH) filed with the Federal Energy Regulatory Commission amendments to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations originally filed on February 2, 2001.

DNH is an indirect wholly-owned subsidiary of Dominion Energy, Inc., which is, in turn, a wholly-owned subsidiary of Dominion Resources, Inc. (Dominion), a Virginia corporation. Dominion is a registered holding company under the Public Utility Holding Company Act of 1935 (1935 Act).

DNH owns 5% of the voting securities of Dominion Nuclear Marketing III, L.L.C. (DMN III). An affiliate of DNM III, Dominion Nuclear Connecticut, Inc. (DNC), will acquire, own and operate the Millstone Nuclear Power Station located in Waterford, Connecticut (the Facility). The Facility consists of Millstone Unit 1, a 660–MW reactor that was retired from service in July 1998 and is being decommissioned; Millstone Unit 2, an operating 875–MW reactor; and 93.47% of the ownership interests in Millstone Unit 3, an operating 1,154–MW reactor. DNM III will purchase from DNC, and resell at wholesale, a portion of the power generated by the Facility.

Comment date: March 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. FPL Energy Pecos Wind II, LP

[Docket No. EG01–143–000]

Take notice that on March 7, 2001, FPL Energy Pecos Wind II, LP (the Applicant), with its principal office at 700 Universe Boulevard, Juno Beach, Florida 33408, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of developing and operating an approximately 80 MW wind-powered generating facility located in the County of Pecos, Texas. Electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

Comment date: April 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

24. Southern Company-Florida LLC

[Docket No. EG01–144–000]

Take notice that on March 7, 2001, Southern Company—Florida LLC (Applicant), 270 Peachtree Street, Atlanta, Georgia 30303, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware limited liability company that intends to construct, operate, and own an undivided 65 percent interest in a 632 MW generation facility at a site located in Orange County, Florida. Applicant is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: April 2, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing 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). All such motions or protests should be filed on or before the comment date. 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 these filings are on file with the Commission and are available for public inspection. This filing 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.*

David P. Boergers,

Secretary.

[FR Doc. 01–6716 Filed 3–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–042, North Carolina]

Alcoa Power Generating Inc.; Notice of Availability of Environmental Assessment

March 13, 2001.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of an application by Alcoa Power Generating Inc. (Alcoa) to grant a permit to KEJ Marketing Co., Inc. for the construction of four boat docks with a total of 48 boat slips and one boat ramp on Narrows reservoir, part of the Yadkin Hydroelectric Project. Alcoa proposes to grant a second permit to Heron Bay Homeowners Association for the use and operation of the above facilities. Alcoa is the licensee for the Yadkin Project which is on the Yadkin/Pee Dee River in Montgomery, Stanly, Davidson, Rowan, and Davie Counties, North Carolina. The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows (Badin), and Falls. The project does not occupy any federal lands.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. Commission staff believe approving Alcoa's application would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be viewed on the web at *www.fer.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 208–1371.

David P. Boergers,

Secretary.

[FR Doc. 01–6658 Filed 3–16–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

March 13, 2001.

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.:* P–11884–000.

c. *Date Filed:* February 7, 2001.

d. *Applicant:* City of Twin Falls, Idaho.

e. *Name of Project:* Auger Falls Project.

f. *Location:* On the Snake River, in Twin Falls County, Idaho. No federal facilities or land would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. *Applicant Contact:* Mr. Tom Courtney, City Manager, 321 Second Avenue East, P.O. Box 1907, Twin Falls, Idaho 83303–1907, (208) 735–7271.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell at (202) 219–2806.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Competing Application:* Project No. 11871–000, Date Filed: January 11, 2001, Due Date: April 12, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments recommendation, interventions, and protests, may be electronically filed 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.*

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.

l. *Description of Project:* The proposed project would consist of: (1) A proposed 340-long, 12-foot-high concrete diversion structure; (2) a proposed impoundment having a surface area of 50 acres with negligible storage and a normal water surface elevation of 2,118 feet msl; (3) a three proposed 670-foot-long, 12-foot-diameter steel penstocks; (4) a proposed powerhouse containing three generating units having a total installed capacity of 43.6 MW; (5) a proposed 0.75-mile-long, 138 kV transmission line; and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 157.6 GWh and would be sold to local utility.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 or assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Preliminary Permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

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'', ''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 Project Review, 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.

David P. Boergers,

Secretary.

[FR Doc. 01–6657 Filed 3–16–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

March 13, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 11175–009.

c. *Date Filed:* February 6, 2001, supplement filed March 1, 2001.

d. *Applicants:* Crown Hydro Company and Crown Hydro LLC.

e. *Name and Location of Project:* The Crown Mill Hydroelectric Project is located on the Mississippi River in the City of Minneapolis, Hennepin County, Minnesota. The project occupies federal land 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. Thomas R. Griffin, 5436 Columbus Avenue South, Minneapolis, MN 55417, (612) 825–1043.

h. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles at (202) 219–2671.

i. *Deadline for filing comments and or motions:* April 20, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, 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 at *http://www.ferc.fed.us/efi/doorbell.htm.*

Please include the project number (P–11175–009) on any comments or motions filed.

j. *Description of Proposal:* Crown Hydro Company, the current licensee, requests Commission approval to reorganize itself as a limited liability corporation, stating that the change would be in form but not in management.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *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.

David P. Boergers,

Secretary.

[FR Doc. 01–6659 Filed 3–16–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

March 13, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time to Commence and Complete Project Construction.

b. *Project No.:* 11175–010.

c. *Location:* The proposed Crown Mill Hydroelectric Project is to be located at the Upper St. Anthony Falls on the Mississippi River, in the City of Minneapolis, Hennepin County, Minnesota. The project would occupy 0.5 acre of lands of the United States under the jurisdiction of the U.S. Army Corps of Engineers.

d. *Date Filed:* February 6, 2001 and supplemented on February 26, 2001.

e. *Applicant:* Crown Hydro Company.

f. *Applicant Contact:* Thomas R. Griffin, 5436 Columbus Avenue South, Minneapolis, Minnesota, 55417, (612) 825–1043, or tgrifhydro1@qwest.net

g. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us

h. *Deadline for filing comments and or motions:* April 20, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, 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 at *http://www.ferc.fed.us/efi/doorbell.htm.*

Please include the project numbers (11175–010) on any comments or motions filed.

i. *Description of the Request:* The licensee requests that the deadline for commencement of construction of the Crown Mill Hydroelectric Project be extended for two additional years. The deadline to commence project construction for FERC Project No. 11175 would be extended to March 19, 2003. The deadline for completion of construction for FERC Project No. 11175 would be extended to March 19, 2006.

j. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

k. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. 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.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. 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 any 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.

David P. Boergers,

Secretary.

[FR Doc. 01–6660 Filed 3–16–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6953–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category, EPA ICR No. 2015.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comment on specific aspects of the proposed information collection request as described below.

DATES: Comments must be submitted on or before May 18, 2001.

ADDRESSES: Send comments on this notice in triplicate to Mr. Mark Perez, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue N.W., Washington DC 20460. In addition to submitting hard copies of the comments, the public may also send comments via e-mail to: perez.mark@epa.gov. Copies of the draft information collection request are available at *http://www.epa.gov/OST/pulppaper* or by contacting Mr. Perez.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Perez by telephone at (202) 260–2275, by facsimile at (202) 260–7185, or by e-mail at *perez.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those operations that chemically pulp wood fiber using kraft or soda methods to produce bleached papergrade pulp, paperboard, coarse paper, tissue paper, fine paper, and/or paperboard.

Title: Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category (EPA ICR No. 2015.01).

Abstract: The Environmental Protection Agency (EPA) imposed minimum monitoring requirements on bleached papergrade kraft and soda (subpart B) mills under 40 CFR part 430 as part of the final Cluster Rules. See 63 FR 18504. These provisions, promulgated under the authorities of sections 301, 304, 307, 308, 402, and 501 of the Clean Water Act, require direct and indirect discharging bleached papergrade kraft and soda mills (subpart B) to monitor their effluent for certain pollutants, including chloroform, at specified frequencies.

EPA is considering an amendment to the Cluster Rules to allow direct and indirect discharging subpart B mills to demonstrate compliance with applicable chloroform limitations and standards under 40 CFR part 430 in lieu of monitoring at a fiber line required by 40 CFR 430.02 by certifying (1) that the fiber line is not using elemental chlorine or hypochlorite as bleaching agents and (2) that it also maintains certain process and operating conditions identified during the initial compliance

demonstration period. The initial compliance demonstration consists of a period, not less than two years, where the facility must monitor for chloroform at the minimum frequency required by 40 CFR 430.02, or more frequently, to demonstrate compliance with applicable chloroform limitations and standards and record the range of certain process and operating conditions during this period.

With approval of this ICR, mills subject to Subpart B may choose to participate by certifying that fiber lines are in compliance with effluent limitations and standards in lieu of minimum monitoring for chloroform required by 40 CFR 430.02. These mills must submit a report summarizing the results of the initial compliance demonstration period and subsequently submit periodic certification reports confirming that the participating fiber line continues to operate within the range of process and operating conditions documented during the initial compliance demonstration period.

EPA expects that the initial compliance demonstration and periodic certification reports will be used by NPDES and pretreatment control authorities to determine compliance with the Cluster Rules effluent limitations and standards for chloroform, establish permit and pretreatment control agreement conditions to include the certification option, and revise permit requirements based on data from certification reports and additional required information from the facility.

The additional reporting requirements as part of the certification option are necessary to confirm compliance with applicable chloroform limitations and standards in lieu of minimum monitoring required by 40 CFR 430.02. The burden associated with these additional reporting requirements is expected to be offset by a substantial savings in burden and costs that would otherwise be incurred by the minimum monitoring requirements.

In allowing Subpart B facilities to certify in lieu of minimum monitoring required by 40 CFR 430.02, EPA has struck a balance between: (1) the need to ensure that sufficient data are consistently available to permitting and pretreatment control authorities to provide an adequate basis to verify compliance with the effluent limitations and standards, and to participating mills to ensure the range of process and operating parameters documented during the initial compliance monitoring period captures variability of normal operations expected during the period of subsequent certification, and (2) the availability of a less burdensome option than the minimum monitoring requirements to provide sufficient data to permitting and pretreatment control authorities. The certification option also ensures sufficient process and operating data are available to the mill so that the mill operating personnel and management may quickly become aware of and react to releases that may be harmful to the environment.

EPA anticipates that some mills may elect to submit information and data required as part of the initial compliance demonstration with a claim of confidential business information (CBI). All data claimed as CBI will be maintained pursuant to 40 CFR part 2 when EPA is the permitting authority, and pursuant to regulations governing such information when States are the permitting authorities.

As required by OMB, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA solicits comments on: (i) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) The accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) The quality, utility, and clarity of the information to be collected; and

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

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with previously applicable instructions and requirements; train personnel to be able to respond to the collection of information; search data sources; complete and review the collection of information and transmit or otherwise disclose the information. The following paragraphs summarize the burden estimate imposed on respondents, including mills and States, and EPA. Details of the burden and cost estimate are included in the supporting statement of this ICR.

(a) Industry Burden Estimates

The following discussion describes the total annual burden and costs incurred for facilities that choose to certify their fiber lines in lieu of chloroform minimum monitoring and the associated overall reduction in annual burden and costs for reduced minimum monitoring requirements. EPA estimates 80 of the 84 (127 of the 123 fiber lines) subpart B mills will choose to certify. The reporting burden a report summarizing the results of the initial compliance demonstration period and subsequent submission of periodic certification reports. For the purposes of this ICR, EPA assumed that periodic certification reports are submitted concurrently with monthly Discharge Monitoring Reports (DMRs) to the NPDES permit authorities and Periodic Compliance Reports (PCRs) to the pretreatment control authority in order to express the full potential reporting burden and costs associated with the voluntary certification option. Facilities that choose to certify their fiber lines in lieu of minimum monitoring for chloroform will experience an overall reduction in burden and costs associated with reduced sampling, reporting, and analytical burden and costs required by minimum monitoring in 40 CFR 430.02. This reduction in cost is estimated to be $55,140 annually per mill. The total burden reduction associated with the certification option is summarized below:

TABLE 1.—TOTAL BURDEN AND COST REDUCTION RESULTING FROM CERTIFICATION IN LIEU OF CHLOROFORM MINIMUM MONITORING

Activity	Total annual burden (hours)	Total annual cost (2000)
Annual burden for reporting for certification in lieu of chloroform minimum monitoring	480	$27,320
Annual burden *reduction* from sampling for minimum monitoring required by 40 CFR 430.02	(19,812)	(572,760)
Annual burden *reduction* from reporting for minimum monitoring required by 40 CFR 430.02	(160)	(9,110)
Annual analytical cost *reduction* for minimum monitoring by 40 CFR 430.02		(3,856,740)
Total Annual Burden and Cost Reduction	(19,492)	($4,411,290)

(b) State and Agency Burden Estimates

EPA does not estimate any addition or reduction of recurring burden for NPDES and pretreatment control authorities or for the Agency for facilities wishing to certify their fiber lines in lieu of chloroform minimum monitoring.

Dated: March 2, 2001.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 01–6681 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6952–4]

Agency Information Collection Activities: Continuing Collection; Comment Request; Tax-Exempt (Dyed) Highway Diesel Fuel; Requirements for Transferors and Transferees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Tax-exempt (Dyed) Highway Diesel Fuel: Requirements for Transferors and Transferees (40 CFR 80.29(c)), (EPA ICR Number 1718.03, OMB Control Number 2060–0308, expiration date: 7–31–01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 18, 2001.

ADDRESSES: Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A paper or electronic copy of the draft ICR may be obtained without charge by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, (202) 564–9303, Fax: (202) 565–2085, caldwell.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are those which transfer or receive tax-exempt (dyed) highway diesel fuel.

Title: Tax-exempt (Dyed) Highway Diesel Fuel: Requirements for Transferors and Transferees (40 CFR 80.29(c)), EPA ICR Number 1718.03, OMB Control Number 2060–0308, expiration date: 7–31–01.

Abstract: Diesel fuel for use in motor vehicles, also known as highway diesel fuel, as subject to compositional restrictions, per 40 CFR 80, in order to reduce emissions. Diesel fuel not intended for use in motor vehicles, also known as off-road diesel fuel, has no such restriction. It is required to be dyed red in order to distinguish it from highway diesel fuel, and thus deter its use in motor vehicles. The Internal Revenue Service requires that highway diesel fuel which is tax-exempt contain the same red dye in order to distinguish it from taxed highway diesel fuel, and thus deter its use in vehicles which do not qualify for tax-exempt fuel. In order to distinguish off-road diesel fuel from tax-exempt highway diesel fuel, the product transfer document (PTD) for tax-exempting highway diesel fuel must indicate that the diesel fuel meets the requirements for highway diesel fuel. Typically, a code is used on the PTD to so indicate. The PTD is a necessary document produced in the normal course of business for reasons other than this requirement. Transferors and transferees of tax-exempt highway diesel fuel are required to retain the PTDs for five years, which is customary business practice. See 40 CFR 80.29(c). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

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

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

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

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

Burden Statement: EPA estimates that there are no longer any burdens associated with these reporting and recordkeeping requirements. The computers which print the code or related language on the PTDs were programmed in 1993. Thus, there is no annualized capital cost. The PTDs are produced and retained in the normal course of business. Thus, there is no labor cost and no operating and maintenance cost. No information is reported to EPA. Thus, there is no respondent burden and no respondent cost. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able

to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 1, 2001.

Deborah Wood,

Acting Director, Transportation and Regional Programs Division.

[FR Doc. 01–6703 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6953–9]

Agency Information Collection Activities Up for Renewal; Comment Request; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: ''Underground Storage Tanks, Technical and Financial Requirements, and State Program Approval Procedures,'' EPA ICR Number 1360.06; OMB Control Number 2050–0068. This ICR will replace EPA ICR Number 1360.05, which expires on September 30, 2001. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 18, 2001.

ADDRESSES: Commenters should send an original and two copies of their comments referencing docket number UST 9–2 to: OUST Docket, c/o RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand deliveries of comments should be made to OUST Docket c/o RCRA Docket Information Center, Crystal Gateway One, First Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic form should also be identified by the docket number (UST 9–2). All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Copies of the draft ICR, supporting materials, and public comments are available for viewing in the RCRA Information Center (RIC), located at the Arlington, VA address listed above. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** stated above.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the Federal Register or in a response to comments document placed in the official record for this action. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: Sammy Ng; Office of Underground Storage Tanks, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington DC 20460, (703) 603–7166, ng.sammy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those facilities that own and operate Underground Storage Tanks (USTs) and those states that implement the UST programs.

Title: ''Underground Storage Tanks, Technical and Financial Requirements and State Program Approval Procedures,'' EPA ICR Number 1360.06, OMB Control Number 2050–0068. This ICR will replace EPA ICR Number 1360.05, which expires on September 30, 2001. This is a request for extension of a currently approved collection.

Abstract: Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the EPA develop standards for UST systems as may be necessary to protect human health and the environment, and procedures for approving State programs in lieu of the Federal program. EPA promulgated technical and financial requirements for owners and operators of USTs at 40 CFR Part 280, and State program approval procedures at 40 CFR Part 281. This ICR is a comprehensive presentation of all information collection requirements contained at 40 CFR parts 280 and 281.

The data collected for new and existing UST system operations and financial requirements are used by the owners and operators and/or EPA or the implementing agency to monitor results of testing, inspections, and operations of UST systems, as well as to demonstrate compliance with regulations. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that UST systems are being managed in a manner protective of human health and the environment.

EPA uses State program applications to determine whether to approve a State program. Before granting approval, EPA must determine that programs will be no less stringent than the Federal program and contain adequate enforcement mechanisms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

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

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

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

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

Burden Statement: This ICR is a comprehensive description of the total respondent burden for all information collection activities related to the UST program. EPA has revised its respondent

universe and burden estimates based on updated data from the Office of Underground Storage Tanks (OUST), and State and industry sources. Because of these revisions, the total annual hourly burden to respondents has decreased from the current ICR (6.25 million hours per year) by approximately 0.22 million hours annually to 6.03 million hours.

In modifying hourly respondent labor costs and technical and financial burden estimates under this ICR, EPA ensured that all respondent activities were covered by the ICR, including the development and gathering of information, not only information reporting and recordkeeping. EPA also conducted consultations with trade associations and contractors. Based on these consultations, EPA increased the labor burden associated with many activities associated with the use and management of USTs, adjusted the labor rates for facilities and contractors, and added capital and operation and maintenance (O&M) costs to various activities covered in the ICR. EPA believes that the revised burden reflects a more comprehensive and, therefore, more accurate portrait of the existing burden on the regulated community.

For State program approval procedures, this ICR estimates that the annual respondent burden will decrease slightly over the previous ICR. This decrease has resulted, in part, from the smaller number of States that are expected to apply for State Program Approval (SPA). (The current ICR estimated that four States would apply for program approval each year, while this ICR estimates that three States will submit State program materials each year). In addition, EPA revised its burden estimates based on several years of program experience and on input from State program officials. EPA believes that these changes resulted in a more accurate reflection of the burden placed on the State programs by the SPA process.

EPA estimates that the total annual respondent burden for all activities covered by this proposed ICR is 6.03 million hours. The total estimated annual financial burden is approximately $666.19 million ($302.62 million in labor costs, $57.13 million in capital/startup costs, and $306.43 million in O&M costs). The Agency estimates that the average total annual number of respondents will be 261,865 and the frequency of their response will depend upon the individual reporting and recordkeeping requirements.

Based on this analysis, the public reporting burden for UST facilities is estimated to average 12.37 hours per respondent per year. This estimate includes time for preparing and submitting notices, preparing and submitting demonstrations and applications, reporting releases, gathering information, and preparing and submitting reports. The recordkeeping burden for UST facilities is estimated to average 11.90 hours per respondent per year. This estimate includes time for gathering information and for developing and maintaining records.

For States applying for program approval, the reporting burden is estimated to average 255.30 hours per respondent per year. This estimate includes time for preparing and submitting an application and associated information. The recordkeeping burden is estimated to be 47.00 hours per respondent per year. This estimate includes time for maintaining application files.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 9, 2001.

Cliff Rothenstein,

Director, Office of Underground Storage Tanks.

[FR Doc. 01–6705 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6953–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category, EPA ICR No. 1878.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 18, 2001.

ADDRESSES: Send comments on this notice in triplicate to Mr. Mark Perez, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue N.W., Washington, DC 20460. In addition to submitting hard copies of the comments, the public may also send comments via e-mail to: *perez.mark@epa.gov.* Copies of the draft information collection request are available at *http://www.epa.gov/OST/pulppaper* or by contacting Mr. Perez.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Perez by telephone at (202) 260–2275, by facsimile at (202) 260–7185, or by e-mail at *perez.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those operations that chemically pulp wood fiber using kraft or soda methods to produce bleached papergrade pulp, paperboard, coarse paper, tissue paper, fine paper, and/or paperboard; and those operations that chemically pulp wood fiber using papergrade sulfite methods to produce pulp and/or paper.

Title: Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category (EPA ICR No. 1878.01)

Abstract: The Environmental Protection Agency (EPA) imposed minimum monitoring requirements on bleached papergrade kraft and soda and papergrade sulfite mills under 40 CFR part 430 as part of the effluent limitations guidelines and standards promulgated on April 15, 1998 (63 FR 18504). This final rule is often referred

to as the ''Cluster Rules.'' The monitoring provisions, promulgated under the authorities of sections 301, 304, 307, 308, 402, and 501 of the Clean Water Act, require direct and indirect discharging bleached papergrade kraft and soda and papergrade sulfite mills (subparts B and E) to monitor their effluent for certain pollutants, namely adsorbable organic halides (AOX), 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), 2,3,7,8-tetrachlorodibenzofuran (TCDF), chloroform, and 12 chlorinated phenolics at specified frequencies. These minimum monitoring requirements are in addition to the current monitoring requirements specified in 40 CFR part 122 for direct discharging mills (under the existing National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Discharge Monitoring Report (DMR) ICR (OMB 2040–0004)), and in 40 CFR part 403 for indirect dischargers (under the National Pretreatment Program ICR (OMB 2040–0009)). Under NPDES program regulations, codified at 40 CFR parts 122 through 125, permitted municipal and non-municipal point source dischargers are required to collect and analyze wastewater samples or have the analyses performed by an outside laboratory and report the results to the permitting authority (EPA or an authorized NPDES State) using Discharge Monitoring Reports (DMRs), a pre-printed form used to report pollutant discharge information. Under the National Pretreatment program, codified at 40 CFR part 403, industrial users subject to pretreatment standards are required to collect and analyze wastewater samples or have the analyses performed by an outside laboratory and report the results to the pretreatment control authority (EPA or a local or State authorized authority) using Periodic Compliance Reports (PCRs).

With approval of this ICR, the permitting and pretreatment control authority must require applicable facilities subject to subparts B or E to monitor certain pollutants at specified frequencies. See 40 CFR 430.02. Under 40 CFR 122.41(e)(4), the discharger must then report these monitoring results to the permitting or pretreatment control authority. EPA expects that the permitting or pretreatment control authority will use the data from these forms to assess permittee compliance and, for mills enrolled in the Voluntary Advanced Technology Incentives Program (VATIP), to assess the mill's progress towards achieving the ultimate VATIP Tier limits beyond baseline Best Available Technology Economically Achievable (BAT).

It is the agency's intention for this ICR to cover the minimum monitoring requirements for direct discharging mills set forth in 40 CFR 430.02 until these requirements can be subsumed under the NPDES/Sewage Sludge Monitoring DMR ICR (OMB 2040–0004) and for indirect discharging mills until these requirements can be subsumed under the renewal of the National Pretreatment Program ICR (OMB 2040–0009). This ICR serves to clarify and augment the burden already identified in the National Pretreatment Program ICR incurred by indirect dischargers for compliance with minimum monitoring requirements.

These additional minimum monitoring requirements and corresponding additional reporting requirements are necessary to demonstrate compliance with the effluent limitations guidelines and standards promulgated at 40 CFR part 430, subparts B and E, particularly considering the degree of change that is expected to occur to pulping and bleaching processes as the Cluster Rules are implemented. For those mills that choose to enroll in the VATIP, EPA has established alternative monitoring requirements that ultimately reduce the monitoring burden when mills have achieved baseline BAT levels and have committed to reduce pollutant levels beyond baseline. See 40 CFR 430.02(c)–(e).

In establishing the minimum monitoring frequencies for the regulated pollutants, EPA has struck a balance between: (1) The cost of the monitoring regimen, and (2) the need to ensure that sufficient data are consistently available to permitting and pretreatment control authorities to provide an adequate basis to verify compliance with the effluent limitations and standards. Permitting and pretreatment control authorities need to have an adequate basis to verify compliance with the effluent limitations and standards, given the environmental significance of these pollutants that are highly toxic and bioaccumulative, and the generation of which is variable as available data clearly demonstrate. This monitoring regimen also ensures sufficient data are available to the mill so that the mill may quickly become aware of and react to releases that may be harmful to the environment. EPA does not anticipate that mills will be required to submit any confidential business information (CBI) or trade secrets as part of this ICR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA would like to solicit comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information and transmit or otherwise disclose the information.

The following paragraphs summarize the burden estimate imposed on respondents, including mills, local governments, States, and EPA. Supporting details can be found in section 6 and appendix A in the supporting statement for this ICR.

(a) Industry Burden Estimates

The following discussion describes the information collection requirements associated with the monitoring requirements promulgated at 40 CFR 430.02. These minimum monitoring requirements, in turn, would trigger additional reporting and recordkeeping obligations under 40 CFR part 122. These requirements apply to approximately 94 direct and indirect discharging papergrade kraft, soda, and sulfite mills. EPA estimated the total burden and costs associated with sampling, reporting and recordkeeping

required by 40 CFR 430.02, including capital costs for installing bleach plant effluent flow monitoring stations and O&M (analytical) costs for mills to send their collected samples to outside laboratories for analysis. These estimates do not reflect the reduced burden associated with the VATIP program, because mills are not required to enroll in the program; EPA thus assumes for this ICR that all mills will be subject to the baseline minimum monitoring frequencies.

Minimum monitoring requirements for non-Totally Chlorine Free (TCF) bleaching fiber lines are as follows:

AOX—daily
chloroform—weekly
TCDD/TCDF—monthly
12 chlorinated phenolics—monthly

EPA did not specify limitations for exclusively TCF facilities, see 40 CFR 430.24(a)(2), and thus did not specify minimum monitoring frequencies for those dischargers. Mills enrolled in the Voluntary Advanced Technology Incentives Program (VATIP) may be eligible for reduced minimum monitoring frequencies. See 40 CFR 430.02(c),(d), and (e).

The duration of the minimum monitoring requirements for non-Totally Chlorine Free (TCF) direct discharging facilities is five years, commencing on the date the applicable limitations or standards are first included in the discharger's NPDES permit.

Under current NPDES permitting regulations, permittees must report all monitoring results to the permitting authority using DMRs. Submission of such reports shall be at the frequency established by the NPDES permit authority not less than once per year. See 40 CFR 122.44(i)(2). For the purposes of this ICR, EPA assumed that DMRs are submitted monthly to the NPDES permit authority in order to express the full potential reporting and recordkeeping costs associated with the minimum monitoring requirements for subparts B and E mills. The permittee is required to retain ongoing monitoring records and reports for at least three years. See 40 CFR 122.41(j)(2).

The duration of the minimum monitoring requirements for non-Totally Chlorine Free (TCF) indirect discharging facilities is until April 17, 2006.

Under current general pretreatment regulations, permittees must report all monitoring results to the permitting authority using PCRs. Submission of such reports shall be at the frequency established by the pretreatment control authority not less than twice per year. See 40 CFR 122.44(i)(2) and section 430.12(b),(d),(e),(g). For the purposes of this ICR, EPA assumed that PCRs are submitted monthly to the pretreatment control authority in order to express the full potential reporting and recordkeeping costs associated with the minimum monitoring requirements for subpart B and E mills. The permittee is required to retain ongoing monitoring records and reports for at least three years. See 40 CFR 403.12(o)(2).

Based on the assumptions listed above, EPA estimates of the total annual respondent burden associated with these monitoring, reporting and recordkeeping requirements are summarized in Table 1.

TABLE 1.—SUMMARY OF ANNUAL BURDEN ESTIMATE FOR COMPLIANCE MONITORING BY AFFECTED SUBPART B AND E MILLS

[approximaately 94 mills]

Burden and costs	Labor (hurs)	Cost (2000 dollars)
Sampling	35,830	1,035,850
Analytica Cost	.....	12,587,240
Reporting	773	44,000
Recordkeeping	255	14,520
Capital Costs (Annualized)	.....	6,414,910
Total	36,858	20,096,520

On a per-facility basis, mills are anticipated to incur an average of 400 hours per year for sampling, reporting and recordkeeping for monthly DMRs or PCRs for an average of annual cost of $213,790, including capital and O&M costs.

(b) State and Agency Burden Estimates

NPDES-authorized States are estimated to incur 533 burden hours for processing and analyzing monitoring data captured in submitted DMRs and for follow-up activities associated with 20 percent of all DMRs submitted. This hourly burden translates to an estimated $18,010 annually for these activities.

Local pretreatment control authorities are estimated to incur 72 burden hours for processing and analyzing monitoring data captured in submitted PCRs and for follow-up activities associated with 20 percent of all PCRs submitted. This hourly burden translates to an estimated $2,220 annually for these activities. State pretreatment approval authorities are estimated to incur 24 burden hours per year for support of local follow-up activities at a cost of $810.

EPA burden is estimated to be 286 hours per year for support of State follow-up activities as well as acting as the NPDES permit authority for 10 mills where the States are not authorized NPDES authorities at a cost of $9,660. Table 2 summarizes the burden estimates for respondents (industry and State governments) and the agency.

TABLE 2.—SUMMARY OF ESTIMATED ANNUAL RESPONDENT AND AGENCY BURDEN AND COSTS

(2000 Dollars)

Category	Number of respondents	Total hours per year	Total labor cost per year	Total annualized capital costs	Total annual O&M costs (analytical costs)
Respondents—Subpart B and E mills	94	36,858	$1,094,370	$6,414,910	$12,587,240
Respondents—State NPDES authorities	33	629	21,040	0	0
Total Respondents	127	37,487	1,115,410	6,414,910	12,587,240
Agency	.....	286	9,660	0	0

Dated: March 2, 2001

Geoffrey H. Grubbs, Director,

Office of Science and Technology.

[FR Doc. 01–6707 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6952–8]

Extension of Time To Comment on Agency Information Collection Activities: Proposed Collection; Comment Request; Reimbursement to Local Governments for Emergency Responses to Hazardous Substance Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing an extension of time to comment on the Reimbursement to Local Governments for Emergency Responses to Hazardous Substance Releases Information Collection Request renewal.

DATES: Comments are due by April 30, 2001.

ADDRESSES: Send comments to Lisa Boynton, EPA, 5204G, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Materials relevant to this ICR may be inspected from 9:00 a.m. to 4:00 p.m., Monday through Friday, by visiting the Public Docket, located at 1235 Jefferson-Davis Highway (ground floor), Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Lisa Boynton, (703) 603–9052, e-mail: boynton.lisa@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA announces an extension of time to submit comments on the Reimbursement to Local Governments for Emergency Responses to Hazardous Substance Releases Information Collection Request renewal from December 4, 2000 to April 30, 2001. The original notice for comment was published in the **Federal Register** at 65 FR 69510 (November 17, 2000).

Dated: March 6, 2001.

Larry Reed,

Acting Director, Office of Emergency and Remedial Response.

[FR Doc. 01–6709 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100169; FRL–6773–8]

The George Washington University, Writing Center; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to The George Washington University, Writing Center in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). The George Washington University, Writing Center has been awarded a contract to perform work for OPP, and access to this information will enable The George Washington University, Writing Center to fulfill the obligations of the contract.

DATES: The George Washington University, Writing Center will be given access to this information on or before March 26, 2001.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number 01–01–0851/000, the contractor will perform the following:

Scientists must determine the risk of each pesticide to be registered or reregistered according to its use. Such risk assessments must be communicated in writings of ''plain language'' as mandated by former President Clinton in his memorandum, dated June 1, 1998.

The purpose of this service is to ensure or make certain that scientists can transition from scientific/technical writers into competent writers of information intended for the lay public. They will be trained to produce risk assessments that are structured logically, that avoid redundancy, and that use active instead of passive voice. Each risk assessment will be written to express the hazard and exposure as well as the estimate of potential risks (e.g., exposure and safety factors for infants and children, assessing pesticide exposure from food, assessing pesticide exposure from drinking water, assessing residential pesticide exposure and assessing occupational pesticide exposure.) The risk estimates are used to support risk management decisions and are the basis of risk communication.

The contractor shall work with a base of 20 EPA/OPP students individually and develop a needs assessment specific to each individual.

The contract involves no subcontractors.

The OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with The George Washington University, Writing Center prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each

official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, The George Washington University, Writing Center is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to The George Washington University, Writing Center until the requirements in this document have been fully satisfied. Records of information provided to The George Washington University, Writing Center will be maintained by EPA Project Officers for the contract. All information supplied to The George Washington University, Writing Center by EPA for use in connection with the contract will be returned to EPA when The George Washington University, Writing Center has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: February 28, 2001.

Richard D. Schmitt,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 01–6712 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00710; FRL–6775–6]

FY2001 Tribal Pesticide Special Project Solicitation; Notice of Availability of Funds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Pesticide Programs (OPP), in coordination with the EPA Regions, is soliciting Tribal pesticide special projects for FY2001 funding. The total amount of funding available in FY2001 to be awarded to tribal governments and/or intertribal consortia for pesticide special projects is $200,000.

DATES: Project proposals, identified by docket control number OPP–00710, must be received by EPA Regional staff on or before May 15, 2001.

ADDRESSES: Applications may be submitted by mail or electronically. 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 control number OPP–00710 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Regina Langton, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7161; fax number: (703)308–1850; e-mail address: langton.regina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to any federally-recognized tribal government or intertribal consortia eligible to receive Federal funds. Only one application may be submitted by each Tribal government or intertribal consortia.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. You may also access this document on the Home page for the Office of Pesticide Programs at http://www.epa.gov/pesticides. Select ''What's New''.

C. How and to Whom Do I Submit an Application?

You may submit an application through the mail or electronically to the EPA Tribal Pesticide staff in your Region, as listed below. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00710 in the subject line on the first page of your response.

1. EPA Region 1
Rob Koethe
John F. Kennedy Federal Building (CPT)
One Congress Street
Suite 1100
Boston, MA 02114-2023
(617) 918–1535
koethe.robert@epa.gov

2. EPA Region 2
Adrian Enache
U.S. EPA Facilities
Raritan Depot
2890 Woodbridge Avenue
Edison, NJ 08837–3679
(732) 321–6769
enache.adrian@epa.gov

3. EPA Region 3
Fatima El Abdaoui
1650 Arch Street (3WC32)
Philadelphia , PA 19103-2029
(215) 566–2129
el-abdaoui.fatima@epa.gov

4. EPA Region 4
Jeaneanne Gettle
61 Forsyth Street, S.W. (4APT-PS)
Atlanta, GA 30303
(404) 562–8979
gettle.jeaneanne@epa.gov

5. EPA Region 5
Meonii Crenshaw
77 West Jackson Boulevard (DRT8J)
Chicago, IL 60604–3507
(312) 353–4716
crenshaw.meonii@epa.gov

6. EPA Region 6
Jerry Collins
1445 Ross Avenue
Suite 1200
Dallas, TX 75202.2733
(214) 665–7562
collins.jerry@epa.gov

7. EPA Region 7
John Tice
100 Centennial Mall N.
Room 289
Lincoln, NB 68508
(402) 471-5080
tice.john@epa.gov

8. EPA Region 8
Ron Schiller
999 18th Street (8-P-TA)
Suite 500
Denver, CO 80202–2466
(303) 312–6017
schiller.ron@epa.gov

9. EPA Region 9
Marcy Katzin
75 Hawthorne Street (CMD-4-3)
San Francisco, CA 94105
(415) 744–1097
katzin.marcy@epa.gov

10. EPA Region 10
Gary McRae
Idaho Operations Office
1435 North Orchard Street
Boise, ID 83706
(208) 378–5765
mcrae.gary@epa.gov

D. What Should I Consider as I Prepare My Project Proposal for EPA?

1. *Scope and purpose of the Office of Pesticide Programs' tribal special project pesticide cooperative agreements.* The purpose of tribal

pesticide special project cooperative agreements is to provide financial assistance to eligible tribal governments or intertribal consortia that are working on or plan to carry out projects in support of the development or implementation of a pesticides program. Funds can be used for new activities or to further an existing eligible project.

2. *Eligible applicants and activities*— i. *who may submit applications and may an applicant submit more than one?* Any federally–recognized tribal government or intertribal consortia eligible to receive Federal funds may submit an application. Only one special project application may be submitted by each Tribal government or intertribal consortia. (See separate, concurrent **Federal Register** notice for Water Quality Project Solicitation.)

ii. *What types of special projects are eligible for funding?* The Agency will consider projects related to human health and the environment that support the development or implementation of a pesticides program. Examples of such projects include, but are not limited to: (a) pesticide outreach and education; (b) pesticide management, including implementation of Integrated Pest Management, reduced use, or use of alternatives to pesticides; (c) pesticide sampling, such as soil sampling, or residue sampling on culturally significant/medicinal plants; and (d) determining the effects of pesticides on cultural activities, such a subsistence hunting and fishing.

Pesticide Water Quality proposals will not be considered under this solicitation, but may be submitted in accordance with the FY2001 Tribal Pesticide-Water Quality Project Solicitation. (See separate notice for Water Quality Project Solicitation published elsewhere in this issue of the **Federal Register**.)

iii. *How much money may be requested?* Maximum funding awarded will not exceed $50,000 per project. Indirect cost rates will not increase the $50,000 maximum funding amount.

3. *Application requirements*— i. *What is required for applications?* In order to be considered for funding, applicants must submit the following to the regional tribal pesticide staff contact:

a. A Special Project Proposal (maximum 6 pages of narrative), including:

A. Name of Project

B. Tribal Project Contact

C. Project Description, including:

- Purpose and Goal(s) of the Project
- New or continuing project
- Environmental or Health Issues Addressed
- Approach and Methods (How the project will be carried out)
- Expected/Desired Outcome
- Indicators/Measures of Success
- Resources and Time Frame Required for Project, including beginning and ending dates

D. Need for Assistance

Provide the following information to the extent it relates to and is relevant to demonstrating the need for the specific project that is proposed:

- A list of other sources of funding that you have sought for the project
- A description of similar, identical, or otherwise relevant work that you have undertaken, including sources of funding for that work
- A description of studies, surveys and other sources of information that document the environmental issues that will be addressed by the project.

E. Responsible Parties and Location

- Identify persons in charge of the project
- Identify major participants in the project
- Identify location(s) where project will be conducted

F. External Stakeholders

- Identify those affected by the project and how they will be affected
- Identify those who will participate in the project and their roles

G. Resources

- Identify any personnel and/or contractors to be involved in the project, including their role and qualifications. Description should include any relevant training or experience the persons(s) has in writing a Sampling and Analysis Plan for a project, in conducting soil or water sampling, etc.
- Identify existing resources/information that will be used in conducting project
- Identify any additional resources (including but not limited to training) that will be required for project
- Describe any EPA training or assistance that will be required for tribal personnel who will be working on the project. Such training may include the development of outreach material or a Sampling Analysis Plan, sampling, etc.

H. Infrastructure and Coordination

- Identify coordination efforts required to conduct project, within or outside tribe
- Identify ways in which this project will affect tribal capacity
- Identify any assistance you may require in coordinating with other Federal, State or local agencies

b. *Draft workplan (1–2 pages).* The submitted draft workplan should outline: (1) the separate phases of the project; (2) the tasks associated with each phase of the project; (3) the time frames for completion of each phase or task; (4) the name and title of the person(s) who will conduct each phase or task, and (5) the dates when progress reports will be provided to EPA. Project costs cannot be incurred until a final workplan has been approved by the appropriate EPA Regional office.

c. *Estimated budget.* The estimated budget should outline estimated costs for personnel, fringe benefits, travel, equipment, supplies, contractual, indirect cost rate, or any other estimated costs associated with the proposed project.

d. *Letter or resolution from Tribal Council or Chairperson showing support for and commitment to the project.* (If it is not possible to obtain a letter/resolution from the tribal council or chairperson to submit with your project proposal, an interim letter of explanation must be included with the proposal. The letter/resolution will still be required prior to project award.)

e. *Letter of confirmation for any matching funds needed to complete the project.* If your proposal requires the use of matching funds, please include a letter from the funding source confirming that these monies are available for the project. If the budget includes a tribal in-kind match, a letter of confirmation is not needed.

ii. *When and where must applications be submitted?* The applicant must submit/mail one signed original application and one copy of the application. The application and copy must be received by the EPA Regional contact listed in Unit I.C. of this document no later than close of business May 15, 2001. Incomplete or late proposals will be disqualified for funding consideration.

4. *Process for awarding cooperative agreements*— i. *How will Applications be Reviewed and Selected?* Tribal project proposals will be reviewed and approved for completeness by each respective region and then forwarded through OPP, along with comments, to a review team. The review team will consist of OPP and Regional staff members. The team will consult with Regional staff regarding their comments as necessary. If there is money left over after the selection process is completed, the review team will discuss and determine the allocation of the money. Selections will be made by close of business June 15, 2001.

ii. *How will applicants be notified?* Regions will notify their respective applicants of the selections. Those applicants not awarded funds may request an explanation from their regional staff.

5. *Criteria for awarding special project cooperative agreements* Criteria on which the special project proposals will be ranked and selected are listed below. Applicants must submit information specified in this solicitation to address the award criteria. Applicants must also provide information specified in this solicitation that will assist both a tribe and EPA in assessing the tribe's capacity to do the special project work outlined in the project proposal. Information will

not be used when ranking the proposals; however, they will help EPA determine the appropriateness of the workplan and budget estimate provided. For example, if a tribe does not have personnel experienced in sampling, then training might be warranted. This in turn can leave less time for actual sampling or completing other aspects of the proposal. The workplan and budget should reflect the training and the work that can realistically be accomplished.

i. *Environmental issues addressed*. What are the environmental and human health issues addressed by the proposed pesticide project? What are the quality of life issues gained by the project? 0 to 20 points

ii. *Outcome/justification*. What is the potential outcome of the project? What are the benefits of conducting this project? Does the project have limited or broad application to address risk related to pesticides? Is the project proposal thoroughly and clearly written? 0 to 20 points

iii. *Impact assessment/indicators*. Does the project propose to quantify and measure its success? How will you evaluate the success of the project in terms of measurable environmental results? 0 to 10 points

iv. *Resources and time frame required for project*. Can the project be accomplished with available or existing resources (tribal or non-tribal) and within the identified time frame? 0 to 10 points

v. *Major participants/external stakeholders*. Has the tribe identified the need for other parties (tribal or non–tribal) who will be involved or who will participate in the project? Who will be affected by the outcome of the project?0 to 10 points

vi. *Coordination/capacity building*. Has the tribe identified the need to coordinate with outside communities, Federal, State or local government? Will the project help build tribal infrastructure or capacity? What coordination will be necessary between tribal departments, offices, etc.? 0 to 5 points

vii. *Transferability*. Can the project results be incorporated into the tribe's future activities on an ongoing basis? Can any of the experiences, products or outcome gained as a result of the project be transferred to other communities? Could this project be implemented by another Tribe? 0 to 5 points

Total possible points: 80

6. *Post selection activity*. Selected applicants must formally apply for receipt of funds through the appropriate EPA Regional office. In addition, selected applicants must negotiate a final workplan including reporting requirements with the designated EPA Regional project officer. For more general information on post award requirements and the evaluation of grantee performance, see 40 CFR part 31.

II. What Action is the Agency Taking?

The Office of Pesticide Programs (OPP), in coordination with the EPA Regions, is soliciting Tribal pesticide special projects for FY2001 funding. The total amount of funding available in FY2001 to be awarded to tribal governments and/or intertribal consortia for pesticide special projects is $200,000.

III. Statutory Authority and Regulations.

Sections 23(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) authorize EPA to enter into cooperative agreements with States and Indian Tribes to implement pesticide enforcement programs. Pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for fiscal year 1999, pesticide program implementation grants under section 23(a)(1) of FIFRA are available for ''pesticide program development and implementation, including enforcement and compliance activities.''

The award and administration of these grants will be governed by the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments set forth at 40 CFR part 31.

IV. Submission to Congress and the Comptroller General

Under the Agency's current interpretation of the definition of a ''rule '', grant solicitations such as this which are competitively awarded on the basis of selection criteria, are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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).

List of Subjects

Environmental protection, Grants.

Dated: March 7, 2001.

Anne E. Lindsay,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 01–6719 Filed 3–16–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00711; FRL–6775–7]

FY2001 Tribal Pesticide Water Quality Project Solicitation; Notice of Availability of Funds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Pesticide Programs (OPP), in coordination with the EPA Regions, is soliciting Tribal pesticide water quality projects for FY2001 funding. The total amount of funding available in FY2001 to be awarded to tribal governments and/or intertribal consortia for pesticide-water quality projects is $245,500.

DATES: Project proposals, identified by docket control number OPP–00711, must be received by EPA Regional staff on or before May 15, 2001.

ADDRESSES: Applications may be submitted by mail or electronically. 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 control number OPP–00711 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Regina Langton, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7161; fax number: (703) 308–1850; e-mail address: langton.regina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to any federally-recognized tribal government or intertribal consortia eligible to receive Federal funds. Only one water quality project application may be submitted by each Tribal government or intertribal consortia.

If you have any questions regarding the applicability of this action to a

particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. You may also access this document on the Home page for the Office of Pesticide Programs at http://www.epa.gov/pesticides. Select ''What's New''.

C. How and to Whom Do I Submit an Application?

You may submit comments through the mail or electronically to the EPA Tribal Pesticide staff in your Region, as listed below. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00711 in the subject line on the first page of your response.

1. EPA Region 1
Rob Koethe
John F. Kennedy Federal Building (CPT)
One Congress Street
Suite 1100
Boston, MA 02114-2023
(617) 918–1535
koethe.robert@epa.gov

2. EPA Region 2
Adrian Enache
U.S. EPA Facilities
Raritan Depot
2890 Woodbridge Avenue
Edison, NJ 08837–3679
(732) 321–6769
enache.adrian@epa.gov

3. EPA Region 3
Fatima El Abdaoui
1650 Arch Street (3WC32)
Philadelphia , PA 19103-2029
(215) 566–2129
el-abdaoui.fatima@epa.gov

4. EPA Region 4
Jeaneanne Gettle
61 Forsyth Street, S.W. (4APT-PS)
Atlanta, GA 30303
(404) 562–8979
gettle.jeaneanne@epa.gov

5. EPA Region 5
Meonii Crenshaw
77 West Jackson Boulevard (DRT8J)
Chicago, IL 60604–3507
(312) 353–4716
crenshaw.meonii@epa.gov

6. EPA Region 6
Jerry Collins
1445 Ross Avenue
Suite 1200
Dallas, TX 75202.2733
(214) 665–7562
collins.jerry@epa.gov

7. EPA Region 7
John Tice
100 Centennial Mall N.
Room 289
Lincoln, NB 68508
(402) 471-5080
tice.john@epa.gov

8. EPA Region 8
Ron Schiller
999 18th Street (8-P-TA)
Suite 500
Denver, CO 80202–2466
(303) 312–6017
schiller.ron@epa.gov

9. EPA Region 9
Marcy Katzin
75 Hawthorne Street (CMD-4-3)
San Francisco, CA 94105
(415) 744–1097
katzin.marcy@epa.gov

10. EPA Region 10
Gary McRae
Idaho Operations Office
1435 North Orchard Street
Boise, ID 83706
(208) 378–5765
mcrae.gary@epa.gov

D. What Should I Consider as I Prepare My Water Quality Project Proposal for EPA?

1. *Scope and purpose of the Office of Pesticide Programs' tribal water quality pesticide cooperative agreements.* The purpose of tribal pesticide water quality project cooperative agreements is to provide financial assistance to eligible tribal governments or intertribal consortia that are working on or plan to carry out projects in support of the development and implementation of a pesticide program to protect water quality. Funds can be used for new activities or to further an existing eligible project.

These funds may be used to help develop or advance the Tribe's program to address pesticides and water quality issues. Tribes may focus on their specific needs, as related to ground or surface water quality.

2. *Eligible applicants and activities*— i. *who may submit applications and may an applicant submit more than one?* Any federally-recognized tribal government or intertribal consortia eligible to receive Federal funds may submit an application. Only one water quality project application may be submitted by each Tribal government or intertribal consortia. (See notice for Special Project Solicitation published elsewhere in this issue of the **Federal Register**.)

ii. *What types of water quality projects are eligible for funding?* The Agency will consider projects that support the development or implementation of a pesticide program to protect water resources. These may include but are not limited to products such as the following: Work products focused on monitoring, either surface or ground water, which can support a variety of programs and goals. For example, monitoring could be valuable in: (1) assessing dietary exposure to pesticides via drinking water, (2) determining those water bodies that may be impaired due to pesticides, (3) predicting potential exposure to endangered and threatened aquatic species, or (4) establishing a baseline of contamination from which to measure progress in the future. Work may also focus on information gathering and development such as undertaking a vulnerability assessment, determining the pesticides that are most likely to impact water quality, and/or providing information to pesticide users on ways they can assist in ensuring quality water sources. Finally, work may also focus on the development or implementation of programs aimed at preventing contamination of water sources or mitigating already contaminated water sources.

Special Project proposals will not be considered under this solicitation, but may be submitted in accordance with the FY2001 Tribal Special Projects Solicitation. (See Notice for Special Project Solicitation published elsewhere in this issue of the **Federal Register**.)

iii. *How much money may be requested, and are matching funds required?* Maximum funding awarded will not exceed $50,000 per project. Applicants should note that a 15% match for pesticide water quality funds is recommended. Tribal monies or ''in-kind services'' may be used as the 15% match. Indirect cost rates will not increase the $50,000 maximum funding amount.

3. *Application requirements*— i.*what is required for applications?* In order to be considered for funding, applicants must submit the following to the regional tribal pesticide staff contact:

a. A water quality Project Proposal (maximum 6 pages of narrative), including:

A. Name of Project
B. Tribal Project Contact
C. Project Description, including:
- Purpose and Goal(s) of the Project
- New or continuing project
- Environmental or Health Issues Addressed

• Approach and Methods (How the project will be carried out)
• Expected/Desired Outcome
• Indicators/Measures of Success
• Resources and Time Frame Required for Project, including beginning and ending dates

D. Need for Assistance

Provide the following information to the extent it relates to and is relevant to demonstrating the need for the specific project that is proposed:
• A list of other sources of funding that you have sought for the project
• A description of similar, identical, or otherwise relevant work that you have undertaken, including sources of funding for that work
• A description of studies, surveys and other sources of information that document the environmental issues that will be addressed by the project.

E. Responsible Parties and Location
• Identify persons in charge of the project
• Identify major participants in the project
• Identify location(s) where project will be conducted

F. External Stakeholders
• Identify those affected by the project and how they will be affected
• Identify those who will participate in the project and their roles

G. Resources

Identify any personnel and/or contractors to be involved in the project, including their role and qualifications. Description should include any relevant training or experience the persons(s) has in writing a Sampling and Analysis Plan for a project, in conducting soil or water sampling, etc.
• Identify existing resources/information that will be used in conducting project
• Identify any additional resources (including but not limited to training) that will be required for project
• Describe any EPA training or assistance that will be required for tribal personnel who will be working on the project. Such training may include the development of outreach material or a Sampling Analysis Plan, sampling, etc.

H. Infrastructure and Coordination
• Identify coordination efforts required to conduct project, within or outside tribe
• Identify ways in which this project will affect tribal capacity
• Identify any assistance you may require in coordinating with other Federal, State or local agencies

ii. *Draft workplan (1–2 pages).* The submitted draft workplan should outline: (1) the separate phases of the project; (2) the tasks associated with each phase of the project; (3) the time frames for completion of each phase or task; (4) the name and title of the person(s) who will conduct each phase or task, and (5) the dates when progress reports will be provided to EPA. Project costs cannot be incurred until a final workplan has been approved by the appropriate EPA Regional office.

iii. *Estimated budget.* The estimated budget should outline estimated costs for personnel, fringe benefits, travel, equipment, supplies, contractual, indirect cost rate, or any other estimated costs associated with the proposed project.

iv. *Letter or resolution from Tribal Council or Chairperson showing support for and commitment to the project.* (If it is not possible to obtain a letter/resolution from the tribal council or chairperson to submit with your project proposal, an interim letter of explanation must be included with the proposal. The letter/resolution will still be required prior to project award.)

v. *Letter of confirmation for any matching funds needed to complete the project.* If your proposal requires the use of matching funds, please include a letter from the funding source confirming that these monies are available for the project. If the budget includes a tribal in-kind match, a letter of confirmation is not needed.

4. *When and where must applications be submitted?* The applicant must submit/mail one signed original application and one copy of the application. The application and copy must be received by the EPA Regional contact listed in Section C of this document no later than close of business May 15, 2001. Incomplete or late proposals will be disqualified for funding consideration.

5. *Process for awarding cooperative agreements*—i. *How will Applications be Reviewed and Selected?* Tribal project proposals will be reviewed and approved for completeness by each respective region and then forwarded through OPP, along with comments, to a review team. The review team will consist of OPP and Regional staff members. The team will consult with Regional staff regarding their comments as necessary. If there is money left over after the selection process is completed, the review team will discuss and determine the allocation of the money. Selections will be made by close of business June 15, 2001.

ii. *How will Applicants be Notified?* Regions will notify their respective applicants of the selections. Those applicants not awarded funds may request an explanation from their regional staff.

6. *Criteria for awarding water quality project cooperative agreements.* Criteria on which the water quality project proposals will be ranked and selected are listed below. Applicants must submit information specified in this solicitation to address the award criteria. Applicants must also provide information specified in this solicitation that will assist both a tribe and EPA in assessing the tribe's capacity to do the water quality project work outlined in the project proposal. The information will not be used when ranking the proposals; however, it will help EPA determine the appropriateness of the workplan and budget estimate provided. For example, if a tribe does not have personnel experienced in sampling, then training might be warranted. This in turn can leave less time for actual sampling or completing other aspects of the proposal. The workplan and budget should reflect the training and the work that can realistically be accomplished.

i. *Environmental issues addressed.* What are the environmental and human health issues addressed by the proposed project? What are the environmental and human health issues related to pesticides in water quality? 0 to 20 points

ii. *Outcome/justification.* What is the potential outcome of the project? What are the benefits of conducting this project? Does the project have limited or broad application to address risk related to pesticides in water quality? Is the project proposal thoroughly and clearly written? 0 to 20 points

iii. *Impact assessment/indicators.* How will you evaluate the success of the project in terms of measurable environmental results? Does the project propose to quantify and measure its success? 0 to 10 points

iv. *Resources and time frame required for project.* Can the project be accomplished with available or existing resources (tribal or non-tribal) and within the identified time frame? 0 to 10 points

v. *Major participants/external stakeholders.* Has the tribe identified the need for other parties (tribal or non-tribal) who will be involved or who will participate in the project? Who will be affected by the outcome of the project? 0 to 10 points

vi. *Coordination/capacity building.* Has the tribe identified the need to coordinate with outside communities, Federal, State or local government? Will the project help build tribal infrastructure or capacity? What coordination will be necessary between tribal departments, offices, etc.? 0 to 5 points

Total possible points: 75

7. *Post selection activity*. Selected applicants must formally apply for receipt of funds through the appropriate EPA Regional office. In addition, selected applicants must negotiate a final workplan including reporting requirements with the designated EPA Regional project officer. For more general information on post award requirements and the evaluation of grantee performance, see 40 CFR part 31.

II. What Action is the Agency Taking?

The Office of Pesticide Programs (OPP), in coordination with the EPA Regions, is soliciting Tribal pesticide water quality projects for FY2001 funding. The total amount of funding available in FY2001 to be awarded to tribal governments and/or intertribal consortia for pesticide water quality projects is $245,500.

III. Statutory Authority and Regulations

Sections 23(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) authorize EPA to enter into cooperative agreements with States and Indian Tribes to implement pesticide enforcement programs. Pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for fiscal year 1999, pesticide program implementation grants under section 23(a)(1) of FIFRA are available for ''pesticide program development and implementation, including enforcement and compliance activities.''

The award and administration of these grants will be governed by the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments set forth at 40 CFR part 31.

IV. Submission to Congress and the Comptroller General

Under the Agency's current interpretation of the definition of a ''rule '', grant solicitations such as this which are competitively awarded on the basis of selection criteria, are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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).

List of Subjects

Environmental protection, Grants, Water quality.

Dated: March 7, 2001.

Anne E. Lindsay,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 01–6718 Filed 3–16–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6954–4]

National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction, notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a change to the meeting date of the National Advisory Council for Environmental Policy and Technology (NACEPT). A one-day meeting will be held on March 21, 2001.

The NACEPT is addressing several policy issues associated with EPA's human resource planning and the identification of emerging issues and trends facing the Agency. The NACEPT Council will: present its recommendations regarding EPA's Workforce Capacity efforts to the Agency, and provide an update on the identification of emerging issues and trends facing EPA over the next five to ten years.

DATES: The NACEPT will hold a 1-day public meeting on Wednesday, March 21, from 8:30 a.m. to 5:00 pm.

ADDRESSES: The NACEPT 1-day public meeting will be held at the Latham Hotel, 3000 M Street, NW, Washington, D.C. Materials or written comments may be transmitted to the Council through Gwendolyn Whitt, Designated Federal Officer/NACEPT, U.S. EPA, Office of Cooperative Environmental Management (1601A), 1200 Pennsylvania Avenue NW, Washington, D.C. 20460. The public will have an opportunity to make comments directly to the Council. Oral comments will be limited to a total time of five minutes. Requests to make oral comments must be submitted no later than March 19, 2001 to Gwendolyn Whitt, at the address above or faxed to (202) 501–0661. Anyone who has not reserved time in advance, may make comments during the public comment period as time allows.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer, NACEPT, at (202) 564–9741.

Dated: March 6, 2001.

Timothy O. Sherer,

Acting Director Office of Cooperative Environmental Management.

[FR Doc. 01–6678 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6955–2]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of two meetings of the Ecological Processes and Effects Committee (EPEC) of the US EPA Science Advisory Board (SAB). The meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Ecological Processes and Effects Committee (EPEC)—Teleconference Meeting April 3, 2001

The Ecological Processes and Effects Committee will meet by conference call from 3:00 to 5:00 pm Eastern time on Tuesday, April 3, 2001. Members of the public wishing to call-in to the teleconference must make arrangements with Ms. Mary Winston by noon the Wednesday *before* the meeting. Instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston, Management Assistant, at (202) 564–4538, or via e-mail at: *winston.mary@epa.gov.*

Purpose of the Meeting—The purpose of the April 3, 2001 conference call meeting is to allow the Committee and the Agency to complete preparations for the face-to face meeting on April 20, 2001. The Agency will provide a briefing for the Committee on the Science to Achieve Results (STAR)

Water and Watersheds program (see background below), and the Committee will review the charge questions and review materials provided to them for the April 20, 2001 meeting.

Availability of Materials and Contact Information—See below.

2. Ecological Processes and Effects Committee (EPEC)—April 20, 2001

The Ecological Processes and Effects Committee will meet on Friday, April 20, 2001 at the Radisson Hotel Fisherman's Wharf, 250 Beach Street, San Francisco, CA 94133, telephone (416) 392–6700. The meeting will convene at 8:30 am Pacific time and will adjourn no later than 5 pm.

Purpose of the Meetings—The Committee will review the STAR Water and Watersheds program, based upon (a) written materials provided by the EPA, and (b) the research status reports presented at the EPA-sponsored STAR Water and Watersheds Research Grants Progress Review Meeting, being held April 17–19, 2001 at the Radisson Hotel Fisherman's Wharf. (Information on the EPA-sponsored meeting may be obtained from Mr. William Stelz—see Availability of Materials below)

Background: The goals of the STAR Water and Watersheds program are to: (a) Develop an improved understanding of the natural and anthropogenic processes that govern the quantity, quality, and availability of water resources in natural and human-dominated systems, and an understanding to the structure, function, and dynamics of the terrestrial and aquatic ecosystems that comprise watersheds; and (b) promote integration across the biological, physical, and social sciences in the area of watershed management.

In 1995, a joint solicitation sponsored by EPA-STAR and the National Science Foundation (NSF) was advertised. Six hundred eighty-five proposals were received; 21 grants were funded by EPA and 15 by NSF. Because of the overwhelming response, the RFA was narrowed and has been the basis of the program ever since. In 1996, 11 grants were funded (8 EPA, 3 NSF); in 1997, 14 grants were funded (IO EPA, 4 NSF); in 1998, 15 grants were funded (9 EPA, 3 NSF, 3 USDA (new partner)); in 2000, 11 were funded (8 EPA, 1 USDA, 2 NSF).

The essence of the RFA is a Venn Diagram with intersecting circles of the ecological, physical and social sciences. Since 1996, only those proposals that integrate across all circles have been eligible for funding. In addition to integrating across disciplines, each proposal must demonstrate stakeholder involvement.

While the basic RFA has been stable over time, there have been shifts in programmatic emphasis. In 1997, the RFA focused on watershed restoration, in 1998 on urban systems, and in 2000 on projects relevant to the development of Total Maximum Daily Load (TMDL) assessments. From Fiscal Year 1995 to 2000, the STAR Water and Watersheds grants have totaled about $30 million from EPA, about $12 million from NSF, and about $4 by the U.S. Department of Agriculture.

Charge to the Committee—The Agency is asking the Committee to consider the following charge questions as it evaluates the STAR Water and Watersheds program:

Program Design and Impact

(a) Are the STAR Water and Watershed grants, taken collectively, producing a body of research that will improve our practical understanding of: (a) ''Natural and anthropogenic processes that govern the quantity, quality, and availability of water resources in natural and human-dominated systems,'' and (b) ''the structure, function, and dynamics of the terrestrial and aquatic ecosystems that comprise watersheds''

(b) Are the research findings likely to make a difference in environmental protection (i.e., are research results influencing Agency programs, directions, or regulations? influencing other organizations and other researchers?)

(c) Is the requirement that grant proposals integrate ecological, physical and social sciences producing a unique body of research? Would funding each of the science areas individually have the same outcome? Is the integrated approach so important that it is giving us new insights into decision-making at the watershed scale?

(d) As a result of the Water and Watersheds program, do we see any major advancements or breakthroughs in watershed science or interdisciplinary integration across the relevant disciplines?

(e) How is the program perceived within and outside the research community? What changes would you recommend to the program managers?

Availability of Materials—Copies of background materials provided to the Committee can be obtained by contacting Mr. William Stelz, U.S. Environmental Protection Agency, Office of Research and Development/ NCER, 1200 Pennsylvania Ave, NW, Mail Code 8723R, Washington, DC 20460. Mr. Stelz may also be contacted at telephone (202) 564–6834 or via e-mail at *stelz.william@epa.gov.* Information on the STAR program also is available at *http://es.epa.gov.ncerqa/grants.* The draft meeting agenda will be posted on the SAB website (*http://www.epa.gov/sab*) approximately two weeks before the meeting.

FOR FURTHER INFORMATION: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Ms. Stephanie Sanzone, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4561; fax (202) 501–0582; or via e-mail at *sanzone.stephanie@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Sanzone no later than noon Eastern Standard Time on the Wednesday before the scheduled meeting.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The 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. 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. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 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 committee for their consideration. Comments should be supplied to Ms. Sanzone 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: 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.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Sanzone at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 12, 2001

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 01–6708 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30509; FRL–6771–5]

Pesticide Products; Bt Corn Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30509, must be received on or before May 3, 2001.

ADDRESSES: Comments 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 control number OPP–30509 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8715; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30509. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30509 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30509. Electronic

comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of the application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient Not Included in Any Previously Registered Product

File symbol: 524-LEI. Applicant: Monsanto Company, 700 Chesterfield Parkway N., St. Louis, MO 63198. Product name: Event MON 863: Corn Rootworm Protected Corn (ZMIR13L). Type of product: Plant-pesticide. Active Ingredient: *Bacillus thuringiensis* Cry3Bb protein and the genetic material (Vector ZMIR13L) necessary for its production in corn. Proposed Classification/Use: None. For 1 year, contained, 22,875 acre pre-commercial inbred seed propagation and hybrid seed production registration. Plantings are proposed for the states of California, Hawaii, Illinois, Iowa, Indiana, Kansas, Michigan, Nebraska, South Dakota, Texas, and Wisconsin.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 1, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01–6720 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30485A/30464B; FRL–6770–1]

Pesticide Product; Registration Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Pylon and Chlorfenapyr Technical containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6502; e-mail address: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at *http://www.epa.gov/pesticides/*, and select ''fact sheet.''

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30485A/30464B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action,

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

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of chlorfenapyr (4-bromo-2-(chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile), and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of chlorfenapyr (4-bromo-2-(chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile) when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Registrations

1. EPA issued a notice, published in the **Federal Register** of November 19, 1999 (64 FR 63316) (FRL 6392–7), which announced that American Cyanamid (now BASF) P.O. Box 400 Princeton, NJ 08543–0400, had submitted an application to register the pesticide product, Alert, miticide-insecticide (EPA File Symbol 241–GTU), containing chlorfenapyr (4-bromo-2-(chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile) at 21.4%. This product was not previously registered.

The application was approved on January 19, 2001, as Pylon miticide-insecticide (EPA Registration Number 241–374) for use on pests of ornamentals grown in greenhouses.

2. EPA issued a notice, published in the **Federal Register** of December 2, 1998 (63 FR 66534) (FRL FRL 6046–6), which announced that American Cyanamid (now BASF) P.O. Box 400 Princeton, NJ 08543–0400, had submitted an application to register the pesticide product, AC 303,630 Technical, a technical product (EPA File Symbol 241–GAA), containing chlorfenapyr (4-bromo-2-(chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile) at 93%. This product was not previously registered.

The application was approved on January 19, 2001, as Chlorfenapyr Technical (EPA Registration Number 241–366) containing chlorfenapyr at 96.2% for formulating into pesticide products used on ornamentals in greenhouses.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 16, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–6729 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1002; FRL–6771–2]

Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1002, must be received on or before April 18, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1002 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1002. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1002 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov'', or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1002. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 5, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research/Bayer Corporation

PP 9E6045, 9E6046, 9E6048, 0E6103, 0E6117, 0E6153, 0E6158, 0E6212, 7F4895, 0F6086, and 0F6091

EPA has received pesticide petitions (PP 9E6045, 9E6046, 9E6048, 0E6103, 0E6117, 0E6153, 0E6158, and 0E6212) from the Interregional Research Project Number 4 (IR-4), State Agricultural Experimentation, Rutgers University, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. EPA has also received pesticide petitions (7F4895, 0F6086, and 0F6091) from Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120–0013. The petitions propose, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of tebuconazole, alpha-[2-(4-chlorophenyl)ethyl]alpha-(1,1-dimethylethyl)-1*H*-1,2,4] in or on the raw agricultural commodities as follows:

1. PP 9E6045. Proposes the establishment of tolerances in or on turnip, tops at 8.0 parts per million (ppm) and turnip, roots at 0.4 ppm.
2. PP 9E6046. Proposes the establishment of a tolerance in or on hop at 5.0 ppm.
3. PP 9E6048. Proposes the establishment of a tolerance in or on vegetable, cucurbit, group at 0.1 ppm.
4. PP 0E6103. Proposes the establishment of a tolerance in or on mango (postharvest) at 0.2 ppm.
5. PP 0E6117. Proposes the establishment of a tolerance in or on plum (postharvest) at 1.0 ppm.
6. PP 0E6153. Proposes the establishment of tolerances in or on sunflower, seed at 0.05 ppm, sunflower, refined oil at 0.2 ppm, and sunflower, meal at 0.2 ppm.
7. PP 0E6158. Proposes the establishment of a tolerance in or on okra at 1.0 ppm.
8. PP 0E6212. Proposes the establishment of a tolerance in or on lychee at 1.5 ppm.
9. PP 7F4895. Proposes the establishment of tolerances for nut, tree, group at 0.05 ppm, almond, hulls at 5.0 ppm, pistachio at 0.05, wheat, forage at 3.0 ppm, wheat, hay at 6.0 ppm, and wheat, straw at 1.4 ppm.
10. PP 0F6086. Proposes the establishment of tolerances in or on bean, succulent at 0.1 ppm, bean, seed at 0.1 ppm, cotton, undelinted seed at 2.0 ppm, and cotton, gin byproducts at 16.0 ppm.
11. PP 0F6091. Proposes the establishment of tolerances in or on asparagus at 0.01 ppm, coffee, green bean at 0.1 ppm, coffee, roasted bean at 0.2 ppm, garlic, bulb at 0.1 ppm, and onion, dry bulb at 0.1 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue in plants and animals is adequately understood. The residue of concern is the parent compound only, as specified in 40 CFR 180.474.

2. *Analytical method.* An enforcement method for plant commodities has been validated on various commodities. It has undergone successful EPA validation and has been submitted for inclusion in Pesticide Analytical Method II (PAM). The animal method has also been approved as an adequate enforcement method.

3. *Magnitude of residues*—i. *Wheat.* Nineteen residue crop field trial studies were conducted to evaluate the quantity of tebuconazole residue in wheat following a foliar application of Folicur 3.6 F. These trials were conducted in EPA Regions II, IV, V, VI, VII, VIII, and X. Residues of tebuconazole were quantitated by gas chromatography using a thermionic specific detector. The limit of quantitation (LOQ) for green forage, hay, and straw was 0.1 ppm. The LOQ for grain was 0.05 ppm. The highest average field trial (HAFT) was 2.51 ppm for green forage, 5.31 ppm for wheat hay, and 1.27 ppm for wheat straw. The residues of tebuconazole in wheat grain were less than the LOQ of 0.05 ppm. Data from a 5x processing study also showed residues of tebuconazole in wheat grain less than the LOQ of 0.05 ppm.

ii. *Pecans.* Five residue crop field trial studies were conducted to evaluate the quantity of tebuconazole residue in pecan nutmeat following treatment of pecan trees with Folicur 3.6 F. These five trials were conducted in Regions II, IV, VI, and VIII as required in EPA's June 1994 guidance on number and location of trials. Residues of tebuconazole were quantitated using gas chromatography. Residues in all nutmeat samples were less than or equal to the LOQ of 0.05 ppm. Therefore, a tolerance of 0.05 ppm is being proposed.

iii. *Almonds.* Six residue crop field trial studies were conducted in EPA's Region X to evaluate the quantity of tebuconazole residue in almond nutmeat and almond hulls following treatment with Elite 45 DF. Tebuconazole residues were quantitated by gas chromatography using a thermionic specific detector. The LOQ for tebuconazole was 0.05 ppm for almond nutmeat and 0.1 ppm for almond hulls. Residues in all nutmeat samples were less than or equal to the LOQ. The HAFT residue value for almond hulls was 4.13 ppm. Therefore, tolerances of 0.05 and 5.0 ppm are being proposed for almond nutmeat and hulls, respectively.

iv. *Turnips.* Five field trials were conducted in order to provide information on the magnitude of tebuconazole residues on turnip tops and roots following foliar applications of Folicur 3.6 F. Trials were conducted in Georgia, New Jersey, Ohio, Tennessee, and Texas. Residue levels ranged from 0.75 ppm to 5.62 ppm for turnip tops and <0.05 ppm to 0.234 ppm for turnip roots. A tolerance of 8.0 ppm for turnip tops and 0.4 ppm for turnip roots is being proposed by IR-4.

v. *Hops.* Three field trials were conducted in order to provide information on the magnitude of tebuconazole residues on hops following foliar applications of Folicur 3.6 F. One trial was conducted in Oregon and two trials in Washington. Residue levels ranged from 0.579 ppm to 3.418 ppm. A tolerance of 5.0 ppm is being proposed by IR-4.

vi. *Cucurbits.* Data from summer squash, cucumber and cantaloupe residue crop field trials were used to evaluate the quantity of tebuconazole residue in cucurbits. Data on summer squash were collected from California, Florida, Georgia, New York, and Ohio. Data on cucumbers were collected from Florida, Georgia, Michigan, North Carolina, Ohio, and Texas. Cantaloupe trials were conducted in California, Georgia, Ohio, and Texas. Residue levels from all cucurbits ranged from 0.02 to 0.076 ppm. A tolerance of 0.1 ppm is being proposed by IR-4.

vii. *Bean (succulent).* Studies were conducted to evaluate the quantity of tebuconazole residue on fresh bean pods and dry bean seed following treatments with Folicur 3.6 F. Twelve field trials were conducted on fresh beans, and 14 field trials were conducted on dry beans. Tebuconazole residues were quantitated by gas chromatography using a thermionic specific detector. The LOQ for tebuconazole was 0.05 ppm. The highest residue of tebuconazole was 0.06 ppm in fresh beans. The highest residue in dry beans was 0.08 ppm. Therefore, tolerances are

being proposed at 0.1 ppm for both succulent and seed beans.

viii. *Cotton*. Studies were conducted to evaluate the quantity of tebuconazole residue in undelinted cotton seed and cotton gin byproducts (gin trash) following treatment of cotton plants with Folicur 3.6 F. Tebuconazole residues in undelinted cotton seed were quantitated by gas chromatography. The LOQ was 0.05 ppm in undelinted cotton seed and 0.2 ppm in gin trash. The highest measured residue in undelinted cotton seed was 1.89 ppm and 15.2 ppm in cotton gin trash at a 29–day PHI. Therefore, tolerances are being proposed at 2.0 ppm for undelinted cotton seed and 16.0 ppm for cotton gin trash.

A cotton processing study was conducted with Folicur 3.6 F at 5 times the maximum season proposed label use rate. Processing was performed using procedures which simulate commercial processing practices. The undelinted seed, meal, hull, and refined oil were evaluated for the residue of tebuconazole by gas chromatography. The LOQ in undelinted seed was 0.02 ppm. The LOQ in the processed products of meal, hull and refined oil was 0.04 ppm. Residue of tebuconazole in cotton undelinted seed was 0.04 ppm, while residue in the processed commodities were <0.04 ppm. Therefore, no tolerances are being requested for processed products.

ix. *Asparagus*. Three field trials were conducted in Peru to evaluate the quantity of tebuconazole residue in or on asparagus spears following four foliar applications of Folicur 3.6 F to asparagus ferns. Tebuconazole residues were quantitated by gas chromatography using a nitrogen phosphorus detector. The LOQ for tebuconazole was 0.01 ppm. Since the residue of tebuconazole was <0.01 ppm in all treated asparagus samples, a tolerance on 0.01 ppm is being proposed.

x. *Coffee*. Four field trials were conducted in Brazil and four field trials were conducted in Guatemala to evaluate the quantity of tebuconazole residue in or on dried green coffee beans following applications of Folicur 3.6 F to coffee trees. Tebuconazole residues were quantitated by gas chromatography. The LOQ was 0.01 ppm. The maximum residue value was 0.07 with the majority of the residue values being below the LOQ. Therefore, a tolerance of 0.1 ppm is being requested for green beans.

A processing study was conducted on dried green coffee beans from a field trial in Guatemala. Tebuconazole residues in dried green coffee beans, roasted coffee beans, and instant coffee were quantitated by gas chromatography. The LOQ for tebuconazole was 0.01 in green coffee beans, 0.8 ppm in roasted coffee beans, and 0.04 ppm in instant coffee. The highest average residue found in this study was 0.04 ppm in dried green coffee beans, 0.08 ppm in roasted coffee and 0.03 ppm in instant coffee. The data show that there is no concentration of residues as a result of processing into instant coffee and a slight concentration from dry beans (0.04 ppm) to roasted beans (0.08) ppm. A 0.2 ppm tolerance is being proposed for roasted coffee beans.

xi. *Garlic*. Three field trials were conducted in Mexico to evaluate the quantity of tebuconazole residue in or on garlic bulbs after a seed (clove) treatment of Folicur 3.6 F. Tebuconazole residues were quantitated by gas chromatography. The LOQ for tebuconazole was 0.10 ppm. Since all average validated tebuconazole residues were at or below the LOQ, a tolerance of 0.1 ppm is being proposed.

xii. *Onion*. Three field trials were conducted in Mexico to evaluate the quantity of tebuconazole residue in or on onion bulbs following foliar applications of Folicur 3.6 F. Tebuconazole residues were quantitated by gas chromatography. The LOQ for tebuconazole was 0.10 ppm. Since the HAFT was below the LOQ, a tolerance of 0.1 ppm is being proposed.

xiii. *Mango*. Three trials were conducted at a tropical fruit packing facility in order to provide information on the magnitude of tebuconazole residues on mango (post-harvest). Tebuconazole residues were quantitated by gas chromatography. All residue values were <0.05. A tolerance of 0.2 ppm is being proposed by IR-4.

xiv. *Plums*. Two trials were conducted in California in a fruit packing facility in order to provide information on the magnitude of tebuconazole residues on plums (post-harvest). The highest tebuconazole residue detected in plums was 0.44 ppm. Therefore, a tolerance of 1.0 ppm is being proposed by IR-4.

xv. *Sunflower*. IR-4 received requests from Kansas and North Dakota for the use of tebuconazole on sunflowers. To support these requests, magnitude of residue data were collected from seven field trials located in EPA Region V. Three of the trials were conducted in Kansas; the remaining four trials were located in North Dakota. Since all residues in the 1X field trails are less than the LOQ of 0.04 ppm, a tolerance of 0.05 ppm is being proposed for sunflower seed. Based on a processing study on peanuts completed by Bayer Corporation, a processing study was deemed not necessary and tolerances of 0.2 ppm are being requested for sunflower oil and sunflower meal.

xvi. *Lychee*. Three magnitude of residue field trials were conducted in Homestead, Florida. Residues from treated samples ranged from 0.4 ppm to 0.98 ppm. Tebuconazole residues were quantitated by gas chromatography. A tolerance of 1.5 ppm is requested by IR-4 for tebuconazole residues in or on lychee.

xvii. *Okra*. Magnitude of residue data were collected from six field trials located in EPA Region II (three trials), Region III (one trial), and Region VI (two trials). Residues ranged from 0.0863 ppm to 0.590 ppm tebuconazole in the treated samples. Tebuconazole residues were quantitated by gas chromatography. A tolerance of 1.0 ppm is requested by IR-4 for tebuconazole residues in or on okra.

B. Toxicological Profile

1. *Acute toxicity*. Tebuconazole exhibits moderate toxicity. The rat acute oral LD_{50} = 3,933 milligram/kilogram (mg/kg) (category III); the rabbit acute dermal LD_{50} >5,000 mg/kg (category IV); and the rat acute inhalation LC_{50} >0.371 milligram/Liter (mg/L) (category II). Technical tebuconazole was slightly irritating to the eye (category III) and was not a skin irritant (category IV) in rabbits. Tebuconazole was not a dermal sensitizer.

2. *Genotoxicity*. An Ames test with *Salmonella sp.*, a mouse micronucleus assay, a sister chromatid exchange assay with Chinese hamster ovary cells, and an unscheduled DNA synthesis assay with rat hepatocytes provided no evidence of mutagenicity.

3. *Reproductive and developmental toxicity*—i. In a developmental toxicity study, pregnant female rats were gavaged with technical tebuconazole at levels of 0, 30, 60, or 120 mg/kg/day between days 6 and 15 of gestation. The maternal no observed adverse effect level (NOAEL) was 30 mg/kg/day and the maternal lowest observed adverse effect level (LOAEL) was 60 mg/kg/day based on increased absolute and relative liver weights. The developmental NOAEL was 30 mg/kg/day and the developmental LOAEL was 60 mg/kg/day based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum and limbs plus an increase in supernumerary ribs.

ii. In a developmental toxicity study, pregnant female rabbits were gavaged with technical tebuconazole at levels of 0, 10, 30, or 100 mg/kg/day between days 6 and 18 of gestation. The maternal NOAEL was 30 mg/kg/day and the maternal LOAEL was 100 mg/kg/day

based on minimal depression of body weight gains and food consumption. The developmental NOAEL was 30 mg/kg/day and the developmental LOAEL was 100 mg/kg/day based on increased postimplantation losses, malformations in eight fetuses out of five litters (including peromelia in five fetuses/four litters; palatoschisis in one fetus/one litter), hydrocephalus and delayed ossification.

iii. In a developmental toxicity study, pregnant female mice were gavaged with technical tebuconazole at levels of 0, 10, 30, or 100 mg/kg/day between days 6 and 15 of gestation (part 1 of study) or at levels of 0, 10, 20, 30, or 100 mg/kg/day between days 6 and 15 of gestation (part 2 of study). The maternal NOAEL was 10 mg/kg/day and the maternal LOAEL was 20 mg/kg/day. Maternal toxicity (hepatocellular vacuolation and elevations in AST, ALP and alkaline phosphatase) occurred at all dose levels but was minimal at 10 mg/kg/day. Reduction in mean corpuscular volume in parallel with reduced hematocrit occurred at doses greater than or equal to 20 mg/kg/day. The liver was the target organ. The developmental NOAEL was 10 mg/kg/day and the developmental LOAEL was 30 mg/kg/day based on an increase in the number of runts.

iv. In a developmental toxicity study, pregnant female mice were administered dermal doses of technical tebuconazole applied at levels of 0, 100, 300, or 1,000 mg/kg/day between days 6 and 15 of gestation. Equivocal maternal toxicity was observed 1,000 mg/kg/day. The maternal NOAEL was nearly equal to 1,000 mg/kg/day. The developmental NOAEL was 1,000 mg/kg/day.

v. In a 2–generation reproduction study, rats were fed technical tebuconazole at levels of 0, 100, 300, or 1,000 ppm, (0, 5, 15, or 50 mg/kg/day, males and females). The parental maternal NOAEL was 15 mg/kg/day and the parental LOAEL was 50 mg/kg/day based on depressed body weights, increased spleen hemosiderosis and decreased liver and kidney weights. The reproductive NOAEL was 15 mg/kg/day and the reproductive LOAEL of 50 mg/kg/day based on decreased pup body weights from birth through 3–4 weeks.

vi. In a developmental neurotoxicity study, pregnant female rats were fed a nominal concentration of 0, 100, 300 or 1,000 ppm of tebuconazole in the diet. The NOAEL for maternal toxicity in this study was 300 ppm (based on mortality, body weight and feed consumption reductions, and prolonged gestation in the 1,000 ppm dosage group). The 1,000 ppm dose level was considered to be excessively toxic for the F_1 offspring, based on mortality, marked reductions in pup body weight and body weight gain, reduction in pup absolute brain weight (at postpartum day (PD) 12 and adult), a developmental delay in vaginal patency, and decreased cerebellar thickness. The effects on brain weight and morphology are considered to represent incomplete compensation for the marked decrease in body weight gain during development. By approximately day 80 postpartum, the body weight had completely recovered in the females but was still reduced (89% of the control group value) in the males. The brain weights had shown an incomplete recovery (90% to 93% of the control group values) in both sexes. The NOAEL for the F_1-generation rats was 300 ppm. Technical grade tebuconazole did not cause any specific neurobehavioral effects in the offspring when administered to the dams during gestation and lactation at dietary concentrations up to and including 1,000 ppm. The overall NOAEL in this study for the F_1 offspring was 300 ppm.

4. *Subchronic toxicity*—i. In a 90–day oral feeding study, rats were administered technical tebuconazole at levels of 0, 100, 400, or 1,600 ppm (0, 8, 34.8, or 171.7 mg/kg/day for males or 0, 10.8, 46.5, or 235.2 mg/kg/day for females). In males, the NOAEL was 34.8 mg/kg/day and the LOAEL was 171.7 mg/kg/day based on decreased body weight and decreased body weight gain, adrenal vacuolation and spleen hemosiderosis. In females, the NOAEL was 10.8 mg/kg/day and the LOAEL of 46.5 mg/kg/day was based on adrenal vacuolation.

ii. In a 90–day oral feeding study, Beagle dogs were administered technical tebuconazole at levels of 0, 200, 1,000, or 5,000 ppm (0, 74, 368, or 1,749 mg/kg/day for males or 0, 73, 352, or 1,725 mg/kg/day for females). In females, the NOAEL was 73 mg/kg/day and the LOAEL was 352 mg/kg/day based on decreased body weight and decreased body weight gain, decreased food consumption and increased liver *N*-demethylase activity. At the highest dose tested (HDT), lens opacity was seen in all males and in one female and cataracts were seen in three females.

iii. In a 21–day dermal toxicity study, rabbits were exposed dermally to technical tebuconazole 5 days a week at doses of 0, 50, 250, or 1,000 mg/kg/day. No significant systemic effects were seen. The systemic NOAEL >1,000 mg/kg/day.

iv. In a 21–day inhalation toxicity study, rats were exposed to technical tebuconazole (15 exposures - 6 hours/day for 3 weeks) at airborne concentrations of 0, 0.0012, 0.0106, or 0.1558 mg/L/day. The NOAEL was 0.0106 mg/L/day and the LOAEL was 0.1558 mg/L/day based on piloerection and induction of liver *N*-demethylase.

5. *Chronic toxicity*—i. In a 2–year combined chronic feeding/carcinogenicity study, rats were administered technical tebuconazole at levels of 0, 100, 300, or 1,000 ppm (0, 5.3, 15.9, or 55 mg/kg/day for males or 0, 7.4, 22.8, or 86.3 mg/kg/day for females). In males, the NOAEL was 5.3 mg/kg/day and the LOAEL was 15.9 mg/kg/day based on C-cell hyperplasia in the thyroid gland. In females, the NOAEL was 7.4 mg/kg/day and the LOAEL was 22.8 mg/kg/day based on body weight depression, decreased hemoglobin, hematocrit, mean corpuscular volume and mean corpuscular hemoglobin concentration and increased liver microsomal enzymes. No evidence of carcinogenicity was found at the levels tested.

ii. In a 1–year chronic feeding study, Beagle dogs were administered technical tebuconazole at levels of 0, 40, 200, or 1,000 (weeks 1-39) and 2,000 ppm (weeks 40-52) (0, 1, 5 or 25/50 mg/kg/day for males and females). The NOAEL was 1 mg/kg/day and the LOAEL was 5 mg/kg/day based on ocular lesions (lenticular and corneal opacity) and hepatic toxicity (changes in the appearance of the liver and increased siderosis).

iii. In a 1–year chronic feeding study, Beagle dogs were administered technical tebuconazole at levels of 0, 100, or 150 ppm (0, 3.0, or 4.4 mg/kg/day for males or 0, 3.0 or 4.5 mg/kg/day for females). The NOAEL was 3.0 mg/kg/day and the LOAEL was 4.4 mg/kg/day based on adrenal affects in both sexes. In males there was hypertrophy of adrenal zona fasciculata cells amounting to 4/4 at 150 ppm and to 0/4 at 100 ppm and in controls. Other adrenal findings in males included fatty changes in the zona glomerulosa (3/4) and lipid hyperplasia in the cortex (2/4) at 150 ppm vs. (1/4) for both effects at 100 ppm and control dogs. In females there was hypertrophy of zona fasciculata cells of the adrenal amounting to 4/4 at 150 ppm and to 0/4 at 100 ppm and 1/4 in controls. Fatty changes in the zona glomerulosa of the female adrenal amounted to 2/4 at 150 ppm and to 1/4 at 100 ppm and in controls.

iv. In a 91–week carcinogenicity study, mice were administered technical tebuconazole at levels of 0, 500, or 1,500 ppm (0, 84.9, or 279 mg/kg/day for males or 0, 103.1, or 365.5 mg/kg/day for females). Neoplastic histopathology

consisted of statistically significant increased incidences of hepatocellular neoplasms; adenomas (35.4%) and carcinomas (20.8%) at 1,500 ppm in males and carcinomas (26.1%) at 1,500 ppm in females. Statistically significant decreased body weights and increased food consumption were reported that were consistent with decreased food efficiency at 500 and 1,500 ppm in males and at 1,500 ppm in females. Clinical chemistry values (dose-dependent increases in plasma GOT, GPT and alkaline phosphatase) for both sexes were consistent with hepatotoxic effects at both 500 and 1,500 ppm. Relative liver weight increases reached statistical significance at both 500 and 1,500 ppm in males and at 1,500 ppm in females. Non-neoplastic histopathology included dose-dependent increases in hepatic pancinar fine fatty vacuolation, statistically significant at 500 and 1,500 ppm in males and at 1,500 ppm in females. Other histopathology included significant oval cell proliferation in both sexes and dose-dependent ovarian atrophy that was statistically significant at 500 and 1,500 ppm. The Maximum Tolerated Dose (MTD) was achieved at or around 500 ppm.

6. *Animal metabolism*. Rats were gavaged with 1 or 20 mg/kg radio-labeled technical tebuconazole, 98.1% of the oral dose was absorbed. Within 72 hours of dosing, over 87% of the dose was excreted in urine and feces. At sacrifice (72 hours post dosing), total residue gastrointestinal (GI tract) amounted to 0.63% of the dose. A total of 10 compounds were identified in the excreta. A large fraction of the identified metabolites corresponded to successive oxidations steps of a methyl group of the test material. At 20 mg/kg, changes in detoxication patterns may be occurring.

7. *Endocrine disruption*. No special studies investigating potential estrogenic or endocrine effects of tebuconazole have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects but no such effects were noted in any of the studies with either tebuconazole or its metabolites.

C. Aggregate Exposure

1. *Dietary exposure*. An aggregate risk assessment was conducted for residues of tebuconazole. For purposes of assessing the potential acute and chronic dietary exposure, Bayer has estimated acute and chronic exposure for all registered crops; section 18 uses on filberts, garlic, sunflowers, wheat and barley; petitions and uses pending with the EPA on wheat, beans (succulent and dry), cotton, coffee, asparagus, garlic, onions and the tree nut crop group; and proposed IR-4 uses on the cucurbit vegetables crop group, turnips (roots and tops), hops, plums (post-harvest), mangoes (post-harvest), and sunflowers.

Novigen Sciences, Inc.'s Dietary Exposure Evaluation Model (DEEM), which is licensed to Bayer, was used to estimate the chronic and acute dietary exposure. This software used the food consumption data for the 1994-1996 USDA Continuing Surveys of Food Intake by Individuals (CSFII 1994-1996). To assess acute dietary risk, EPA used an endpoint of 10 mg/kg/day NOAEL from the developmental toxicity study in mice (64 FR 1132, January 8, 1999) (FRL–6050–5). This endpoint was based on an increased incidence of runts observed at the LOAEL of 30 mg/kg/day. The population adjusted dose for acute dietary (aPAD) was determined by dividing the NOAEL by an uncertainty factor of 1,000 (10X for interspecies differences, 10X for intraspecies variability and 10X for FQPA safety factor): aPAD = 10/(1,000) = 0.01 mg/kg/day. To assess the chronic dietary risk, EPA (64 FR 1132) used the NOAEL of 3.0 mg/kg/day from a 1-year dog feeding study. This endpoint was due to histopathological changes in the adrenal gland. The population adjusted dose for chronic dietary cPAD was determined by dividing the NOAEL by an uncertainty factor of 100 (10X for interspecies differences and 10X for intraspecies variability): cPAD = 3/100 = 0.03 mg/kg bw/day. This cPAD applies to all population subgroups.

Results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of tebuconazole on currently registered and pending uses.

i. *Food*— a. *Acute*. The acute dietary (food) risk assessment was conducted using a Monte Carlo analysis (Tier 3). The anticipated residue values used were determined from field trial data reflecting maximum application rates and minimum preharvest intervals. Field trial residue distributions were used in the Monte Carlo simulation for those foods identified as single-serving commodities. For those foods considered to be blended or processed, mean field trial residues were calculated. The dietary exposure assessment estimated percent of the aPAD and corresponding margins of exposure (MOE) for the overall U.S. population (all seasons) and subpopulations. For the overall U.S. population the %aPAD = 36.49%. The most highly exposed population subgroup, children (1-6 years), had an exposure equal to 70.20% of the aPAD. These exposure estimates are within EPA's criteria of acceptability at the 99.9th percentile.

b. *Chronic*. In the analysis for the chronic dietary (food only) risk assessment the anticipated residue values used were determined from field trail data conducted at maximum application rates and minimum preharvest intervals. Mean anticipated residues values were calculated substituting half of the LOQ for those samples for which residues were reported below the LOQ. The chronic dietary analysis estimated the cPAD for the overall U. S. population (all seasons) and subpopulations. For the overall U.S. population the %cPAD = 0.1%. For the most highly exposed population subgroup, children (1 to 6 years), the exposure was estimated to be 0.3% of the cPAD.

ii. *Drinking water*. EPA has determined (64 FR 1132) that there are no monitoring data for residues of tebuconazole in ground water. In addition, they have established no health advisory levels or Maximum Contaminant Levels for residues of tebuconazole in drinking water. EPA has determined that tebuconazole is persistent and relatively immobile in water. EPA has used the Screening Concentration in Ground Water (SCI-GROW) screening model to determine the Estimated Environmental Concentration (EEC) of 0.3 µg/L of tebuconazole in ground water for both chronic and acute analysis.

a. *Acute*. EPA has determined that the acute drinking water levels of concern (DWLOC) is 200 µg/L for females (13+ years old) and 14 µg/L for infants/children. The EECs for acute analysis of water are 0.3 µg/L (ground water) and 14 µg/L (surface water). EPA does not expect the acute aggregate exposure to exceed 10% of the acute RfD. Therefore, EPA has concluded with reasonable certainty that no harm will result to the subpopulations of concern, females (13+ years old), or infants and children from aggregate exposure to residues of tebuconazole.

b. *Chronic*. EPA has determined that the chronic DWLOC is 910 µg/L for the U.S. population, 720 µg/L for females (13+ years, nursing), and 190 µg/L for

infants/children. The EECs for chronic analysis of water are 0.3 µg/L (ground water) and 10 µg/L (surface water). EPA does not expect the chronic aggregate exposure to exceed 100% of the chronic RfD. Therefore, EPA has concluded with reasonable certainty that no harm will result from chronic (non-cancer) aggregate exposure to tebuconazole residues.

2. *Non-dietary exposure.* Tebuconazole is currently registered for use on the following residential non-food sites: the formulation of wood-based composite products, wood products for in-ground contact, plastics, exterior paints, glues and adhesives. EPA has determined (64 FR 1132) that exposure via incidental ingestion (by children) and inhalation are not a concern for these products which are used outdoors. No paints or other end-use products containing tebuconazole are available for interior use. Therefore, EPA has determined that no risk is expected for residential nonfood sites.

D. Cumulative Effects

Tebuconazole is a member of the triazole class of systemic fungicides which included other triazoles such as bitertanol, cyproconazole, diclobutrazole, difenoconazole, diniconazole, fenbuconazole, flusilazole, hexaconazole, myclobutanil, penconazole, propiconazole, tetraconazole, triadimefon, and triadimenol. At this time, the EPA has not made a determination that tebuconazole and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for these tolerance petitions, it is assumed that tebuconazole does not have a common mechanism of toxicity with other substances and only the potential risks of tebuconazole in its aggregate exposure are considered.

E. Safety Determination

1. *U.S. population.* Based on the exposure assessments described above under Unit C. Aggregate Exposure and on the completeness and reliability of the toxicity data, it can be concluded that aggregate exposure estimates from all label and pending uses of tebuconazole are 36.49% of the aPAD and 0.1% of the cPAD for dietary exposures. Since EPA found no concern from drinking water or non-dietary exposure (64 FR 1132), it can be concluded with reasonable certainty that the potential risks to the overall U.S. population would not exceed the Agency's level of concern.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of tebuconazole, data from developmental toxicity studies in mice, rats, rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Using the conservative exposure assumptions described above under Unit C. Aggregate Exposure, it can be concluded that the aggregate dietary exposure estimates from the proposed uses of tebuconazole would not exceed 70.20% of the aPAD and 0.3% of the cPAD for the most sensitive population subgroup children (1-6 years). Since EPA found no concern from drinking water or non-dietary exposure (64 FR 1132), it can be concluded with reasonable certainty that the potential risks to infants and children would not exceed the Agency's level of concern.

F. International Tolerances

There are no established Codex or Canadian Maximum Residue Levels (MRLs) for tebuconazole. A Mexican MRL has been established on barley for tebuconazole.

[FR Doc. 01–6711 Filed 3–16–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–997; FRL–6766–7]

Notice of Filing Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–000, must be received on or before April 18, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–000 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6411; e-mail address: tavano.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person.* The Agency has established an official record for this

action under docket control number PF–000. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–000 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–000. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 26, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The summaries of the petitions were prepared by the petitioner and represent the view of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Rohm and Haas Company

PP 0F6176

EPA has received a pesticide petition (0F6176) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–02399 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of tebufenozide benzoic acid, 3,5-dimethyl-,1-(1,1-dimethylethyl)-2-(4-4-ethylbenzoyl) hydrazide in or on the raw agricultural commodity citrus crop group (Crop Group 10) at 0.8 parts per million (ppm) and in or on citrus oil at 15 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Nature of the residue—Plants*. The qualitative nature of the residue in plants is adequately understood based

upon acceptable apple, sugar beet, and rice metabolism studies. The Agency has concluded that the residue of regulatory concern is tebufenozide *per se*.

2. *Nature of the residue—Animal*. The results of the ruminant and poultry metabolism studies have been reviewed by the Agency and the determination was made that the tebufenozide residues of regulatory concern in animals are the parent tebufenozide and the four metabolites designated: RH-2703 [benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide], RH-9886 [benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide], the stearic acid conjugate of RH-9886, and RH-0282 [benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl) benzoyl)hydrazide].

3. *Analytical method*— i. *Plant tissues*. Rohm and Haas method TR 34-96-184, with minor modifications, was used to determine tebufenozide residue levels in/on lemons, grapefruit and oranges. This method was independently validated. The method involves extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation (LOQ) of the method for all matrices is 0.02 ppm for tebufenozide and the limit of detection (LOD) is 0.006 ppm.

ii. *Animal tissues*. A submitted high performance liquid chromotography (HPLC/UV) Method, Rohm and Haas Method TR 34-96-109, has been determined to be adequate for collecting data on residues of tebufenozide in animal tissues. The validated LOQ for tebufenozide in animal tissue is 0.02 ppm. The LOQ for each of the metabolites studied are as follows: RH-2703 in liver, 0.02 ppm; RH-9886 and RH-0282 in meat, 0.02 ppm; RH-9526 in fat, 0.02 ppm. The LODs for the analytes are 0.006 ppm in tissues.

iii. *Multi-residue methods*. Rohm and Haas has previously submitted data involving multi-residue method testing.

a. *Magnitude of residues*. Field residue trials were conducted in the representative citrus fruit crops lemons, grapefruit and oranges and residues of tebufenozide were measured in whole fruit, peel and fresh pulp. The highest average field trial residue observed was in oranges at 047 ppm. Results of analyses showed that residues of tebufenozide will not exceed 0.8 ppm in whole fruit. Residues were found to be mainly associated in the peel and not in the fresh pulp.

b. *Processed food/feed*. Grapefruit and orange processing studies were conducted. Residues of tebufenozide did not concentrate in dry pulp or juice. Residues of tebufenozide concentrated in citrus oil. The average concentration factor for citrus oil was determined to be 26. The Highest Average Field Trial residue was in oranges at 0.47 ppm. Residues of tebufenozide in citrus oil should not exceed 15 ppm (rounded up from 0.47 ppm X 26).

B. Toxicological Profile

1. *Acute toxicity*. Acute toxicity studies with technical grade: Oral LD_{50} in the rat is > 5 grams for males and females - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category III; inhalation LD_{50} in the rat is > 4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit > 5 mg - Toxicity Category IV. Tebufenozide is not a sensitizer.

In a 21-day dermal toxicity study, Crl: CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day Limit-Dose or the formulation 23.1% a.i. product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested 1,000 mg/kg/ during the 21-day study. Based on these results, the NOAEL for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day highest dose tested (HDT). A lowest-observable-effect level (LOAEL) for systemic toxicity and dermal irritation was not established.

2. *Genotoxicity*. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

3. *Reproductive and developmental toxicity*. In a prenatal developmental toxicity study in Sprague-Dawley rats 25/group Tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

In a prenatal developmental toxicity study conducted in New Zealand white rabbits 20/group Tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

In a 1993 two-generation reproduction study in Sprague-Dawley rats tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extra-medullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

In a 1995 two-generation reproduction study in rats tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extra-medullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at

2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm. (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

4. *Subchronic toxicity*. A 1-year dog feeding study with a (LOAEL) of 250 ppm, 9 mg/kg/day for male and female dogs based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The no-observed effect level (NOAEL) for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

5. *Chronic toxicity*. An 18-month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

A 2-year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. *Animal metabolism*. The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3-6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992 ^{14}C labeled in one of three positions (A-ring, B-ring or N-butyl carbon). The extent of absorption was not established. The majority of the radio labeled material was eliminated or excreted in the feces within 48 hours within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioaccumulation. Absorption and excretion were rapid. A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be cleaved (minor), but there was no fragmentation of the molecule between the benzyl rings. No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

The absorption and metabolism of tebufenozide were studied in a group of male and female bile-duct cannulated rats. Over a 72 hour period, biliary excretion accounted for 30%[M] to 34%[F] of the administered dose while urinary excretion accounted for about 5% of the administered dose and the carcass accounted for <0.5% of the administered dose for both males and females. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35%[M] to 39%[F]. The majority of the radioactivity in the bile (20%[M] to 24%[F] of the administered dose) was excreted within the first 6 hours post-dosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours post-dosing. A large amount [67%[F] to 70%[M]] of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

7. *Metabolite toxicology*. A total of 13 metabolites were identified in the bile; the parent compound was not identified, i.e. unabsorbed compound, nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primarily by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (F and/or M). Bile also contained the previously undetected (in the pharmacokinetics study) ''A'' Ring ketone and the ''B'' Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for 5% of the total administered dose. Total bile radioactivity accounted for about 17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

8. *Short- and intermediate-term toxicity*. No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit- Dose) as well as a formulated (23% a.i) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21-day period. In spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies. This risk is considered to be negligible.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food— From food and feed uses*. Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. The current petition requests establishment of tolerances in or on the crop group Citrus Fruit at 0.8 ppm and in citrus oil at 15 ppm. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide as follows:

a. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Neither neurotoxicity nor systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rabbits. This risk is considered to be negligible.

b. *Chronic exposure and risk*. The RfD used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting the DEEM (Dietary Exposure Evaluation Model) analysis for chronic exposure to and risk from tebufenozide residues in food, Rohm and Haas used tolerance level residues for all crops and other commodities with established or pending tebufenozide tolerances; and percent crop-treated (PCT) information for some of these crops. The following tolerances were used: Citrus fruit at 0.8 ppm, citrus oil at 15 ppm, tree nut crop group at 0.1 ppm, pome fruit at 1.5 ppm, cotton at 1.5 ppm, leafy and cole crop groups ranging from 2.0 to 10.0 ppm,

turnip tops at 9.0 ppm, turnip roots at 0.25 ppm, canola seed at 1.75 ppm, canola oil at 3.75 ppm, mint at 10.0 ppm, fruiting vegetables at 1.0 ppm, sugarcane at 1.0 ppm, molasses at 0.6 ppm, cranberries at 1.0 ppm, berry crops at 3.0 ppm, imported kiwifruit at 1.0 ppm and imported wine grapes at 0.5 ppm, and the livestock commodities milk, meat and meat by-products ranging from 0.05 to 0.25 ppm. The % CT information utilized is found in Table 1 below:

TABLE 1.—MAXIMUM PERCENT CROP TREATED VALUES FOR VARIOUS CROPS UTILIZED IN CHRONIC DIETARY EXPOSURE ANALYSES

Crop	Maximum PCT (Percent)
Cranberries	100
Kiwifruit	100
Canola	100
Mint	100
Grapes	100
Citrus	100
Meat, Meat By-Products, Milk	100
Sugarcane	82
Turnips	75
Pecans	40
Walnuts	30
Berry Crops	25
Cotton	19
Cole Crop Vegetables	18
Almonds	16
Leafy Vegetables	14
Pome Fruit	10
Fruiting Vegetables	10

The Novigen DEEM system (version 7.075) was used for this chronic dietary exposure analysis. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. Summaries of the exposures and their representations as percentages of the cPAD for the general population and subgroups of interest are presented in Table 2 below. The subgroups listed below are (1) the U.S. Population (48 states); (2) those for infants and children; and (3) the other subgroups (adult) for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. Population (48 states). cPAD% is defined as Exposure X 100% divided by the cPAD. The results are summarized below in Table 2:

TABLE 2.—CHRONIC EXPOSURE ANALYSIS BY THE DEEM SYSTEM FOR TEBUFENOZIDE

Population	Exposure (mg/kg/day)	cPAD (Percent)
U.S. Population	0.0038	21.1
All Infants (< 1 year)	0.0041	23.0
Nursing Infants (< 1 year)	0.0023	12.9
Non-Nursing Infants (< 1 year)	0.0049	27.3
Children (1-6 years old)	0.0092	51.0
Children (7-12 years old)	0.0057	31.8
Females (13+ years, nursing)	0.0043	23.9
U.S. Population Autumn	0.0038	21.4
U.S. Population Winter	0.0039	21.9
Hispanics	0.0042	23.1
Non-Hispanic Blacks	0.0043	23.6
Non-Hispanic Other than Black or White	0.0049	27.5
Northeast Region	0.0042	23.1
Western Region	0.0042	23.5
Pacific Region	0.0043	24.1

This chronic dietary (food only) risk assessment should be viewed as conservative. Further refinement using anticipated residue values and additional PCT information would result in a lower estimate of chronic dietary exposure from food.

ii. *Drinking water*— a. *Acute exposure and risk*. Because no acute dietary endpoint was determined, Rohm and Haas concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

b. *Chronic exposure and risk*. The Agency calculated the Tier I Estimated Environmental Concentrations (EECs) for tebufenozide using generic expected environmental concentration (GENEEC) (surface water) and screening concentration in ground water (SCI-GROW) (ground water) models for use in the human health risk assessment. For chronic exposure, the worst case EECs for surface water and ground water were 16.5 parts per billion (ppb) and 1.04 ppb, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water. These modeling data were compared to the chronic drinking water levels of comparison (DWLOC) for tebufenozide in ground and surface water.

For purposes of chronic risk assessment, the estimated maximum concentration for tebufenozide in surface and ground waters (16.5 ppb) was compared to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized below in Table 3:

TABLE 3.—DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE TO TEBUFENOZIDE[1]

Population Category[2]	Chronic RfD (mg/kg/day)	Food exposure (mg/kg/day)	exposure Max. water (mg/kg/day)[3]	DWLOC (µg/L)[4,5,6]	EEC[7] calc. max. (µg/L) (in percent)
U.S. Population (48 contiguous states)	0.018	0.0038	0.0142	497	16.5
Females (13+ years)	0.018	0.0043	0.0137	411	16.5
Children (1-6 years)	0.018	0.0092	0.0088	88	16.5

[1] Values are expressed to 2 significant figures.
[2] Within each of these categories, the subgroup with the highest food exposure was selected.
[3] Maximum water exposure (chronic) (mg/kg/day) = Chronic PAD (mg/kg/day).
[4] DWLOC (µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) divided by 10^{-3} mg/µg) x water consumed daily (L/day).
[5] HED Default body weights are: General U.S. population, 70 kg; females (13+ years old), 60 kg; other adult populations, 70 kg; and, all infants/children, 10 kg.
[6] HED Default daily drinking rates are 2 L/day for adults and 1 L/day for children.
[7] EEC: Estimated Environmental Concentration. (Chronic 56-day value).

2. *Non-dietary exposure*. There is a potential for occupational exposure to tebufenozide during mixing, loading, and application activities. However, the Agency did not identify dermal or inhalation endpoints for tebufenozide and determined that risks from these routes of exposure are negligible.

D. Cumulative Effects

Cumulative exposure to substances with a common mechanism of toxicity. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity''. EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, Rohm and Haas has not assumed that tebufenozide has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population— aggregate risks and determination of safety for U.S. population*—i. *Acute risk*. The Agency did not identify an acute dietary toxicological endpoint, therefore, the risk from this route of exposure is negligible.

ii. *Chronic risk*. Using the exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, Rohm and Haas has concluded that dietary (food only) exposure to tebufenozide will utilize 21% of the cPAD for the U.S. population, and 51% of the cPAD for the most highly exposed population subgroup (children 1-6 years old). EPA generally has no concern for exposures below 100% of the cPAD. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than the Agency's DWLOCs. There are no chronic non- occupational/residential exposures expected for tebufenozide. Therefore, the Rohm and Haas concludes that there is a reasonable certainty that no harm will result to adults, infants and children from chronic aggregate exposure to tebufenozide residues.

iii. *Short- and intermediate-term risk*. There are potential non-occupational/residential short-term post application exposures (incidental non-dietary ingestion) to toddlers from the use of tebufenozide on ornamentals. However, since the Agency did not identify acute dietary endpoint, the short-term post application exposure risk assessment is expected to be negligible. Intermediate-term incidental non-dietary exposures are not expected.

iv. *Determination of safety*. Based on these risk assessments, Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

2. *Infants and children—aggregate risk and determination of safety for infants and children*— i. *Safety factor for infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Conclusion*. There is a complete toxicity data base for tebufenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. For the reasons summarized above, Rohm and Haas concludes that an additional safety factor is not needed to protect the safety of infants and children.

iii. *Acute risk*. Since no acute toxicological endpoints were established, it is unlikely that acute aggregate risk exists.

iv. *Chronic risk*. Using the exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, the Agency has concluded that dietary (food only) exposure to tebufenozide will utilize 21% of the cPAD for the U.S. population, and 51% of the cPAD for the most highly exposed population subgroup (children 1-6 years old). EPA generally has no concern for exposures below 100% of the cPAD. Despite the potential for exposure to tebufenozide in drinking water and from non-dietary, non- occupational exposure, Rohm and Haas does not expect the aggregate exposure to exceed 100% of the RfD.

v. *Short- or intermediate-term risk*. Short- and intermediate-term risks are judged to be negligible due to the lack of significant toxicological effects observed.

vi. *Determination of safety*. Based on these risk assessments, Rohm and Haas concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

F. International Tolerances

Codex MRLs have been established for residues of tebufenozide in/on pome fruit (1.0 ppm), husked rice (0.1 ppm) and walnuts (0.05 ppm). Tebufenozide is registered in Canada, and a tolerance for residues in/on apples is established at 1.0 ppm. EPA has set the pome fruit tolerance at 1.5 ppm based on U.S. field residue trials.

2. Rohm and Haas Company

PP 0F6201

EPA has received a pesticide petition (0F6201) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA, 19106–2399 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing time-limited tolerances for indirect or inadvertent residues of methoxyfenozide [benzoic acid, 3-methoxy-2-methyl-, 2–(3,5-dimethylbenzoyl)-2–(1,1-dimethylethyl) hydrazide] and its metabolites RH–117,236 (free phenol of methoxyfenozide; 3,5-dimethylbenzoic

acid N-tert-butyl-N'-(3-hydroxy- 2-methylbenzoyl) hydrazide), RH–151,055 (the glucose conjugate of RH–117,236; 3,5-dimethylbenzoic acid N-tert- butyl-N–[3(-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide) and RH–152,072 (the malonylglycosyl conjugate of RH–117,236) in or on the raw agricultural commodities root and tuber vegetables at 0.05 parts per million (ppm); leaves of root and tuber vegetables at 0.1 ppm; bulb vegetables at 0.1 ppm; leafy vegetables (except Brassica) at 0.2 ppm; Brassica vegetables at 0.2 ppm; legume vegetables at 0.05 ppm; foliage of legume vegetables at 8 ppm; forage, fodder, hay and straw of cereal grains at 7 ppm; grass forage, fodder and hay at 7 ppm; forage, fodder, straw and hay of non-grass animal feeds at 8 ppm; and herbs and spices at 8 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of methoxyfenozide residues in plants is adequately understood based upon acceptable cotton, apple and grape metabolism studies. EPA has determined that the residue of concern for dietary exposure and tolerance setting purposes in primary crops and water is the parent compound, methoxyfenozide. The qualitative nature of methoxyfenozide residues in rotation crop plants is adequately understood based upon ^{14}C confined rotation crop studies. The residue of concern for dietary exposure and tolerance setting purposes in rotation crops is the parent compound, methoxyfenozide and its metabolites RH–117,236 (free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid N-tert-butyl-N'-(3-hydroxy-2-methylbenzoyl) hydrazide), RH–151,055 (the glucose conjugate of RH–117,236; 3,5-dimethylbenzoic acid N-tert-butyl-N–[3(-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide) and RH–152,072 (the malonylglycosyl conjugate of RH–117,236).

The qualitative nature of the residue in animals is adequately understood based on acceptable studies conducted on goats and laying hens. EPA has determined that the residue of concern in milk and ruminant tissues (other than liver and kidney) is the parent compound, methoxyfenozide. The residue of concern in ruminant liver and kidney is the parent compound, methoxyfenozide, and its glucuronide metabolite designated as RH–141,518 (also referred to as RH–1518).

2. *Analytical method*. An HPLC/UV Method TR 34–00–41 for the enforcement of tolerances in rotation crops has been developed. Confirmatory method validation, radiovalidation, and independent method validation data have been submitted for this method. The validated limit of quantitation (LOQ) of the analytical method was 0.02 ppm in all matrices for methoxyfenozide and RH–117,236 and 0.05 ppm for RH–151,055.

3. *Magnitude of residues*. Magnitude of the residue in rotation crops. Two geographically representative field trials were submitted to support the proposed time-limited tolerances on rotation crops. Turnips, onions, mustard greens, tomatoes, cucumbers, soybeans and wheat were planted back 7 days after the last application to growing lettuce crops of methoxyfenozide 80WP formulation according to the maximum proposed use patterns. The rotated crops were harvested at maturity. Residues of methoxyfenozide in turnip roots, turnip tops, onions, mustard greens, tomatoes and cucumbers ranged from no-detectable residues to 0.07 ppm.

The results of the field trials indicate that residues of methoxyfenozide will not exceed the proposed tolerances of 0.05 ppm in root and tuber vegetables, 0.1 ppm in the leaves of root and tuber vegetables, 0.1 ppm in bulb vegetables, 0.2 ppm in leafy and cole crop vegetables. No residues were found in fruiting vegetables or cucurbit vegetables. Residues of methoxyfenozide and its metabolites RH–117236, RH–151055 and RH–152072 in soybean seeds did not exceed 0.033 ppm and no residues were detected in wheat grain. Residues of methoxyfenozide and its metabolites concentrated in the dry matrices soybean hay and wheat straw at 7.1 ppm and 6.4 ppm, respectively. The results of the field trials indicate that residues of methoxyfenozide and its metabolites will not exceed the proposed tolerances of 7 ppm in forage, fodder and straw of cereal grains and grass forage, fodder and hay. Residues of methoxyfenozide and its metabolites will not exceed the proposed tolerances of 8 ppm in foliage of legume vegetables, forage, fodder, straw and hay of non-animal feeds, or in herbs and spices. Additional rotation crop trials are in progress to support these time-limited tolerances.

Residues in meat, milk, poultry, and eggs. The maximum theoretical dietary burden of methoxyfenozide for dairy or beef cattle associated with this petition is estimated to be less than 20 ppm. The established tolerances of 0.02 ppm in the milk and meat of cattle, goats, hogs, horses, and sheep, 0.1 ppm in the fat of cattle, goats, hogs, horses, and sheep, 0.1 ppm in liver and 0.02 ppm in meat byproduct (except liver) of cattle, goat, hogs, horses, and sheep were established based on a dairy cow feeding level of 45 ppm. These tolerances are adequate for the proposed rotation crop tolerances.

The maximum theoretical dietary burden of methoxyfenozide for poultry animals associated with this petition (from cotton meal and soybean seed) would contribute a maximum theoretical dietary burden for methoxyfenozide at 0.41 ppm. A poultry metabolism study was conducted at feeding levels of 58 ppm, 60 ppm, and 68 ppm which are equivalent to 145x, 150x, and 170x, respectively, the maximum theoretical dietary burden for poultry. Assuming a linear relationship between dose and residues, the expected residues in eggs and poultry tissues would be below the LOD for methods used to measure residues in poultry products. Rohm and Haas concludes that there is no reasonable expectation of finite residues in eggs and poultry tissues and that a poultry feeding study is not required at this time.

B. Toxicological Profile

1. *Acute toxicity*. Acute toxicity studies with technical grade: Oral LD_{50} in the rat is 5,000 milligrams/kilograms (mg/kg) for males and females- Toxicity Category IV; Oral LD_{50} in the mouse is 5,000 mg/kg for males and females-Toxicity Category IV; Dermal LD_{50} in the rat is > 2,000 mg/kg-Toxicity Category III; Inhalation LC_{50} in the rat is > 4.3 milligram/liter (mg/L)-Toxicity Category IV; Primary Eye Irritation in the rabbit-very mild irritant-Toxicity Category IV; Primary skin irritation in the rabbit-not a skin irritant-Toxicity Category IV. Methoxyfenozide is not a skin sensitizer.

In an acute neurotoxicity study in rats, statistically significant decreased hind limb grip strength was observed in male rats at 3 hours (approximate time of peak effect) following a single oral dose of 2,000 mg/kg (limit dose) of methoxyfenozide. Decreased hindlimb grip strength was also observed in the male rats at 7 and 14 days, but was not statistically significant. No other systemic or neurotoxic effects were observed in the male rats or in the female rats at any time in this study. Since this marginal effect occurred only in one sex, was statistically significant at only one time, was observed only at the high dose (limit dose) and no other

signs of toxicity were observed in the rats in this study, this possible effect is not considered to be biologically significant. In addition, neither decreased hindlimb grip strength nor any other signs of neurotoxicity were observed in any of the animals at any time in a 90–day subchronic neurotoxicity study in rats.

2. *Genotoxicity*. In a battery of four mutagenicity studies (with and without metabolic activation, as appropriate for the specific study), technical grade methoxyfenozide was negative for genotoxicity in all four studies. The four studies satisfy the new revised mutagenicity guideline requirements for a new chemical (published in 1991). An additional mutagenicity study, performed on RH–117,236 (Metabolite M-B), a metabolite of methoxyfenozide, was also negative for genotoxicity.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study in rats, no signs of maternal toxicity in dams or of developmental toxicity in fetuses were observed at the limit dose of 1,000 mg/kg/day. The No Observed Adverse Effect Level (NOAEL) in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The Lowest Observed Adverse Effect Level (LOAEL) > 1,000 mg/kg/day. Similarly, in a developmental toxicity study in rabbits, no signs of maternal toxicity or of developmental toxicity were observed at the limit dose of 1,000 mg/kg/day. The NOAEL in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The LOAEL was > 1,000 mg/kg/day.

In neither the developmental toxicity study in rats nor in the developmental toxicity study in rabbits was there any evidence for increased susceptibility of fetuses to in utero exposure to methoxyfenozide. In these studies, methoxyfenozide was determined not to be a developmental toxicant.

In a 2–generation (1 litter/generation) reproduction study in rats, treatment-related parental toxicity was observed only at 20,000 ppm, the highest dose tested (HDT). At this dose, increased liver weights were observed in males and females of both generations and midzonal to periportal hepatocellular hypertrophy was observed in the livers of all males and females of both generations. The LOAEL for parental toxicity was 20,000 ppm (1,552/1,821 mg/kg/day for males/females,respectively) and the NOAEL was 2,000 ppm (153/181 mg/kg/day for males/females, respectively). There were no treatment-related effects on reproductive parameters for adult (parent) animals. The NOAEL for reproductive toxicity was 20,000 ppm. Since no treatment-related effects were observed in the pups, the NOAEL for neonatal toxicity was also, 20,000 ppm. The NOAEL for parental toxicity in this reproduction study is higher than the NOAEL for the 2–year combined chronic feeding/carcinogenicity study in rats because many of the toxic effects observed in the 2–year study at the LOAEL (hematological changes, liver toxicity, histopathological changes in the thyroid gland and increased adrenal weights) were not examined in the reproduction study.

4. *Subchronic toxicity*. In a 2–week range-finding dietary study in rats, treatment-related effects were observed at > 5,000 ppm in the liver (increased liver weights and hepatocellular hypertrophy in males and females), in the thyroid gland (hypertrophy/hyperplasia of follicular cells in males and females), and in the adrenal gland (increased adrenal weights and/or hypertrophy of the zona fasciculata in females). Hypertrophy/hyperplasia of thyroid follicular cells was also observed in males and females at 1,000 ppm, the lowest observed adverse effect level (LOAEL) in this study. The no observed adverse effect level (NOAEL) was 250 ppm. Treatment-related hematological changes were not observed in the rats in this study.

In a 3–month feeding study in rats, the predominant treatment-related effects were increased liver weights in males and females and periportal hepatocellular hypertrophy in all males and females at 20,000 ppm highest dose tested (HDT) and at 5,000 ppm. In addition, at 20,000 ppm, a slightly decreased (7–8%) RBC count and slightly decreased (7–8%) hemoglobin concentration, compared to control rats, were observed in the females. The LOAEL in this study was 5,000 ppm (353/379 mg/kg/day in males/females, respectively). The NOAEL was 1,000 ppm (69/72 mg/kg/day in males/females, respectively). Although observed in the 2–week dietary study and in the 2–year chronic feeding/carcinogenicity study in rats, treatment-related effects in the thyroid and adrenal glands were not observed in the rats in this 3–month study. There is no available biological explanation for this difference in findings in the studies.

In a 2–week range-finding study in dogs, treatment-related hematological changes were observed in both males and females at 3,500 ppm, 7,000 ppm, 15,000 ppm, and 30,000 ppm (HDT). These changes included decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, decreased MCHC, increased MCV, increased MCH, increased Heinz bodies, methemoglobinemia, changes in RBC morphology such as Howell-Jolly bodies and polychromasia, increased reticulocyte counts, increased nucleated RBC and increased platelet counts. At the same dose levels (> 3,500 ppm), increased spleen weights and/or enlarged spleens were also observed. At 7,000 ppm, plasma total bilirubin was increased. The LOAEL in this study was 3,500 ppm (90–184 mg/kg/day in males and females). The NOAEL was 300 ppm (11–16 mg/kg/day in males and females).

In a 3–month feeding study in dogs, no treatment-related effects other than a suggestion of decreased body weight gains in males and females were observed in either males or females at the HDT viz. 5,000 ppm (198/209 mg/kg/day in males/females, respectively). Although hematological effects were noted in dogs in the 2–week range-finding study > 3,500 ppm (90–184 mg/kg/day) and in the 1–year chronic feeding study at > 3,000 ppm (106/111 mg/kg/day), hematological changes were not observed in this 3–month study at 5,000 ppm (198/209 mg/kg/day). There is no available biological explanation for this difference in findings in the studies.

As part of the 3–month study in dogs, some male and female dogs were given 15 ppm (0.6 mg/kg/day) of methoxyfenozide in the diet for 15 weeks followed by an increase in the dietary dose to 15,000 ppm (422/460 mg/kg/day in males/females, respectively) for an additional 6 weeks. After about 2 weeks and 6 weeks at 15,000 ppm, hematological examinations were conducted. No hematological changes in these dogs were observed. Apparently, pretreatment of the dogs at 15 ppm for 15 weeks prevented the occurrence of hematological changes which would have been expected to occur based on results in the 2–week and 1–year feeding studies. One possible explanation is that the liver microsomal enzyme system may have been stimulated so much during pretreatment at 15 ppm that the metabolic (detoxification) rate of methoxyfenozide was increased to the point where blood levels of methoxyfenozide may have remained below critical effect levels at 15,000 ppm. Another possible explanation is that compensatory mechanisms for replacing damaged RBC in pretreated dogs may have been so efficient that hematological changes were not observed in these dogs even at 15,000 ppm. Other explanations for this finding are also possible.

5. *Chronic toxicity*. In a 2–year combined chronic feeding/

carcinogenicity study in rats, the following treatment-related effects were observed at 20,000 ppm (highest dose tested): decreased survival in males, decreased body weight and food efficiency in females during the last year of the study, hematological changes (decreased RBC counts, hemoglobin concentrations, and/or hematocrits; methemoglobinemia; and increased platelet counts) in males and females, increased liver weights and periportal hepatocellular hypertrophy in males and females, thyroid follicular cell hypertrophy in males, altered thyroid colloid in males and females, and increased adrenal weights in males and females. At 8,000 ppm, the following treatment-related effects were observed: hematological changes (decreased RBC counts, hemoglobin concentrations, and/or hematocrits in males and females), liver toxicity (increased liver weights in males and periportal hepatocellular hypertrophy in males and females), histopathological changes in the thyroid (increased follicular cell hypertrophy in males and altered colloid in males) and possible adrenal toxicity (increased adrenal weights in males and females). The LOAEL in this study was 8,000 ppm (411/491 mg/kg/day in males/females, respectively), based on the effects described above. The NOAEL was 200 ppm (10.2/11.9 mg/kg/day in males/females, respectively). This NOAEL was used to establish the reference dose (RfD) for methoxyfenozide. Utilizing an uncertainty factor of 100 to account for both interspecies extrapolation (10x) and intraspecies variability (10x), the chronic RfD for methoxyfenozide was calculated to be 0.10 mg/kg/day. No evidence of carcinogenicity was observed in this study. Dosing was considered adequate because of the decreased survival in males and the decreased body weights and food efficiency in females at 20,000 ppm. In addition, the HDT for both males and females, 20,000 ppm (1,045/1,248 mg/kg/day in males/females, respectively), is higher than the limit dose of 1,000 mg/kg/day.

In a 1–year chronic feeding study in dogs, the predominant toxic effects were anemia and signs of an associated compensatory response. At 30,000 ppm, the HDT, the following treatment-related effects were observed in both males and females: decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, methemoglobinemia, nucleated RBC, increased platelets, increased serum total bilirubin, bilirubinurea, increased hemosiderin in macrophages in liver and spleen, and increased hyperplasia in bone marrow of rib and sternum. Increased liver weights in males and females and increased thyroid weights in males were also observed at 30,000 ppm. Signs of anemia were also noted at 3,000 ppm and included decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, methemoglobinemia, increased platelets, and increased serum total bilirubin and bilirubinurea. The LOAEL in this study was 3,000 ppm (106/111 mg/kg/day in males/females, respectively). The NOAEL was 300 ppm (9.8/12.6 mg/kg/day in males/females, respectively).

6. *Animal metabolism*. In a metabolism study in rats, 14_C-methoxyfenozide was rapidly absorbed, distributed, metabolized and almost completely excreted within 48 hours. The major route of excretion was feces (86–97%) with lesser amounts in the urine (5–13%). An enterohepatic circulation was observed. The test material was metabolized principally by O-demethylation of the A-ring methoxy group and oxidative hydroxylation of the B-ring methyl groups followed by conjugation with glucuronic acid. No significant sex-related or dose-dependent differences in metabolic disposition were noted. Seven metabolites and the parent accounted for 74–90% of the administered dose in all groups. The glucuronide conjugates are considered to be less toxic than the parent compound because glucuronide conjugation is well known to be a commonly occurring ''detoxification'' mechanism in mammalian species since it results in the formation of more polar, more water-soluble metabolites which are readily and easily excreted from the body (in this case, in the bile and urine). Further, based on similarities of chemical structure, the non-conjugated metabolites would be expected to be no more toxic than the parent compound. In a dermal absorption study in rats using an 80% wettable powder formulation as the test material, the cumulative dermal absorption of test material after a 10– or 24–hour dermal exposure was determined to be 2%. In a 28–day dermal toxicity study in rats, no treatment-related systemic or skin effects were observed at the limit dose of 1,000 mg/kg/day (HDT). Regarding effects on endocrine organs, methoxyfenozide affected the thyroid gland and adrenal gland in the 2–week and 2–year feeding studies in rats. In the thyroid gland, hypertrophy/hyperplasia of follicular cells and altered colloid were observed in males and females at or near the LOAEL in both of these studies. In the adrenal gland, increased adrenal weights and hypertrophy of the zona fasciculata were also observed in males and females at or near the LOAEL. In addition, in the 1–year chronic feeding study in dogs, increased thyroid weight in males was observed, but only at the very high dose of 30,000 ppm. Since the definition and regulatory significance of the term ''endocrine disruptor chemical'' has not yet been established by the Agency, it is not clear whether methoxyfenozide, on the basis of these effects on the thyroid gland and adrenal gland, should be considered to be an ''endocrine disruptor chemical.'' Other than the morphological changes described above, there were no signs of thyroid or adrenal dysfunction in these or in any other studies on methoxyfenozide.

7. *Endocrine disruption*. Regarding effects on endocrine organs, methoxyfenozide affected the thyroid gland and adrenal gland in the 2–week and 2–year feeding studies in rats. In the thyroid gland, hypertrophy/hyperplasia of follicular cells and altered colloid were observed in males and females at or near the LOAEL in both of these studies. In the adrenal gland, increased adrenal weights and hypertrophy of the zona fasciculata were also observed in males and females at or near the LOAEL. In addition, in the 1–year chronic feeding study in dogs, increased thyroid weight in males was observed, but only at the very high dose of 30,000 ppm. Since the definition and regulatory significance of the term ''endocrine disruptor chemical'' has not yet been established by the Agency, it is not clear whether methoxyfenozide, on the basis of these effects on the thyroid gland and adrenal gland, should be considered to be an ''endocrine disruptor chemical.'' Other than the morphological changes described above, there were no signs of thyroid or adrenal dysfunction in these or in any other studies on methoxyfenozide.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.— From food and feed uses*. Tolerances have been established (40 CFR 180.544) for residues of methoxyfenozide on cotton, undelinted seed; cotton gin byproducts; pome fruit; apple pomace, wet; milk; meat of cattle, goats, hogs, horses and sheep and fat of cattle, goats, hogs, horses and sheep at 2.0, 35.0, 1.5, 7.0, 0.02, 0.02, 0.1 ppm and tolerances for the combined residues of methoxyfenozide and its glucuronide metabolite in liver of cattle, goats, hogs, horses and sheep and meat byproducts (except liver) of cattle, goats, hogs, horses and sheep at 0.1 and 0.02 ppm

respectively. Other petitions pending request tolerances for grapes at 1.0 ppm, raisins at 1.5 ppm, fruiting vegetables at 2.0 ppm, Leafy Vegetables (4A) at 25 ppm, Leaf Petioles (4B) at 10.0 ppm, Head and Stem Brassica (5A) at 6.5 ppm and Leafy Brassica Greens (5B) at 20.0 ppm. The current petition requests establishment of tolerances due to indirect or inadvertent residues of methoxyfenozide [benzoic acid, 3-methoxy-2-methyl-, 2–(3,5-dimethylbenzoyl)-2–(1,1-dimethylethyl) hydrazide] in or on root and tuber vegetables at 0.05 parts per million (ppm); leaves of root and tuber vegetables at 0.1 ppm; bulb vegetables at 0.1 ppm; leafy vegetables (except Brassica) at 0.2 ppm; Brassica vegetables at 0.2 ppm; and for indirect or inadvertent combined residues of methoxyfenozide and its metabolites RH–117,236 (free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid N-tert-butyl-N'-(3-hydroxy-2-methylbenzoyl) hydrazide), RH–151,055 (the glucose conjugate of RH–117,236; 3,5-dimethylbenzoic acid N-tert-butyl-N-[3(-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide) and RH–152,072 (the malonylglycosyl conjugate of RH–117,236) in or on legume vegetables at 0.05 ppm; foliage of legume vegetables at 8 ppm; forage, fodder, hay and straw of cereal grains at 7 ppm; grass forage, fodder and hay at 7 ppm; forage, fodder, straw and hay of non-grass animal feeds at 8 ppm; and herbs and spices at 8 ppm.

Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from methoxyfenozide as follows:

a. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide including the acute neurotoxicity study in rats, the developmental toxicity study in rats and the developmental toxicity study in rabbits. This risk is considered to be negligible.

b. *Chronic exposure and risk.* Rohm and Haas used the Dietary Exposure Evaluation Model (DEEM) software for conducting a chronic dietary (food) risk analysis. DEEM is a dietary exposure analysis system that is used to estimate exposure to a pesticide chemical in foods comprising the diets of the U.S. population, including population subgroups. DEEM contains food consumption data as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989–1992. Rohm and Haas assumed 100% of crops would be treated and contain methoxyfenozide residues at the tolerance level. The following tolerance levels were used in the analysis:

Commodity	Tolerance Level (parts per million) (ppm)
Cotton, undelinted seed	2.0
Pome fruits	1.5 ppm
Grapes	1.0 ppm
Raisins	1.5 ppm
Leafy Vegetables (4A)	25 ppm
Leaf Petioles (4B)	10.0 ppm
Head and Stem Brassica (5A)	6.5 ppm
Leafy Brassica Greens (5B)	20.0 ppm
Fruiting vegetables	2.0 ppm
Root and tuber vegetables	0.05 ppm
Leaves of root and tuber vegetables	0.1 ppm
Bulb vegetables	0.1 ppm
Leafy vegetables (except Brassica)	0.2 ppm
Brassica vegetables	0.2ppm
Legume vegetables	0.05 ppm
Herbs and spices	8 ppm
Milk	0.02 ppm
Meat*	0.02 ppm
Meat byproducts* (except liver)	0.02 ppm
Fat*	0.1 ppm
Liver	0.1 ppm

* of cattle, goats, hogs, horses and sheep.

Processing factors were also applied to grape juice (1.2x), grape juice concentrate (3.6x), apple juice/cider (1.3x), apple juice concentrate (3.9x), dried apples (8x), dried beef (1.92x), dried pears (6.25x), tomato juice (1.5x), tomato puree (3.3x), tomato paste (5.4x), tomato catsup (2.5x), dried tomatoes (14.3x), dehydrated onions (9x), white dry potatoes (6.5x), and dried veal (1.92x). The processing factors are default values from DEEM.

As shown in the following table, the resulting dietary food exposures occupy up to 28.3% of the Chronic PAD for the most highly exposed population subgroup, children 1–6 years old. These results should be viewed as conservative (health protective) risk estimates. Refinements such as use of percent crop-treated information and/or anticipated residue values would yield even lower estimates of chronic dietary exposure.

SUMMARY: CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)

Population Subgroup[1]	Exposure (mg/kg/day)	Percent of Chronic PAD[2]
U.S. Population – 48 States	0.0149	14.9
All infants (<1 year)	0.0144	14.4
Nursing Infants<1 year old	0.0084	8.4
Non-Nursing Infants < 1 year old	0.0169	6.9
Children 1–6 years old	0.0283	28.3
Children 7–12 years old	0.0193	19.3
Females 13 + (nursing)	0.0172	17.2
U.S. population (autumn season)	0.0150	15.0
U.S. population (winter season)	0.0151	15.1
U.S. population (spring season)	0.0152	15.2
Northeast region	0.0161	16.1
Western region	0.0161	16.1
Non-Hispanic whites	0.0150	15.0
Non-Hispanic/non-white/non-black	0.0171	17.1
Pacific region	0.0162	16.2

[1]The subgroups listed are: (1) The U.S. population (total); (2) Those for infants and children; (3) The other subgroup(s), if any, for which the percentage of the Chronic PAD occupied is greater than that occupied by the subgroup U.S.population (total); and, (4) The most highly exposed of the females subgroups (in this case, females, (13+ years, nursing).

[2]Percent chronic PAD = (Exposure divided by Chronic PAD) x 100%.

ii. *Drinking water— From drinking water.* The are no water-related exposure data from monitoring to complete a quantitative drinking water exposure analysis and risk assessment for methoxyfenozide. GENEEC and/or PRZM/EXAMS (both produce estimates of pesticide concentration in a farm pond) are used to generate EECs for surface water and SCI-GROW (an empirical model based upon actual monitoring data collected for a number of pesticides that serve as benchmarks) predicts EECs in ground water. These models take into account the use patterns and the environmental profile of a pesticide, but do not include consideration of the impact that processing raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models at this stage is to provide a coarse screen for assessing whether a pesticide is likely to be present in drinking water at concentrations which would exceed human health levels of concern.

A drinking water level of comparison (DWLOC) is the concentration of a pesticide in drinking water that would be acceptable as a theoretical upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. HED uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for a pesticide, the DWLOC is used as a point of comparison against the conservative EECs provided by computer modeling (SCI-GROW, GENEEC, PRZM/EXAMS).

a. *Acute exposure and risk.* Because no acute dietary endpoint was determined, Rohm and Haas concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

b. *Chronic exposure and risk.* Tier II screening-level assessments can be conducted using the simulation models SCI-GROW and PRZM/EXAMS to generate EECs for ground and surface water, respectively. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for methoxyfenozide (1.0 lb ai/acre/season). PRZM/EXAMS was used to generate the surface water EECs, because it can factor the persistent nature of the chemical into the estimates.

The EECs for assessing chronic aggregate dietary risk used by HED are 6 parts per billion (ppb) (in ground water, based on SCI-GROW) and 98.5 ppb (in surface water, based on the PRZM/EXAMS, long-term mean). The back-calculated DWLOCs for assessing chronic aggregate dietary risk range from 720 ppb for the most highly exposed population subgroup (children 1–6 years old) to 2,979 ppb for the U.S. population (48 contiguous States—all seasons).

The SCI-GROW and PRZM/EXAMS chronic EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for methoxyfenozide residues in drinking water as a contribution to chronic aggregate exposure. Rohm and Haas thus concludes with reasonable certainty that residues of methoxyfenozide in drinking water will not contribute significantly to the aggregate chronic human health risk and that the chronic aggregate exposure from methoxyfenozide residues in food and drinking water will not exceed the Agency's level of concern (100% of the cPAD) for chronic dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the cPAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, conservative, and very protective of human health.

DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE TO METHOXYFENOZIDE

Population Subgroup	Chronic PAD (mg/kg/d)	Food Exposure (m/kg/d)	Max. Water Exposure (mg/kg/d)[1]	SCI-GROW (µg/L)	GENEEC 56–Day Average (µg/L)	DWLOC (µ/L)%
U.S. Population –48 States	0.10	0.0149	0.0851	6	98.5	2,979
Females 13+ (nursing)	0.10	0.0171	0.0829	6	98.5	2,487
Non-Nursing>1 year old	0.10	0.0169	0.083	6	98.5	830
Children 1–6 years old	0.10	0.0283	0.0720	6	98.5	720
Children 7–12 years old	0.10	0.0193	0.0807	6	98.5	807

[1]Maximum Water Exposure (mg/kg/d) = Chronic PAD (mg/kg/day) - Chronic Food Exposure DWLOC (µ/L) = [Maximum water Exposure (mg/kg/d) x body weight (kg)] divided by [1/1000 mg/µ x water consumed daily (L/day)].

2. *Non-dietary exposure.* From non-dietary exposure. Methoxyfenozide is not currently registered for use on any residential non-food sites. Therefore, there is no non-dietary acute, chronic, short- or intermediate-term exposure.

D. Cumulative Effects

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

PA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, it is assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population* — i. *Acute risk.* Since no acute toxicological endpoints were established, Rohm and Haas considers acute aggregate risk to be negligible.

ii. *Chronic risk.* Using the DEEM exposure assumptions described in this unit, Rohm and Haas has concluded that aggregate exposure to methoxyfenozide from food will utilize 14.9% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1–6 years old at 28.3% of the cPAD and is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, the aggregate exposure is not expected to exceed 100% of the cPAD. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues.

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

Since there are currently no registered indoor or outdoor residential non-dietary uses of methoxyfenozide and no short or intermediate term toxic endpoints, Rohm and Haas considers short or intermediate term aggregate risks to be negligible.

iv. *Aggregate cancer risk for U.S. population.* Methoxyfenozide is classified as a ''not likely'' human carcinogen. Therefore this risk does is negligible.

v. *Determination of safety.* Based on these risk assessments, Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues.

2. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of methoxyfenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Prenatal and postnatal sensitivity.* The toxicology data base for methoxyfenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2–generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to methoxyfenozide.

iii. *Conclusion.* There is a complete toxicity data base for methoxyfenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the completeness of the data base and the lack of prenatal and postnatal toxicity, EPA determined that an additional safety factor was not needed for the protection of infants and children.

iv. *Acute risk.* Since no acute toxicological endpoints were established, acute aggregate risk is considered to be negligible.

v. *Chronic risk.* Using the exposure assumptions described in this unit, Rohm and Haas has concluded that aggregate exposure to methoxyfenozide from food will utilize 28.3% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, Rohm and Haas does not expect the aggregate exposure to exceed 100% of the cPAD.

vi. *Short- or intermediate-term risk.* Short and intermediate term risks are judged to be negligible due to the lack of significant toxicological effects observed.

vii. *Determination of safety.* Based on these risk assessments, Rohm and Haas concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to methoxyfenozide residues.

F. International Tolerances

There are no established or proposed Codex, Canadian or Mexican limits for residues of methoxyfenozide in/on plant or animal commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances discussed in this petition review.

3. Rohm and Haas Company

PP OF6213

EPA has received a pesticide petition (0F6213) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA, 19106–2399 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of methoxyfenozide [benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1- dimethylethyl) hydrazide] in or on the raw agricultural commodities field corn grain at 0.05 parts per million (ppm), sweet corn (K +CWHR) at 0.05 ppm, field corn forage at 15 ppm, field corn stover (fodder) at 105 ppm, corn oil at 0.2 ppm, aspirated grain factions at 1.0 ppm, corn silage at 5.0 ppm, sweet corn forage at 30 ppm, and sweet corn stover (fodder) at 60 ppm. In addition, this petition requests an increase in the established tolerance for residues of methoxyfenozide to 0.1 ppm in milk and an increase in the established tolerances for residues of methoxyfenozide and its glucuronide metabolite to 0.5 ppm in fat, to 0.4 ppm in liver and to 0.1 ppm in meat by products (except liver) of cattle, goats, horses, hogs and sheep. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of methoxyfenozide residues in plants and animals is adequately understood and was previously published in the **Federal Register** of July 5, 2000 (65 FR 41355)(FRL–6496–5). The qualitative nature of methoxyfenozide residues in rotation crop plants is adequately understood based upon ^{14}C confined rotation crop studies. The residue of concern for dietary exposure and tolerance setting purposes in rotation crops is the parent compound, methoxyfenozide and its metabolites RH-–117,236 (free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid N-tert-butyl-N'-(3-hydroxy-2-methylbenzoyl) hydrazide), RH–151,055 (the glucose conjugate of RH-117,236; 3,5-dimethylbenzoic acid N-tert-butyl-N-[3(-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide) and RH–152,072 (the malonylglycosyl conjugate of RH–117,236).

2. *Analytical method.* An high performance liquid chromatography using ultra violet Method TR 34-00-38 for the enforcement of tolerances in field and sweet corn matrices has been developed. Confirmatory method validation, radiovalidation, and independent method validation data have been submitted for this method. The validated limit of quantitation (LOQ) of the analytical method was 0.02 ppm in all matrices for methoxyfenozide.

3. *Magnitude of residues*— i. *Magnitude of the residue.* Geographically representative field trials with methoxyfenozide 80WP and 2F formulations were conducted to support the proposed tolerances on field and sweet corn. The results of the field trials indicate that residues of methoxyfenozide will not exceed the proposed tolerances of 0.05 ppm in field grain and sweet corn (K+CWHR), 15 ppm in field corn forage, 105 ppm in

field corn stover (fodder), 1.0 ppm in aspirated grain factions, 5.0 ppm in corn silage, 30 ppm in sweet corn forage and 60 ppm in sweet corn stover (fodder). A processing study was conducted and showed that residues concentrated in oil and a tolerance of 0.2 ppm is proposed.

ii. *Residues in meat, milk, poultry, and eggs*. The maximum theoretical dietary burden of methoxyfenozide for dairy or beef cattle associated with this petition and previous petition is estimated to be less than 75 ppm. Based on a feeding study with methoxyfenozide at 150 ppm, tolerances should be increased to 0.1 ppm in milk, to 0.5 ppm in fat, to 0.4 ppm in liver and to 0.1 ppm in meat by-products (except liver). The maximum theoretical dietary burden of methoxyfenozide for poultry animals associated with this petition (from cotton meal, corn meal and grain) was calculated to be 0.03 ppm.

A poultry feeding study was conducted at levels of 2 ppm, 6 ppm, and 20 ppm which are equivalent to 67x, 200x, and 1,500x, respectively, the maximum theoretical dietary burden for poultry. No detectable residues of methoxyfenozide were found in any of the muscle, fat or liver samples from any dose level. In eggs, no quantifiable residues (i.e., greater than the limit of quantitation of 0.01 ppm) of either methoxyfenozide or its glucuronide metabolite were found in any of the samples. Average residues of RH–1518 in liver from hens dosed at 6 ppm were 0.016 ppm while those in the liver of hens dosed at 20 ppm were 0.031 ppm. After a 7–day depuration period, no detectable residues of RH–1518 were found in the liver of hens dosed at 20 ppm. Assuming a linear relationship between dose and residues, the expected residues in eggs and poultry tissues would be below the LOD of 0.01 ppm for methods used to measure residues in poultry products. Rohm and Haas concludes that there is no reasonable expectation of finding finite residues in eggs and poultry tissues.

B. Toxicological Profile

1. *Acute toxicity*. Acute toxicity studies with technical grade: Oral LD_{50} in the rat is > 5,000 milligrams/kilograms (mg/kg) for males and females- Toxicity Category IV; Oral LD_{50} in the mouse is > 5,000 mg/kg for males and females-Toxicity Category IV; Dermal LD_{50} in the rat is > 2,000 mg/kg-Toxicity Category III; Inhalation LD_{50} in the rat is > 4.3 milligram/liter (mg/L)-Toxicity Category IV; Primary Eye Irritation in the rabbit -very mild irritant-Toxicity Category IV; Primary skin irritation in the rabbit-not a skin irritant-Toxicity Category IV. Methoxyfenozide is not a skin sensitizer.

In an acute neurotoxicity study in rats, statistically significant decreased hind limb grip strength was observed in male rats at 3 hours (approximate time of peak effect) following a single oral dose of 2,000 mg/kg (limit dose) of methoxyfenozide. Decreased hindlimb grip strength was also observed in the male rats at 7 and 14 days, but was not statistically significant. No other systemic or neurotoxic effects were observed in the male rats or in the female rats at any time in this study. Since this marginal effect occurred only in one sex, was statistically significant at only one time, was observed only at the high dose (limit dose) and no other signs of toxicity were observed in the rats in this study, this possible effect is not considered to be biologically significant. In addition, neither decreased hindlimb grip strength nor any other signs of neurotoxicity were observed in any of the animals at any time in a 90–day subchronic neurotoxicity study in rats.

2. *Genotoxicity*. In a battery of four mutagenicity studies (with and without metabolic activation, as appropriate for the specific study), technical grade methoxyfenozide was negative for genotoxicity in all four studies. The four studies satisfy the new revised mutagenicity guideline requirements for a new chemical (published in 1991). An additional mutagenicity study, performed on RH–117,236 (Metabolite M-B), a metabolite of methoxyfenozide, was also negative for genotoxicity.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study in rats, no signs of maternal toxicity in dams or of developmental toxicity in fetuses were observed at the limit dose of 1,000 mg/kg/day. The No Observed Adverse Effect Level (NOAEL) in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The Lowest Observed Adverse Effect Level (LOAEL) 1,000 mg/kg/day. Similarly, in a developmental toxicity study in rabbits, no signs of maternal toxicity or of developmental toxicity were observed at the limit dose of 1,000 mg/kg/day. The NOAEL in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The LOAEL was > 1,000 mg/kg/day.

In neither the developmental toxicity study in rats nor in the developmental toxicity study in rabbits was there any evidence for increased susceptibility of fetuses to *in utero* exposure to methoxyfenozide. In these studies, methoxyfenozide was determined not to be a developmental toxicant.

In a 2–generation (1 litter/generation) reproduction study in rats, treatment-related parental toxicity was observed only at 20,000 ppm, the HDT. At this dose, increased liver weights were observed in males and females of both generations and midzonal to periportal hepatocellular hypertrophy was observed in the livers of all males and females of both generations. The LOAEL for parental toxicity was 20,000 ppm (1,552/1,821 mg/kg/day for males/females, respectively) and the NOAEL was 2,000 ppm (153/181 mg/kg/day for males/females, respectively). There were no treatment-related effects on reproductive parameters for adult (parent) animals. The NOAEL for reproductive toxicity was 20,000 ppm. Since no treatment-related effects were observed in the pups, the NOAEL for neonatal toxicity was also, 20,000 ppm. The NOAEL for parental toxicity in this reproduction study is higher than the NOAEL for the 2–year combined chronic feeding/carcinogenicity study in rats because many of the toxic effects observed in the 2–year study at the LOAEL (hematological changes, liver toxicity, histopathological changes in the thyroid gland and increased adrenal weights) were not examined in the reproduction study.

4. *Subchronic toxicity*. In a developmental toxicity study in rats, no signs of maternal toxicity in dams or of developmental toxicity in fetuses were observed at the limit dose of 1,000 mg/kg/day. The NOAEL in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The LOAEL > 1,000 mg/kg/day. Similarly, in a developmental toxicity study in rabbits, no signs of maternal toxicity or of developmental toxicity were observed at the limit dose of 1,000 mg/kg/day. The NOAEL in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The LOAEL was > 1,000 mg/kg/day.

In neither the developmental toxicity study in rats nor in the developmental toxicity study in rabbits was there any evidence for increased susceptibility of fetuses to *in utero* exposure to methoxyfenozide. In these studies, methoxyfenozide was determined not to be a developmental toxicant.

In a 2–generation (1 litter/generation) reproduction study in rats, treatment-related parental toxicity was observed only at 20,000 ppm, the HDT. At this dose, increased liver weights were observed in males and females of both generations and midzonal to periportal hepatocellular hypertrophy was observed in the livers of all males and females of both generations. The LOAEL

for parental toxicity was 20,000 ppm (1,552/1,821 mg/kg/day for males/females, respectively) and the NOAEL was 2,000 ppm (153/181 mg/kg/day for males/females, respectively). There were no treatment-related effects on reproductive parameters for adult (parent) animals. The NOAEL for reproductive toxicity was 20,000 ppm. Since no treatment-related effects were observed in the pups, the NOAEL for neonatal toxicity was also, 20,000 ppm. The NOAEL for parental toxicity in this reproduction study is higher than the NOAEL for the 2–year combined chronic feeding/carcinogenicity study in rats because many of the toxic effects observed in the 2–year study at the LOAEL (hematological changes, liver toxicity, histopathological changes in the thyroid gland and increased adrenal weights) were not examined in the reproduction study.

5. *Chronic toxicity*. In a 2–year combined chronic feeding/carcinogenicity study in rats, the following treatment-related effects were observed at 20,000 ppm (highest dose tested): decreased survival in males, decreased body weight and food efficiency in females during the last year of the study, hematological changes (decreased RBC counts, hemoglobin concentrations, and/or hematocrits; methemoglobinemia; and increased platelet counts) in males and females, increased liver weights and periportal hepatocellular hypertrophy in males and females, thyroid follicular cell hypertrophy in males, altered thyroid colloid in males and females, and increased adrenal weights in males and females. At 8,000 ppm, the following treatment-related effects were observed: hematological changes (decreased RBC counts, hemoglobin concentrations, and/or hematocrits in males and females), liver toxicity (increased liver weights in males and periportal hepatocellular hypertrophy in males and females), histopathological changes in the thyroid (increased follicular cell hypertrophy in males and altered colloid in males) and possible adrenal toxicity (increased adrenal weights in males and females). The LOAEL in this study was 8,000 ppm (411/491 mg/kg/day in males/females, respectively), based on the effects described above. The NOAEL was 200 ppm (10.2/11.9 mg/kg/day in males/females, respectively). This NOAEL was used to establish the reference dose (RfD) for methoxyfenozide. Utilizing an uncertainty factor of 100 to account for both interspecies extrapolation (10x) and intraspecies variability (10x), the chronic RfD for methoxyfenozide was calculated to be 0.10 mg/kg/day. No evidence of carcinogenicity was observed in this study. Dosing was considered adequate because of the decreased survival in males and the decreased body weights and food efficiency in females at 20,000 ppm. In addition, the HDT for both males and females, 20,000 ppm (1,045/1,248 mg/kg/day in males/females, respectively), is higher than the limit dose of 1,000 mg/kg/day.

In a 1–year chronic feeding study in dogs, the predominant toxic effects were anemia and signs of an associated compensatory response. At 30,000 ppm, the HDT, the following treatment-related effects were observed in both males and females: decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, methemoglobinemia, nucleated RBC, increased platelets, increased serum total bilirubin, bilirubinurea, increased hemosiderin in macrophages in liver and spleen, and increased hyperplasia in bone marrow of rib and sternum. Increased liver weights in males and females and increased thyroid weights in males were also observed at 30,000 ppm. Signs of anemia were also noted at 3,000 ppm and included decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, methemoglobinemia, increased platelets, and increased serum total bilirubin and bilirubinurea. The LOAEL in this study was 3,000 ppm (106/111 mg/kg/day in males/females, respectively). The NOAEL was 300 ppm (9.8/12.6 mg/kg/day in males/females, respectively).

6. *Animal metabolism*. In a metabolism study in rats, 14C-methoxyfenozide was rapidly absorbed, distributed, metabolized and almost completely excreted within 48 hours. The major route of excretion was feces (86–97%) with lesser amounts in the urine (5–13%). An enterohepatic circulation was observed. The test material was metabolized principally by O-demethylation of the A-ring methoxy group and oxidative hydroxylation of the B-ring methyl groups followed by conjugation with glucuronic acid. No significant sex-related or dose-dependent differences in metabolic disposition were noted. Seven metabolites and the parent accounted for 74–90% of the administered dose in all groups. The glucuronide conjugates are considered to be less toxic than the parent compound because glucuronide conjugation is well known to be a commonly occurring ''detoxification'' mechanism in mammalian species since it results in the formation of more polar, more water-soluble metabolites which are readily and easily excreted from the body (in this case, in the bile and urine). Further, based on similarities of chemical structure, the non-conjugated metabolites would be expected to be no more toxic than the parent compound. In a dermal absorption study in rats using an 80% wettable powder formulation as the test material, the cumulative dermal absorption of test material after a 10- or 24–hour dermal exposure was determined to be 2%. In a 28–day dermal toxicity study in rats, no treatment-related systemic or skin effects were observed at the limit dose of 1,000 mg/kg/day (HDT). Regarding effects on endocrine organs, methoxyfenozide affected the thyroid gland and adrenal gland in the 2–week and 2–year feeding studies in rats. In the thyroid gland, hypertrophy/hyperplasia of follicular cells and altered colloid were observed in males and females at or near the LOAEL in both of these studies. In the adrenal gland, increased adrenal weights and hypertrophy of the zona fasciculata were also observed in males and females at or near the LOAEL. In addition, in the 1–year chronic feeding study in dogs, increased thyroid weight in males was observed, but only at the very high dose of 30,000 ppm. Since the definition and regulatory significance of the term ''endocrine disruptor chemical'' has not yet been established by the Agency, it is not clear whether methoxyfenozide, on the basis of these effects on the thyroid gland and adrenal gland, should be considered to be an ''endocrine disruptor chemical.'' Other than the morphological changes described above, there were no signs of thyroid or adrenal dysfunction in these or in any other studies on methoxyfenozide.

7. *Endocrine disruption*. Regarding effects on endocrine organs, methoxyfenozide affected the thyroid gland and adrenal gland in the 2–week and 2–year feeding studies in rats. In the thyroid gland, hypertrophy/hyperplasia of follicular cells and altered colloid were observed in males and females at or near the LOAEL in both of these studies. In the adrenal gland, increased adrenal weights and hypertrophy of the zona fasciculata were also observed in males and females at or near the LOAEL. In addition, in the 1–year chronic feeding study in dogs, increased thyroid weight in males was observed, but only at the very high dose of 30,000 ppm. Since the definition and regulatory significance of the term ''endocrine disruptor chemical'' has not yet been established by the Agency, it is not clear whether methoxyfenozide, on the basis of these effects on the thyroid

gland and adrenal gland, should be considered to be an ''endocrine disruptor chemical.'' Other than the morphological changes described above, there were no signs of thyroid or adrenal dysfunction in these or in any other studies on methoxyfenozide.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food.*— *From food and feed uses.* Tolerances have been established (40 CFR 180.544) for residues of methoxyfenozide on cotton, undelinted seed; cotton gin byproducts; pome fruit; apple pomace, wet; milk; meat and fat of cattle, goats, hogs, horses and sheep and for the combined residues of methoxyfenozide and its glucuronide metabolite in liver and meat byproducts (except liver) of cattle, goats, hogs, horses and sheep. The established tolerances are listed in the table below. Other petitions pending request tolerances for grapes, raisins, fruiting vegetables, Leafy Vegetables (4A), Leaf Petioles (4B), Head and Stem Brassica (5A) and Leafy Brassica Greens (5B), and tolerances due to indirect or inadvertent residues of methoxyfenozide [benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide] in or on root and tuber vegetables; leaves of root and tuber vegetables; bulb vegetables; leafy vegetables (except Brassica); Brassica vegetables; and for indirect or inadvertent combined residues of methoxyfenozide and its metabolites RH-117,236 (free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid N-tert-butyl-N'-(3-hydroxy-2-methylbenzoyl) hydrazide), RH–151,055 (the glucose conjugate of RH–117,236; 3,5-dimethylbenzoic acid N-tert-butyl-N-[3(-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide) and RH–152,072 (the malonylglycosyl conjugate of RH–117,236) in or on legume vegetables; foliage of legume vegetables; forage, fodder, hay and straw of cereal grains; grass forage, fodder and hay; forage, fodder, straw and hay of non-grass animal feeds; and herbs and spices. The proposed tolerances are listed in the table below. The current petition requests establishment of tolerances in field corn grain at 0.05 ppm, sweet corn (K+CWHR) at 0.05 ppm, field corn forage at 15 ppm, field corn stover (fodder) at 105 ppm, corn oil at 0.2 ppm, aspirated grain factions at 1.0 ppm, corn silage at 5.0 ppm, sweet corn forage at 30 ppm, and sweet corn stover (fodder) at 60 ppm. In addition, this petition requests an increase in the established tolerance for residues of methoxyfenozide to 0.1 ppm in milk and an increase in the established tolerances for residues of methoxyfenozide and its glucuronide metabolite to 0.5 ppm in fat, to 0.4 ppm in liver and to 0.1 ppm in meat by products (except liver) of cattle, goats, horses, hogs and sheep.

Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from methoxyfenozide as follows:

a. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide including the acute neurotoxicity study in rats, the developmental toxicity study in rats and the developmental toxicity study in rabbits. Since no acute toxicological endpoints were established, Rohm and Haas considers acute aggregate risk to be negligible.

b. *Chronic exposure and risk.* Rohm and Haas used the Dietary Exposure Evaluation Model (DEEM) software for conducting a chronic dietary (food) risk analysis. DEEM is a dietary exposure analysis system that is used to estimate exposure to a pesticide chemical in foods comprising the diets of the U.S. population, including population subgroups. DEEM contains food consumption data as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1994–1996. Rohm and Haas assumed 100 percent of crops would be treated and contain methoxyfenozide residues at the tolerance level. The following table shows the tolerance levels which were used in the analysis:

Commodity	Tolerance Level (parts per) million (ppm)
Cotton, undelinted seed	2.0
Pome fruit	1.5
Grapes	1.0
Raisins	1.5
Leafy Vegetables (4A)	25
Leaf Petioles (4B)	10.0
Head and Stem Brassica (5A)	6.5
Leafy Brassica Greens (5B)	20.0
Fruiting vegetables	2.0
Root and tuber vegetables	0.05
Leaves of root and tuber vegetables	0.1
Bulb vegetables	0.1
Legume vegetables	0.05
Herbs and spices	8
Corn, field, grain	0.05
Corn, field, forage	15
Corn, field, stover (fodder)	105
Corn, oil	0.2
Corn, aspirated grain fractions	1.0
Corn, silage	5.0
Corn, sweet (K+CWHR)	0.05
Corn, sweet, forage	30
Corn, sweet, stover (fodder)	60
Milk	0.1
Meat[1]	0.02
Meat byproducts[1] (except liver)	0.1
Fat[1]	0.5
Liver	0.4

[1]of cattle, goats, hogs, horses and sheep.

Processing factors were also applied to grape juice (1.2x), grape juice concentrate (3.6x), apple juice/cider (1.3x), apple juice concentrate (3.9x), dried apples (8x), dried pears (6.25x), tomato juice (1.5x), tomato puree (3.3x), tomato paste (5.4x), tomato catsup (2.5x), dried tomatoes (14.3x), dehydrated onions (9x), white dry potatoes (6.5x), sprouted soybean seeds (0.33x), corn grain sugar (high fructose corn syrup; 1.5x), dried beef (1.92x), and dried veal (1.92x). The processing factors are default values from DEEM.

As shown in the following table the resulting dietary food exposures occupy up to 34.5% of the Chronic PAD for the most highly exposed population subgroup, children 1–6 years old. These results should be viewed as conservative (health protective) risk estimates. Refinements such as use of percent crop-treated information and/or anticipated residue values would yield even lower estimates of chronic dietary exposure.

SUMMARY: CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)

Population Subgroup	Exposure (mg/kg/day)	% of Chronic PAD*
U.S. Population — 48 States	0.0176	17.6
All infants (< 1 year)	0.226	22.6
Nursing Infants < 1 year old	0.00678	6.8
Non-Nursing Infants < 1 year old	0.0273	27.3
Children 1-6 years old	0.0345	34.5

SUMMARY: CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)—Continued

Population Subgroup	Exposure (mg/kg/day)	% of Chronic PAD*
Children 7-12 years old	0.0200	20.0
Females 13+ (nursing)	0.0177	17.7
U.S. population (autumn season)	0.0181	18.1
U.S. population (winter season)	0.0178	17.8
U.S. population (spring season)	0.0178	17.8
Northeast region	0.0193	19.3
Western region	0.0195	19.5
Hispanics	0.0177	17.7
Non-Hispanic/non-white/non-black	0.0237	23.7

*Percent chronic PAD = (Exposure divided by Chronic PAD) x 100%

The subgroups listed are: (1) The U.S. population (total); (2) those for infants and children; (3) the other subgroup(s), if any, for which the percentage of the Chronic PAD occupied is greater than that occupied by the subgroup U.S. population (total); and, (4) the most highly exposed of the females subgroups (in this case, females, (13+ years, nursing).

ii. *Drinking water— From drinking water*. The are no water-related exposure data from monitoring to complete a quantitative drinking water exposure analysis and risk assessment for methoxyfenozide. GENEEC and/or PRZM/EXAMS (both produce estimates of pesticide concentration in a farm pond) are used to generate EECs for surface water and SCI-GROW (an empirical model based upon actual monitoring data collected for a number of pesticides that serve as benchmarks) predicts EECs in ground water. These models take into account the use patterns and the environmental profile of a pesticide, but do not include consideration of the impact that processing raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models at this stage is to provide a coarse screen for assessing whether a pesticide is likely to be present in drinking water at concentrations which would exceed human health levels of concern.

A drinking water level of comparison (DWLOC) is the concentration of a pesticide in drinking water that would be acceptable as a theoretical upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. HED uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for a pesticide, the DWLOC is used as a point of comparison against the conservative EECs provided by computer modeling (SCI-GROW, GENEEC, PRZM/EXAMS).

a. *Acute exposure and risk*. Because no acute dietary endpoint was determined, Rohm and Haas concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

b. *Chronic exposure and risk*. Tier II screening-level assessments can be conducted using the simulation models SCI-GROW and PRZM/EXAMS to generate EECs for ground and surface water, respectively. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for methoxyfenozide (1.0 lb ai/acre/season). PRZM/EXAMS was used to generate the surface water EECs, because it can factor the persistent nature of the chemical into the estimates.

The EECs for assessing chronic aggregate dietary risk used by HED are 6 parts per billion (ppb) (in ground water, based on SCI-GROW) and 98.5 ppb (in surface water, based on the PRZM/EXAMS, long-term mean). The back-calculated DWLOCs for assessing chronic aggregate dietary risk range from 655 ppb for the most highly exposed population subgroup (children 1–6 years old) to 2,884 ppb for the U.S. population (48 contiguous States—all seasons).

The SCI-GROW and PRZM/EXAMS chronic EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for methoxyfenozide residues in drinking water as a contribution to chronic aggregate exposure. Rohm and Haas thus concludes with reasonable certainty that residues of methoxyfenozide in drinking water will not contribute significantly to the aggregate chronic human health risk and that the chronic aggregate exposure from methoxyfenozide residues in food and drinking water will not exceed the Agency's level of concern (100% of the cPAD) for chronic dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the cPAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, conservative, and very protective of human health. The following table shows the drinking water level of comparison for chronic exposure to methoxyfenozine:

DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE TO METHOXYFENOZIDE

Population Subgroup	Chronic PAD (mg/kg/d)	Food Exposure (m/kg/d)	Max. Water Exposure (mg/kg/d)	SCI-GROW (µg/L)	GENEEC 56–Day Average (µg/L)	DWLOC (µg/L) %
U.S. Population - 48 States	0.10	0.0176	0.0824	6	98.5	2,884
Females 13+ (nursing)	0.10	.0177	0.0823	6	98.5	2,469
Non-Nursing Infants < 1 year old	0.10	0.0273	0.0727	6	98.5	727
Children 1-6 years old	0.10	0.0345	0.0655	6	98.5	655
Children 7-12 years old	0.10	0.0200	0.080	6	98.5	800

Maximum Water Exposure (mg/kg/d) = Chronic PAD (mg/kg/day) - Chronic Food Exposure DWLOC (µg/L) = [Maximum water Exposure (mg/kg/d) x body weight (kg)] divided by [1/1,000 mg/µg x water consumed daily (L/day)]. Body weights (kg) for adults is 70, for females 13+ is 60 kg and for all children is 10 kg. Drinking water consumption is 2 liters per day for adults and 1 liter per day for children.

2. *Non-dietary exposure*. Methoxyfenozide is not currently registered for use on any residential non-food sites. Therefore, there is no non-dietary acute, chronic, short- or intermediate-term exposure.

D. Cumulative Effects

Cumulative exposure to substances with a common mechanism of toxicity. Section 408(b)(2)(D)(v) requires that,

when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, it is assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the DEEM exposure assumptions described in this unit, Rohm and Haas has concluded that aggregate exposure to methoxyfenozide from food will utilize 17.6% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1–6 years old at 34.5% of the cPAD and is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, the aggregate exposure is not expected to exceed 100% of the cPAD. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues.

2. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infant and children to residues of methoxyfenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Prenatal and postnatal sensitivity.* The toxicology data base for methoxyfenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2–generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to methoxyfenozide.

iii. *Conclusion.* There is a complete toxicity data base for methoxyfenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the completeness of the data base and the lack of prenatal and postnatal toxicity, EPA determined that an additional safety factor was not needed for the protection of infants and children.

iv. *Acute risk.* Since no acute toxicological endpoints were established, acute aggregate risk is considered to be negligible.

v. *Chronic risk.* Using the exposure assumptions described in this unit, Rohm and Haas has concluded that aggregate exposure to methoxyfenozide from food will utilize 34.5% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, Rohm and Haas does not expect the aggregate exposure to exceed 100% of the cPAD.

vi. *Short- or intermediate-term risk.* Short and intermediate term risks are judged to be negligible due to the lack of significant toxicological effects observed.

vii. *Determination of safety.* Based on these risk assessments, Rohm and Haas concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to methoxyfenozide residues.

F. International Tolerances

There are no established or proposed Codex, Canadian or Mexican limits for residues of methoxyfenozide in/on plant or animal commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances discussed in this petition review.

[FR Doc. 01–6721 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–999; FRL–6766–8]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–999, must be received on or before April 18, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–999 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number/e-mail address	Petition(s) number
Shaja Brothers	Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address: brothers.shaja@epamail.epa.gov..	PP 0E6183, 0E6083, 0E6175
Joseph Tavano	Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6411; and e-mail address: tavano.joe@epamail.epa.gov..	PP 0F6220

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number PF–999. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–999 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–999. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 23, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required bysection 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Valent U.S.A. Corporation

0F6220

EPA has received a pesticide petition (OF6220) from Valent U.S.A. Corporation, 1333 North California Street, Suite 600, Walnut Creek, CA 945968025 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine in or on the raw agricultural commodity stone fruit at 1.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Metabolism of ^{14}C-pyriproxyfen labelled in the phenoxyphenyl ring and in the pyridyl ring has been studied in cotton, apples, tomatoes, lactating goats, and laying hens (and rats). The major metabolic pathways in plants is aryl hydroxylation and cleavage of the ether linkage, followed by further metabolism into more polar products by further oxidation and/or conjugation reactions. However, the bulk of the radiochemical residue on RAC samples remained as parent. Comparing metabolites detected and quantified from cotton, apple, tomato, goat and hen (and rat) shows that there are no significant aglycones in plants which are not also present in the excreta or tissues of animals. The residue of concern is best defined as the parent, pyriproxyfen. Ruminant and poultry metabolism studies demonstrated that transfer of administered ^{14}C-residues to tissues was low. Total ^{14}C-residues in goat milk, muscle and tissues accounted for less than 2% of the administered dose, and were less than 1 ppm in all cases. In poultry, total ^{14}C-residues in eggs, muscle and tissues accounted for about 2.7% of the administered dose, and were less than 1 ppm in all cases except for gizzard.

2. *Analytical method*. Practical analytical methods for detecting and measuring residue levels of pyriproxyfen (and relevant metabolites) have been developed and validated in/on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The extraction methodology has been validated using aged radiochemical residue samples from metabolism studies. The methods have been validated in cottonseed, apples, soil, and oranges at independent laboratories. EPA has successfully validated the analytical method for analysis of cottonseed raw agricultural commodity. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances.

3. *Magnitude of residues—stone fruit*. Seven field trials in cherries were conducted in 1998 through 1999. Similarly, 10 field trials were conducted for peaches, and 7 field trials were conducted for plums. The proposed use pattern for the three stone fruit crops is identical. The analytical data show that the average measured residue in/on cherry samples was 0.33 ppm (n = 14, σ_{n-1} = 0.20 ppm) pyriproxyfen. Similarly, the analytical data show that the average measured residue in/on peach samples was 0.16 ppm (n = 20, σ_{n-1} = 0.06 ppm), and in/on plum samples was 0.06 ppm (n = 14, σ_{n-1} = 0.06 ppm), of pyriproxyfen. A processing study in prunes demonstrated that pyriproxyfen concentrated in prunes (2.9–fold). The highest average residue (HAR) from field trials was 0.20 ppm. All these data support proposed tolerances for pyriproxyfen in/on stone fruit crop group at 1.0 ppm and no processed commodity tolerance is necessary.

i. *Secondary residues*. Using proposed tolerances to calculate the maximum feed exposure to fed animals, and using the very low potential for residue transfer documented in the milk cow feeding residue study, finite, detectable secondary residues in animal tissues, milk, and eggs are not expected. Therefore, tolerances are not proposed for these commodities.

ii. *Rotational crops*. The results of a confined rotational crops accumulation study indicate that no rotational crop planting restrictions or rotational crop tolerances are required.

B. Toxicological Profile

1. *Acute toxicity*. The acute toxicity of technical grade pyriproxyfen is low by all routes. The compound is classified as Category III for acute dermal and inhalation toxicity, and Category IV for acute oral toxicity, and skin/eye irritation. Pyriproxyfen is not a skin sensitizing agent.

2. *Genotoxicty*. Pyriproxyfen does not present a genetic hazard. Pyriproxyfen was negative in the following tests for mutagenicity: Ames assay with and

without S9, *in vitro* unscheduled DNA synthesis in HeLa S3 cells, *in vitro* gene mutation in V79 Chinese hamster cells, and *in vitro* chromosomal aberration with and without S9 in Chinese hamster ovary cells.

3. *Reproductive and developmental toxicity*. Pyriproxyfen is not a developmental or reproductive toxicant. Developmental toxicity studies have been performed in rats and rabbits, and multigenerational effects on reproduction were tested in rats. These studies have been reviewed and found to be acceptable to the Agency.

In the developmental toxicity study conducted with rats, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 milligrams/kilogram of body weight/day (mg/kg bw/day) during gestation days 7–17. Maternal toxicity (mortality, decreased body weight gain and food consumption, and clinical signs of toxicity) was observed at doses of 300 mg/kg bw/day and greater. The maternal NOAEL was 100 mg/kg bw/day. A transient increase in skeletal variations was observed in rat fetuses from females exposed to 300 mg/kg bw/day and greater. These effects were not present in animals examined at the end of the postnatal period, therefore, the NOAEL for prenatal developmental toxicity was 100 mg/kg bw/day. An increased incidence of visceral and skeletal variations was observed postnatally at 1,000 mg/kg bw/day. The NOAEL for postnatal developmental toxicity was 300 mg/kg bw/day.

In the developmental toxicity study conducted with rabbits, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 mg/kg bw/day during gestation days 6–18. Maternal toxicity (clinical signs of toxicity including one death, decreased body weight gain and food consumption, and abortions or premature deliveries) was observed at oral doses of 300 mg/kg bw/day or higher. The maternal NOAEL was 100 mg/kg bw/day. No developmental effects were observed in the rabbit fetuses. The NOAEL for developmental toxicity in rabbits was 1,000 mg/kg bw/day.

In the rat reproduction study, pyriproxyfen was administered in the diet at levels of 0, 200, 1,000, and 5,000 ppm through 2 generations of rats. Adult systemic toxicity (reduced body weights, liver and kidney histopathology, and increased liver weight) was produced at the 5,000 ppm dose (453 mg/kg bw/day in males, 498 mg/kg bw/day in females) during the pre-mating period. The systemic NOAEL was 1,000 ppm (87 mg/kg bw/day in males, 96 mg/kg bw/day in females). No effects on reproduction were produced at 5,000 ppm, the highest dose tested.

4. *Subchronic toxicity*. Subchronic oral toxicity studies conducted with pyriproxyfen technical in the rat, mouse and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of decreased body weight gain; increased liver weights; histopathological changes in the liver and kidney; decreased red blood cell counts, hemoglobin and hematocrit; altered blood chemistry parameters; and, at 5,000 and 10,000 ppm in mice, a decrease in survival rates. The NOAELs from these studies were 400 ppm (23.5 mg/kg bw/day for males, 27.7 mg/kg bw/day for females) in rats, 1,000 ppm (149.4 mg/kg bw/day for males, 196.5 mg/kg bw/day for females) in mice, and 100 mg/kg bw/day in dogs.

In a 4–week inhalation study of pyriproxyfen technical in rats, decreased body weight and increased water consumption were observed at 1,000 mg/m^3. The NOAEL in this study was 482 mg/m^3.

A 21–day dermal toxicity study in rats with pyriproxyfen technical did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg bw/day, the highest dose tested (HDT). In a 21–day dermal study conducted with KNACK®. Insect Growth Regulator the test material produced a NOAEL of 1,000 mg/kg bw/day (HDT) for systemic effects, and a NOAEL for skin irritation of 100 mg/kg bw/day.

5. *Chronic toxicity*. Pyriproxyfen technical has been tested in chronic studies with dogs, rats and mice. EPA has established a reference dose (RfD) for pyriproxyfen of 0.35 mg/kg bw/day, based on the NOAEL in female rats from the 2–year chronic/oncogenicity study. Effects cited by EPA in the Reference Dose Tracking Report include negative trend in mean red blood cell volume, increased hepatocyte cytoplasm and cytoplasm: nucleus ratios, and decreased sinusoidal spaces.

Pyriproxyfen is not a carcinogen. Studies with pyriproxyfen have shown that repeated high dose exposures produced changes in the liver, kidney and red blood cells, but did not produce cancer in test animals. No oncogenic response was observed in a rat 2–year chronic feeding/oncogenicity study or in a 78 week study on mice. The oncogenicity classification of pyriproxyfen is ''E'' (no evidence of carcinogenicity for humans).

Pyriproxyfen technical was administered to dogs in capsules at doses of 0, 30, 100, 300 and 1,000 mg/kg bw/day for 1–year. Dogs exposed to dose levels of 300 mg/kg bw/day or higher showed overt clinical signs of toxicity, elevated levels of blood enzymes and liver damage. The NOAEL in this study was 100 mg/kg bw/day.

Pyriproxyfen technical was administered to mice at doses of 0, 120, 600 and 3,000 ppm in diet for 78 weeks. The NOAEL for systemic effects in this study was 600 ppm (84 mg/kg bw/day in males, 109.5 mg/kg bw/day in females), and a LOAEL of 3,000 ppm (420 mg/kg bw/day in males, 547 mg/kg bw/day in females) was established based on an increase in kidney lesions.

In a 2–year study in rats, pyriproxyfen technical was administered in the diet at levels of 0, 120, 600, and 3,000 ppm. The NOAEL for systemic effects in this study was 600 ppm (27.31 mg/kg bw/day in males, 35.1 mg/kg bw/day in females). A LOAEL of 3,000 ppm (138 mg/kg bw/day in males, 182.7 mg/kg bw/day in females) was established based on a depression in body weight gain in females.

6. *Animal metabolism*. The absorption, tissue distribution, metabolism and excretion of ^{14}C-labeled pyriproxyfen were studied in rats after single oral doses of 2 or 1,000 mg/kg bw (phenoxyphenyl and pyridyl label), and after a single oral dose of 2 mg/kg bw (phenoxyphenyl label only) following 14 daily oral doses at 2 mg/kg bw of unlabelled material. For all dose groups, most (88–96%) of the administered radiolabel was excreted in the urine and feces within 2 days after radiolabeled test material dosing, and 92–98% of the administered dose was excreted within 7 days. Seven days after dosing, tissue residues were generally low, accounting for no more than 0.3% of the dosed ^{14}C. Radiocarbon concentrations in fat were higher than in other tissues analyzed. Recovery in tissues over time indicates that the potential for bioaccumulation is minimal. There were no significant sex or dose-related differences in excretion or metabolism.

7. *Metabolite toxicology*. Metabolism studies of pyriproxyfen in rats, goats and hens, as well as the fish bioaccumulation study demonstrate that the parent is very rapidly metabolized and eliminated. In the rat, most (88–96%) of the administered radiolabel was excreted in the urine and feces within 2 days of dosing, and 92–98% of the administered dose was excreted within 7 days. Tissue residues were low 7 days after dosing, accounting for no more than 0.3% of the dosed ^{14}C. Because parent and metabolites are not retained in the body, the potential for acute toxicity from *in situ,* formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure

to the parent at the MTD and consequent chronic exposure to the internally formed metabolites.

Seven metabolites of pyriproxyfen, 4'-OH-pyriproxyfen, 5''-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, PYPAC, 2-OH-pyridine and 2,5-diOH-pyridine, have been tested for mutagenicity (Ames) and acute oral toxicity to mice. All seven metabolites were tested in the Ames assay with and without S9 at doses up to 5,000 micro-grams per plate or up to the growth inhibitory dose. The metabolites did not induce any significant increases in revertant colonies in any of the test strains. Positive control chemicals showed marked increases in revertant colonies. The acute toxicity to mice of 4'-OH-pyriproxyfen, 5''-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, and PYPAC did not appear to markedly differ from pyriproxyfen, with all metabolites having acute oral LD_{50} values greater than 2,000 mg/kg bw. The two pyridines, 2-OH-pyridine and 2,5-diOH-pyridine, gave acute oral LD_{50} values of 124 (male) and 166 (female) mg/kg bw, and 1,105 (male) and 1,000 (female) mg/kg bw, respectively.

8. *Endocrine disruption*. Pyriproxyfen is specifically designed to be an insect growth regulator and is known to produce juvenoid effects on arthropod development. However, this mechanism-of-action in target insects and other arthropods has no relevance to any mammalian endocrine system. While specific tests, uniquely designed to evaluate the potential effects of pyriproxyfen on mammalian endocrine systems have not been conducted, the toxicology of pyriproxyfen has been extensively evaluated in acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histopathology of numerous tissues. The results of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, it is concluded that pyriproxyfen does not possess estrogenic or endocrine disrupting properties applicable to mammals.

C. Aggregate Exposure

1. *Dietary exposure*. An evaluation of chronic dietary exposure to include drinking water has been performed for the U.S. population and various sub-populations including infants and children. Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

i. *Food*. a. Chronic dietary exposure to pyriproxyfen residues was calculated for the U.S. population and 26 population subgroups assuming tolerance level residues and 100% of the crop treated. The results from several representative subgroups are listed in the table below. Chronic dietary exposure was at or below 0.705% of the reference dose, with stone fruit commodities contributing the most to chronic exposure. Generally speaking, the Agency has no cause for concern if total residue contribution for published and proposed tolerances is less than 100% of the RfD.

TIER I CALCULATED CHRONIC DIETARY EXPOSURES TO THE TOTAL U.S. POPULATION AND SELECTED SUB-POPULATIONS TO PYRIPROXYFEN RESIDUES IN FOOD

Population Subgroup	Exposure (mg/kg bw/day)	Percent of RfD
Total U.S. Population (all seasons)	0.000535	0.153
Females (13+/Nursing)	0.000597	0.171
Females (20+ years, not preg. or nursing)	0.000415	0.119
Children (1–6 Years)	0.001381	0.395
All Infants (<1 Year Old)	0.002156	0.616
Non-Nursing Infants (<1 Year Old)	0.002467	0.705
Nursing Infants (<1 Year Old)	0.001096	0.313

b. Acute dietary risk assessments are performed for a food use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as the result of a one day or single exposure. No acute dietary endpoint and dose was identified in the toxicology database for pyriproxyfen, therefore the Agency has concluded that there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Drinking water*. Since pyriproxyfen is applied outdoors to growing agricultural crops, the potential exists for pyriproxyfen or its metabolites to reach ground or surface water that may be used for drinking water. Because of the physical properties of pyriproxyfen, it is unlikely that pyriproxyfen or its metabolites can leach to potable groundwater. To quantify potential exposure from drinking water, surface water concentrations for pyriproxyfen were estimated using GENEEC 1.3. The average 56–day concentration predicted in the simulated pond water was 0.16 ppb. Using standard assumptions about body weight and water consumption, the chronic exposure to pyriproxyfen from this drinking water would be 4.57 x 10^{-6} and 1.6 x 10^{-5} mg/kg bw/day for adults and children, respectively; 0.0046 percent of the RfD (0.35 mg/Kg/day) for children. Based on this worse case analysis, the contribution of water to the dietary risk is negligible.

2. *Non-dietary exposure*. Pyriproxyfen is the active ingredient in numerous registered products for household use — primarily for indoor, non-food applications by consumers. The consumer uses of pyriproxyfen typically do not involve chronic exposure. Instead, consumers are exposed intermittently to a particular product (e.g., pet care pump spray) containing pyriproxyfen. Since pyriproxyfen has a relatively short elimination half-life, cumulative toxicological effects resulting from bioaccumulation are not plausible following short-term, intermittent exposures. Further, pyriproxyfen is short-lived in the environment and this indoor domestic use of pyriproxyfen provides only relatively short-term reservoirs. Thus, consumer use of these products results in acute- and short-term intermittent exposures.

No acute dermal, or inhalation dose or endpoint was identified in the toxicity data for pyriproxyfen. Similarly, doses and endpoints were not identified for short- and intermediate-term dermal or inhalation exposure to pyriproxyfen. The Agency has concluded that there are reasonable certainties of no harm from acute-, short-term, and intermediate-term dermal and inhalation occupational and residential exposures due to the lack of significant toxicological effects observed. Thus, no detailed exposure and risk analyses for non-dietary exposures to pyriproxyfen are necessary.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

There are no other pesticidal compounds that are structurally related to pyriproxyfen and have similar effects on animals. In consideration of potential cumulative effects of pyriproxyfen and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by pyriproxyfen would be cumulative with those of other chemical compounds. Thus, only the potential risks of pyriproxyfen have been considered in this assessment of aggregate exposure and effects.

Valent will submit information for EPA to consider concerning potential cumulative effects of pyriproxyfen consistent with the schedule established by EPA at 62 FR 42020 (Aug. 4, 1997) (FRL–5734–6) and other subsequent EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population*—i. *chronic dietary exposure and risk —adult sub-populations*. Using the Tier I dietary exposure assessment procedures described above for pyriproxyfen, calculated chronic dietary exposure resulting from residue exposure from existing and proposed uses of pyriproxyfen is minimal. The estimated chronic dietary exposure from food for the overall U.S. population and many non-child/infant subgroups is from 0.000338 to 0.000652 mg/kg bw/day, 0.097 to 0.186% of the RfD. Addition of the small but worse case potential chronic exposure from drinking water (calculated above) increases exposure by only 4.57 x 10^{-6} mg/kg bw/day and does not change the maximum occupancy of the RfD significatly. Generally, the Agency has no cause for concern if total residue contribution is less than 100% of the RfD. It can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. Population and many non-child/infant subgroups from aggregate, chronic exposure to pyriproxyfen residues.

ii. *Acute dietary exposure and risk—adult sub-populations*. An acute dietary dose and endpoint was not identified. Thus, the risk from acute aggregate exposure is considered to be negligible.

iii. *Non-dietary exposure and aggregate risk—adult sub-populations*. Acute-, short-term, and intermediate-term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed.

2. *Infants and children* —i. *safety factor for infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to 10–fold, for added protection for infants and children in the case of threshold effects unless EPA determines that a different margin of safety will be safe for infants and children.

The toxicological database for evaluating pre- and post-natal toxicity for pyriproxyfen is complete with respect to current data requirements. There are no special pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2-generation reproductive toxicity study in rats. Valent concludes that reliable data support use of the standard 100–fold uncertainty factor and that an additional uncertainty factor is not needed for pyriproxyfen to be further protective of infants and children.

ii. *Chronic dietary exposure and risk— infants and children*. Using the conservative Tier I exposure assumptions described above, the percentage of the RfD that will be utilized by chronic dietary (food only) exposure to residues of pyriproxyfen ranges from 0.000714 mg/kg bw/day for children (7–12 years old), up to 0.002467 mg/kg bw/day for non-nursing infants (<1 year old), 0.204 to 0.705% of the RfD, respectively. Adding the worse case potential incremental exposure to infants and children from pyriproxyfen in drinking water (1.6 x 10^{-5} mg/kg bw/day) does not materially increase the aggregate, chronic dietary exposure and only increases the occupancy of the RfD by 0.0046% to 0.710% for non-nursing infants (<1 year old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic exposure to pyriproxyfen residues.

iii. *Acute dietary exposure and risk — infants and children*. An acute dietary dose and endpoint was not identified. Thus, the risk from acute aggregate exposure is considered to be negligible.

iv. *Non-dietary exposure and aggregate risk — infants and children*. Acute-, short-term, and intermediate-term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed.

F. International Tolerances

There are no presently existing Codex MRLs for pyriproxyfen.

2. Interregional Research Project Number 4 (IR-4)

0E6083 and 0E6175

EPA has received pesticide petitions (0E6083 and 0E6175) from the Interregional Research Project Number 4 (IR-4), Technology Centre of New Jersey, 681 U.S. Highway #1 South, North Brunswick, New Jersey 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for the combined residues of the herbicide, pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its 3,5-dinitrobenzyl alcohol metabolite (CL 202347) in or on the following raw agricultural commodities: tree nuts (crop group 14) and pistachio at 0.1 parts per million (ppm), almond hull at 0.4 ppm, and fruiting vegetable (crop group 8) at 0.1 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by American Cyanamid Company, One Campus Drive, Parsippany, NJ 07054.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues of pendimethalin in plants is understood based on adequate studies conducted with ^{14}C pendimethalin on various crops. Pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite (CL202347) are the residues of concern.

2. *Analytical method*. Section 408 (b)(3) of the amended FFDCA requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above the limit of detection of the designated method. Gas Chromatography (GC) analytical methods, M691 and M692, are proposed as the enforcement method in tree nuts and pistachio as well as fruiting vegetables, for the residues of pendimethalin and the alcohol metabolite (CL 202347), respectively. Both methods have a limit of quantitation (LOQ) of 0.05 ppm for pendimethalin and the alcohol metabolite.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral lethal dose (LD_{50}) values for pendimethalin technical ranged from 1,050 to 1,250 milligrams/kilogram(mg/kg) body weight (bw) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rabbits. The 4–hour rat inhalation lethal concentration (LC_{50}) was >320 mg/cubic meter (m^3) air (aerosol). Pendimethalin was not irritating to rabbit skin or eyes. Pendimethalin did not cause skin sensitization in guinea pigs.

2. *Genotoxicity*. Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show pendimethalin to be non-genotoxic.

3. *Reproductive and developmental toxicity*. A 2–generation rat reproduction study gave a no observed adverse effect level (NOAEL) of 2,500 ppm (172 and 216 mg/kg bw/day in males and females, respectively) for reproductive toxicity and a lowest observed adverse effect level (LOAEL) of 5,000 ppm (346 and 436 mg/kg bw/day in males and females, respectively). Rat and rabbit developmental toxicity studies were negative at doses up to 500 mg/kg/bw and 60 mg/kg bw/day, respectively.

4. *Subchronic toxicity*. Ninty-day feeding studies were conducted in rats and dogs. The NOAELs for these tests were 500 ppm (50 mg/kg bw/day) and 62.5 mg/kg bw/day for the rat and dog studies, respectively.

5. *Chronic toxicity*. The reference dose (RfD) of 0.1 mg/kg/day was established based on a combination of three studies in male rats:

i. A 56–day oral thyroid function study,

ii. A 92–day thyroid function study; and

iii. A 14–day intrathyroidal metabolism study.

The NOAEL was established at 10 mg/kg/day. The LOAEL of 31 mg/kg/day was based on thyroid hormonal changes and histologic thyroid changes. An Uncertainty Factor (UF) of 100 was applied to account for both interspecies and intraspecies variability.

6. *Carcinogenicity*. Pendimethalin has been classified as a Group C, ''possible human carcinogen'', chemical by EPA, based on a statistically significant increased trend and pairwise comparison between the high dose group and controls for thyroid follicular cell adenomas in male and female rats. EPA recommends using the RfD approach for quantification of human risk. Therefore, the RfD is deemed protective of all chronic human health effects, including cancer.

7. *Animal metabolism*. Although not relevant to this petition, adequate goat and poultry metabolism studies are available for pendimethalin. The Agency has determined that there is no reasonable expectation of finite pendimethalin residues of concern in animal commodities as a result of use on multiple crops and no tolerances for pendimethalin residues of concern in livestock commodities are needed.

8. *Endocrine disruption*. It is known that pendimethalin affects the pituitary thyroid axis. However, as the RfD (0.10 mg/kg/day) is based on the reversible, non-adverse hormonal and histologic thyroid changes observed in the subchronic studies, these effects are already taken into consideration in the characterization of potential risks to humans.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Tolerances have been established (40 CFR 180.361) for the combined residues of pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite (CL 202347), in or on a variety of raw agricultural commodities at levels ranging from 0.05 ppm in rice grain to 0.1 ppm in corn, peanuts, soybeans and other commodities. Based on conservative assumptions of tolerance level residues and 100% crop treatment with pendimethalin, the EPA's Dietary Risk Elimination System (DRES) estimates chronic dietary exposure to pendimethalin from all currently registered uses to be only 0.00042 mg/kg/day (< 1% RfD) for the overall U.S. population. The estimated most highly exposed DRES subgroup for pendimethalin is non-nursing infants at a level of 0.00140 mg/kg/day (<2% RfD). Thus, American Cyanamid Company believes that the additional dietary burdens (0.000002 mg/kg/day, 0.002% RfD for the general U.S. population), that will result from the proposed tolerances of pendimethalin in tree nuts and pistachio will be insignificant. Also, American Cyanamid Company believes that the additional dietary burdens (0.000217 mg/kg/day, 0.2% RfD for the general U.S. population and (0.000085 mg/kg/day, 0.1% RfD for non-nursing infants), that will result from the proposed tolerances of pendimethalin in fruiting vegetables will be insignificant.

ii. *Drinking water*. Pendimethalin has low water solubility and a strong absorption to soil, which makes it essentially immobile in all soil types. Thus, there is no concern for the potential for pendimethalin to runoff to surface water or leach to ground water. No Maximum Concentration Level and no Health Advisory Level has been established for residues of pendimethalin in drinking water. The Agency has conducted a pendimethalin drinking water exposure analysis for a 10 kg child and determined that a chronic exposure from a worse-case dietary intake of 0.0018 mg/kg/day would utilize < 2% of the RfD. Thus, American Cyanamid Company believes that contributions to the dietary burden from residues of pendimethalin in water would be inconsequential.

2. *Non-dietary exposure*. Pendimethalin is currently registered for use on the following residential and non-food sites: Ornamental lawns, grasses, ground covers, turf, and ornamental plantings. The Agency has stated that it does not consider that these types of outdoor residential uses constitute a chronic residential exposure scenario. Although there may be short- and intermediate-term non-occupational exposure scenarios, American Cyanamid Company has concluded that the margins of exposure for residential applicators exposure (MOE 833) and residential post-application exposures to children (MOE 111) are more than adequate.

D. Cumulative Effects

The Agency has not yet published guidelines to determine whether pendimethalin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for

which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pendimethalin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, it is assumed that pendimethalin does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, American Cyanamid Company concludes that the total aggregate exposure to pendimethalin from food will utilize less than 1% of the RfD for the overall U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pendimethalin in drinking water and from non-dietary, non-occupational exposures, American Cyanamid Company does not expect the aggregate exposure to exceed 100% of the RfD. The additional dietary burden for the general U.S. population that will result from the proposed tolerances of pendimethalin in tree nuts and pistachio will be only 0.000002 mg/kg/day, 0.002% RfD. Also, the additional dietary burden for the general U.S. population that will result from the proposed tolerances of pendimethalin in fruiting vegetables will be only 0.000217 mg/kg/day, 0.2% RfD. Thus, American Cyanamid Company concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pendimethalin residues as a result of the establishment of the proposed tolerances in tree nuts and pistachio and the establishment of the proposed tolerances in fruiting vegetables.

2. *Infants and children*. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year old. In assessing the potential for additional sensitivity of infants and children to residues of pendimethalin, the data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat have been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. The pre- and post-natal toxicology database for pendimethalin is complete with respect to current toxicological data requirements. The database does not indicate a potential for increased sensitivity from pre- and post-natal exposure. No developmental toxicity was observed in either the rat or rabbit developmental toxicity studies, nor was there any evidence in the 2-generation toxicity study that there was developmental or reproductive toxicity at dose levels below those in which parental toxicity was observed. For rabbits, the developmental toxicity NOAEL was > 60 mg/kg/day, at the highest dose tested (HDT). The maternal NOAEL was > 60 mg/kg/day, based upon mortality observed at 125 mg/kg/day in a pilot study. For rats, there were no maternal or developmental effects at any dose level and the NOAELs were > 500 mg/kg/day, the HDT. In the 2-generation reproductive toxicity study in rats, the reproductive NOAEL was 172 mg/kg/day. The reproductive LOAEL of 346 mg/kg/day was based on decreased pup weight, which occurred in the presence of parental (systemic) toxicity at 346 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional 10–fold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on current toxicological data requirements, the toxicology database for pendimethalin is complete.

Furthermore, for pendimethalin, the reproductive NOAEL of 172 mg/kg/day is 17–fold higher than the NOAEL of 10 mg/kg/day used for the RfD. Additionally, the reproductive LOAEL occurred in the presence of parental (systemic) toxicity and there was no evidence of developmental toxicity in either the rat or the rabbit studies. Therefore, American Cyanamid Company believes that these proposed tolerances do not represent any unacceptable pre- or post-natal risk to infants and children.

Using the conservative exposure assumptions described above, EPA has previously concluded that aggregate exposure to pendimethalin from food will utilize less than 2% of the RfD for infants and children. The additional dietary burden for non-nursing infants, (<1 year old) that will result from the proposed tolerances of pendimethalin in tree nuts and pistachio will be zero. The additional dietary burden for non-nursing infants, (<1 year old) that will result from the proposed tolerances of pendimethalin in fruiting vegetables will be only 0.000085 mg/kg/day, 0.1% of the RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pendimethalin in drinking water and from non-dietary, non-occupational exposure, American Cyanamid Company does not expect the aggregate exposure to exceed 100% of the RfD. Thus, American Cyanamid Company concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pendimethalin residues.

F. International Tolerances

There are no CODEX, Canadian or Mexican International Maximum Residue Levels (MRLs) established for residues of pendimethalin in tree nuts and pistachio, almond hull or in fruiting vegetables at this time.

3. Interregional Research Project Number 4 (IR)

0E6183

EPA has received a pesticide petition (0E6183) from the Interregional Research Project Number 4 (IR 4), Rutgers University, New Brunswick, NJ, 08903–0231 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide carfentrazone-ethyl (ethyl-α-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzene-propanoate)and the metabolite carfentrazone-ethyl chloropropionic acid (α, 2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on the raw agricultural commodity within the crop subgroup caneberry at 0.1 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by FMC Corporation, Agricultural Products Group, Philadelphia, PA 19103.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of carfentrazone-ethyl in plants is adequately understood. The residues of concern are the combined residues of carfentrazone-ethyl and carfentrazone-ethyl-chloropropionic acid.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of carfentrazone and its metabolites in or on food with a limit of quantitation that allows monitoring of food with residues at or above the levels set in the tolerances. The analytical method for carfentrazone-ethyl involves separate analyses for parent and its metabolites. The parent is analyzed by gas chromatography/electron capture detection (GC/ECD). The metabolites are derivatized with boron trifluoride and acetic anhydride for analysis by gas chromatography/mass spectrometry detection (GC/MSD) using selective ion monitoring.

3. *Magnitude of residues*. Carfentrazone-ethyl 40 DF was applied to 4 caneberry trials in the appropriate EPA regions. The caneberries were harvested at the appropriate growth stages and subsequent analyses determined that the residues of carfentrazone-ethyl and its metabolites would not exceed the proposed tolerances of 0.1 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Carfentrazone-ethyl demonstrates low oral, dermal and inhalation toxicity. The acute oral lethal dose (LD_{50}) value in the rat was greater than 5,000 mg/kg, acute dermal LD_{50} value in the rat was greater than 4,000 mg/kg, and the acute inhalation lethal concentration(LC_{50}) value in the rat was greater than 5.09 mg/L/4h. Carfentrazone-ethyl is non-irritating to rabbit skin and minimally irritating to rabbit eyes. It did not cause skin sensitization in guinea pigs. An acute neurotoxicity study in the rat had a systemic No Observed Adverse Effect Level (NOAEL) of 500 mg/kg based on clinical signs and decreased motor activity levels; the NOAEL for neurotoxicity was greater than 2,000 mg/kg highest dose tested (HDT) based on the lack of neurotoxic clinical signs or effects on neuropathology.

2. *Genotoxicity*. Carfentrazone-ethyl did not cause mutations in the Ames assay with or without metabolic activation. There was a positive response in the chromosome aberration assay without activation but a negative response with activation. The mouse micronucleus assay (an *in vivo* test which also measures chromosome damage), the CHO/HGPRT forward mutation assay and the unscheduled DNA synthesis assay were negative. The overwhelming weight of the evidence supports the conclusion that carfentrazone-ethyl is not genotoxic.

3. *Reproductive and developmental toxicity*. Carfentrazone-ethyl is not considered to be a reproductive or a developmental toxin. In the 2-generation reproduction study, the NOAEL for reproductive toxicity was greater than 4,000 ppm (greater than 323 to greater than 409 mg/kg/day). In the developmental toxicity studies, the rat and rabbit maternal NOAELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOAEL for the rabbit was greater than 300 mg/kg/day (HDT), and for the rat the NOAEL was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs at 1,250 mg/kg/day. These two findings (thickened and wavy ribs) are not considered adverse effects of treatment but related delays in rib development which are generally believed to be reversible.

4. *Subchronic toxicity*. Ninty-day feeding studies were conducted in mice, rats and dogs with carfentrazone-ethyl. The NOAEL for the mouse study was 4,000 ppm (571 mg/kg/day), for the rat study was 1,000 ppm (57.9 mg/kg/day for males; 72.4 mg/kg/day for females) and for dogs was 150 mg/kg/day. A 90–day subchronic neurotoxicity study in the rat had a systemic NOAEL of 1,000 ppm (59.0 mg/kg/day for males; 70.7 mg/kg/day for females) based on decreases in body weights, body weight gains and food consumption at 10,000 ppm; the neurotoxicity NOAEL was greater than 20,000 ppm (1,178.3 mg/kg/day for males; 1,433.5 mg/kg/day for females) (HDT).

5. *Chronic toxicity*. Carfentrazone-ethyl is not carcinogenic to rats or mice. A 2–year combined chronic toxicity/carcinogenicity study in the rat was negative for carcinogenicity and had a chronic toxicity NOAEL of 200 ppm (9 mg/kg/day) for males and 50 ppm (3 mg/kg/day) for females based on red fluorescent granules consistent with porphyrin deposits in the liver at the 500 and 200 ppm levels, respectively. An 18 month carcinogenicity study in the mouse had a carcinogenic NOAEL that was greater than 7,000 ppm (>1,090 mg/kg/day for males; >1,296 mg/kg/day for females) based on no evidence of carcinogenicity at the HDT. A 1–year oral toxicity study in the dog had a NOAEL of 50 mg/kg/day based on isolated increases in urine porphyrins in the 150 mg/kg/day group (this finding was not considered adverse).

Using the Guidelines for Carcinogen Risk Assessment, carfentrazone-ethyl should be classified as Group ''E'' for carcinogenicity — no evidence of carcinogenicity — based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18–month feeding study in mice and a 2–year feeding study in rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment is not necessary.

6. *Animal metabolism*. The metabolism of carfentrazone-ethyl in animals is adequately understood. Carfentrazone-ethyl was extensively metabolized and readily eliminated following oral administration to rats, goats, and poultry via excreta. All three animals exhibited a similar metabolic pathway.

7. *Endocrine disruption*. An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects was reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that carfentrazone-ethyl causes endocrine effect.

C. Aggregate Exposure

1. *Dietary exposure—Acute*. Based on the available toxicity data, the EPA has established an acute Reference Dose (aRfD) for carfentrazone-ethyl of 5 mg/kg/day. The aRfD for carfentrazone-ethyl is based on acute neurotoxicity study in rats with a threshold NOAEL of 500 mg/kg/day and an uncertainty factor of 100.

Chronic. Based on the available toxicity data, the EPA has established a chronic Reference Dose (cRfD) for carfentrazone-ethyl of 0.03 mg/kg/day. The cRfD for carfentrazone-ethyl is based on a 2–year chronic toxicity/carcinogenicity study in rats with a threshold NOAEL of 3 mg/kg/day and an uncertainty factor of 100. For purposes of assessing the potential chronic dietary exposure, a Tier 1 dietary risk assessment was conducted based on the Theoretical Maximum Residue Contribution (TMRC) from the established and proposed tolerances for carfentrazone-ethyl, as follows: 0.1 ppm in or on wheat grain; 0.3 ppm in or on wheat hay; 0.2 ppm in or on wheat straw; 1.0 ppm in or on cereal grain forage (except corn and sorghum); 0.1 ppm in or on sorghum and corn (sweet and field) forage, 0.15 ppm in or on stover and 0.1 ppm in or on sweet corn, K+ CWHR (kernels plus cob with husk removed), in or on the soybean seed at 0.1 ppm, in or on cotton at 3.5 ppm, in

or on cotton gin byproducts, in or on cottonseed (undelinted) and 0.2 ppm in/on caneberry at 0.1 ppm. (The TMRC is a ''worse case'' estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels). In conducting this exposure assessment, the following very conservative assumptions were made-100% of soybeans, cotton and cereal grains will contain carfentrazone-ethyl residues and those residues would be at the level of the tolerance which result in an overestimate of human exposure.

i. *Food*. Dietary exposure from the proposed uses would account for 0.1% or less of the aRfD in subpopulations (including infants and children). Dietary exposure from the proposed uses would account for 3.2% or less of the cRfD in subpopulations (including infants and children).

ii. *Drinking water*. Studies have indicated that carfentrazone-ethyl will not move into groundwater, therefore water has not been included in the dietary risk assessment.

2. *Non-dietary exposure*. The potential for non-occupational exposure to the general population has not been fully assessed.

D. Cumulative Effects

EPA is also required to consider the potential for cumulative effects of carfentrazone-ethyl and other substances that have a common mechanism of toxicity. FMC does not have information to indicate that toxic effects produced by carfentrazone-ethyl would be cumulative with those of any other chemical compounds; thus only the potential risks of carfentrazone-ethyl are considered in this exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described and based on the completeness and reliability of the toxicity data, the aggregate exposure to carfentrazone-ethyl will utilize 0.06% of the aRfD and 1.4% of the cRfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result from aggregate exposure to residues of carfentrazone-ethyl, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of carfentrazone-ethyl, EPA considers data from developmental toxicity studies in the rat and rabbit and the 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects on the reproductive capacity of males and females exposed to the pesticide. Developmental toxicity was not observed in developmental toxicity studies using rats and rabbits. Subsequently, there was no reproductive toxicity observed in the 2–generation reproduction study in rats as well.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, FMC concludes that the database relative to pre- and post-natal effects for children is complete and an additional uncertainty factor is not warranted. Therefore at this time, the RfD of 0.03 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above, the percent of the RfD that will be utilized by aggregate exposure to residues of carfentrazone-ethyl for non-nursing infants (<1 year old) would be 0.08% of the aRfD and 3.0% of the cRfD; for children 1–6 years of age would be 0.08% of the aRfD and 3.2% of the cRfD, (the most highly exposed group). Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of carfentrazone-ethyl including all anticipated dietary exposure.

F. International Tolerances

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for carfentrazone-ethyl on any crops at this time.

[FR Doc. 01–6731 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181080; FRL–6772–3]

Bifenazate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture to use the pesticide bifenazate (CAS No. 149877–41–8) to treat up to 200 acres of greenhouse tomatoes to control spider mites. The Applicant proposes a first food use of this pesticide. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket control number OPP–181080, must be received on or before April 3, 2001.

ADDRESSES: Comments 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 control number OPP–181080 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 308–9362; fax number: 703 308–5433; e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of potentially affected entities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–181080. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181080 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181080. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Texas Department of Agriculture has requested the Administrator to issue a specific exemption for the use of bifenazate on greenhouse tomatoes to control spider mites. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that currently registered alternatives do not provide adequate control of spider mites. Texas greenhouse production of tomatoes utilizes an intensive integrated pest managment (IPM) program with dependence on beneficial insects for control of primary insects and mites. In addition, greenhouse tomato production uses an indeterminate variety of tomatoes that are harvested year round. For these reasons, pesticide products are needed which have a short preharvest interval (PHI <= 3 days), are efficacious against two-spotted spider mites while being safe to beneficial insects and bees, and are labeled for use on greenhouse tomatoes. The Applicant claims that the three chemicals currently registered for

use in greenhouses: Dicofol, Abamectin, and Cinnamaldehyde do not meet all of the above qualifications. It is further claimed that the predator normally used to control two-spotted spider mites does not perform well on tomato plants.

The Applicant feels that for those greenhouse growers using biological agents, bifenazate will provide a much needed alternative because of its specificity to spider mites and its relative safety to beneficial insects. It is felt that the effectiveness of the product against multiple tetranychid species makes it useful for single-species and concurrent, multi-species infestations as well as for sequential infestations with two or more species. The Applicant estimates that for the major greenhouse producer, 25% of the 2,000 crop was affected by spider mites. Plants affected with spider mites lose 60% of their value when the secondary effect on quality is included. The difference in gross revenue for the requested use acreage is predicted to be $12,228,000 when using the requested pesticide over the next best alternative.

The Applicant proposes to make no more than two applications of Floramite miticide (EPA Reg. No. 400–481), containing 50% bifenazate, to 200 acres of greenhouse tomatoes in Texas. The product may be applied at a rate of 8 to 16 oz. of product (4-8 oz. of active ingredient (a.i.)) per acre; no more than 16 oz. of product may be applied per acre per year. Application will occur year round throughout the state. Under this exemption, a maximum of 200 lbs. of product (100 lbs. a.i.) may be applied over the course of the year.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a first food use of a chemical. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 20, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–6730 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6954–1]

Preparation of Third U.S. Climate Action Report

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for public comments.

SUMMARY: In June 1992, the United States signed the United Nations Framework Convention on Climate Change (UNFCCC). Pursuant to the national communication reporting requirements under Articles 4.2 and 12 of the Convention and to guidelines later adopted by the UNFCCC Conference of the Parties (COP), the United States submitted the first U.S. Climate Action Report (USCAR) to the UNFCCC Secretariat in 1994 and the second in 1997. The U.S. Government is currently preparing the third national communication, which is due to the UNFCCC secretariat no later than November 30, 2001. The purpose of this announcement is to notify interested members of the public of this process and to solicit contributions and input on the issues covered in the national communication before the draft text is released for public review (in summer of 2001).

DATES: Written comments should be received on or before noon, April 18, 2001. However, comments received after that date will still be welcomed and will be considered during preparation of the report.

ADDRESSES: Comments should be submitted to: Mr. Reid P. Harvey, U.S. Environmental Protection Agency, Office of Atmospheric Programs (Mail Stop 6204N), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments may also be e-mailed to *harvey.reid@epa.gov* or faxed to 202–565–6673. Overnight or courier deliveries should be sent to the office location at 633 3rd Street, NW., Washington, DC, 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Reid P. Harvey, Office of Atmospheric Programs, U.S. Environmental Protection Agency at (202) 564–9429.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the UNFCCC's reporting requirements as specified in Articles 4.2 and 12, and following reporting guidelines developed (and adopted by the UNFCCC COP at its first session), the United States prepared the U.S. Climate Action Report (CAR) and submitted it to the UNFCCC Secretariat in October 1994.

The CAR provided a description of the U.S. program designed to reduce emissions to 1990 levels by the year 2000. The initial CAR incorporated much of the information contained in the first Climate Change Action Plan announced by President Clinton and Vice President Gore on October 19, 1993.

At the Second COP, the Parties requested developed country Parties to the Convention to submit to the UNFCCC Secretariat, in accordance with Articles 12.1 and 12.2 of the Convention, a second national communication by April 15, 1997. Parties that submitted first reports in 1996 were to provide an update by the 1997 deadline and Parties with economies in transition were to provide their second communication by April 15, 1998. Developing country Parties have different guidelines and due dates for their national communications. The United States submitted its second national communication to the UNFCCC Secretariat in July 1997.

At the Fifth COP, the Parties updated the guidelines for preparation of national communications (see FCCC/CP/1999/7). This document is available on the Internet at *http://www.unfccc.de/resource/cop5.html.* In addition, the Parties requested that third national communications be submitted no later than November 30, 2001.

The Third United States Climate Action Report (CAR)

The third CAR will review key elements contained in the Climate Change Action Plan, including: an update on key baseline assumptions; a review and assessment of activities to date under the actions listed in the plan; and an update of the list of actions reflecting changes initiated by responsible agencies since the plan was first proposed in 1993.

In keeping with international guidelines, the third CAR will provide an inventory of U.S. greenhouse gas emissions and sinks, estimate effects of mitigation measures and policies on future emissions levels, and describe U.S. involvement in international programs, including associated contributions and funding efforts.

In addition, the text will include a discussion of U.S. national circumstances that affect U.S. vulnerability and responses to climate change. Information on the U.S. Global Change Research Program, Global Climate Observing Systems (GCOS), and adaptation programs will also presented.

Table of Contents of the Third US CAR

I. Executive summary
II. National circumstances
III. Greenhouse gas inventory
IV. Policies and measures
V. Projections and effects of policies and measures
VI. Vulnerability assessment, climate change impacts, and adaptation measures
VII. Financial resources and transfer of technology
VIII. Research and systematic observation
IX. Education, training, and public awareness

Public Input Process

This Federal Register notice solicits contributions and comments on all aspects to be covered in the third US CAR and in particular, on issues related to non-federal, state, regional, local, and private sector actions to address climate change. The document will be modeled closely on the format of the second CAR. Comments may be submitted to the contact listed above.

In addition, the U.S. will release the draft text of the Third CAR for review and comment in the summer of 2001. Comments on that document will be due within 30 days of release. Because of the tight time constraints on completing and printing the final text, a longer review period will not be possible.

We invite input now on all aspects of the document currently under development, including its content, format, and graphics. Comments received in response to this Federal Register notice will be considered in the preparation of the draft of the third national communication.

You may view the 1997 U.S. Climate Action Report on the Internet at: *http://www.state.gov/www/global/oes/97climate_report/index.html.*

Dated: March 8, 2001.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 01–6704 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6951–8]

Proposed CERCLA Prospective Purchaser Agreement; Doc's Auto Salvage Site; Minneapolis, Hennepin County, Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States as delegated, notice is hereby given of a proposed prospective purchaser agreement concerning the Doc's Auto Salvage site at 580 Eighth Avenue North and 519 Tenth Avenue North, Minneapolis, Hennepin County, Minnesota, with the Metropolitan Council. The agreement requires the Metropolitan Council to pay $1,000 to the EPA Hazardous Substances Superfund; to exercise due care at the site with respect to the existing contamination; and to provide access to the site and to records kept by the Metropolitan Council, retaining any such records for at least ten (10) years after the effective date of the agreement. The agreement includes a covenant not to sue or to take any other civil or administrative action against the Metropolitan Council for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with respect to existing contamination at or from the site. For thirty (30) days following the date of publication of this notice, the United States will receive all written comments relating to the agreement. The United States will consider all comments and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. Please contact Christine M. Liszewski at (312) 886–4670 to make arranges to inspect the comments.

DATES: Comments must be submitted on or before April 18, 2001.

ADDRESSES: The proposed settlement is available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. A copy of the proposed agreement may be obtained from Christine M. Liszewski, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–4670. Comments should reference the Doc's Auto Salvage prospective purchaser agreement, and should be addressed to Christine M. Liszewski.

FOR FURTHER INFORMATION CONTACT: Christine M. Liszewski, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–4670.

Dated: January 3, 2001.

Douglas Ballotti,

Acting Director, Superfund Division, U.S. EPA Region 5.

[FR Doc. 01–6682 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6952–2]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601–9675, notice is hereby given that a proposed purchaser agreement (''Purchaser Agreement'') associated with the Exeter Superfund Site (''Site''), City of Hopewell, Virginia was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under section 107 of CERCLA, 42 U.S.C. 9607, against the City of Hopewell, Virginia, and H.D.C., L.L.C. (''Purchasers''). The settlement would require the Purchasers to, among other things, (1) pay to EPA the sum of $50,000 within thirty (30) days of the effective date of the Purchaser Agreement, (2) remove and dispose of all remaining asbestos found on the Site, in compliance with all federal and state laws and regulations governing asbestos abatement.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Purchaser Agreement. The Agency's response to any comments received will be available for public

inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before April 18, 2001.

Availability: The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Purchaser Agreement may be obtained from Natalie L. Katz (3RC42), Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Exeter Superfund Site, Prospective Purchaser Agreement'' and ''EPA Docket No. CERC–PPA–2000–0005,'' and should be forwarded to Natalie Katz at the above address.

FOR FURTHER INFORMATION CONTACT: Natalie L. Katz (3RC42), Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2615.

Dated: March 2, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 01–6706 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6953–4]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Metro-Plating Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the Metro-Plating Superfund site in Detroit, Wayne County, Michigan. The settlement resolves an EPA claim under section 107(a) of CERCLA against Jerome W. Crawford. The settlement requires the settling party to pay $2,000 to the Hazardous Substances Superfund and includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). However, the agreement does not protect the settling party from the following: (1) The settling party's failure to abide by the terms of the agreement; (2) costs incurred or to be incurred by the settling party that do not meet the definition of past response costs; (3) the settling party's liability for injunctive relief or administrative order enforcement under section 106 of CERCLA, 42 U.S.C. 9606; (4) criminal liability; and (5) natural resource damages.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the United States Environmental Protection Agency, Region 5 Records Center, 7th Floor, 77 W. Jackson Blvd, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before April 18, 2001.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the United States Environmental Protection Agency, Region 5 Records Center, 7th Floor, 77 West Jackson Blvd, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from William Ryczek, United States Environmental Protection Agency, Region 5, Mail Code SE–5J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7184. Comments should reference the Metro-Plating Superfund site, Detroit, Wayne County, Michigan and EPA Docket No. ZW00C615 and should be addressed to William Ryczek at the address shown above.

FOR FURTHER INFORMATION CONTACT: William Ryczek, U.S. EPA Region 5, Mail Code SE–5J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7184.

Dated: February 27, 2001.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 01–6710 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6953–8]

Clean Water Act Section 303(d): Availability of Proposed Determinations That Total Maximum Daily Loads (TMDLs) Are Not Needed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of EPA's determination that TMDLs are not needed for 26 waterbody/pollutant combinations in the Mermentau and Vermilion/Teche River Basins because new data and information show that water quality standards are being met. This proposed action would result in the removal of 26 waterbody/pollutant combinations from the Louisiana 303(d) list. EPA prepared the proposed determinations in response to a court order dated October 1, 1999, in the lawsuit *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Under this court order, EPA is required to prepare TMDLs when needed for waters on the Louisiana 1998 section 303(d) list by December 31, 2007. The court order also requires EPA to add or delete waters to the schedule as new data confirms that waters are or are not meeting water quality standards.

DATES: Comments on the 26 proposed determinations that TMDLs are not needed must be submitted in writing to EPA on or before April 18, 2001.

ADDRESSES: Comments on the proposed determinations should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for the proposed determinations is available for public inspection at this address as well. Documents from the administrative record file may be viewed at www.epa.gov/region6/water/tmdl.htm, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra*

Club, et al. v. *Clifford et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. Discussion of the court's order may be found at 65 FR 54032 (September 6, 2000).

EPA SEEKS COMMENTS ON 26 PROPOSED DETERMINATIONS THAT TMDLS ARE NOT NEEDED

Waterbody	Waterbody description	Suspected pollutant	Reason for delisting
050101	Bayou Des Cannes—Headwaters to Mermentau River.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
050103	Bayou Mallet	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
050201	Bayou Plaquemine Brule, Headwaters to Bayou Des Cannes.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
050901	Mermentau River Basin, Coastal.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060802	Vermilion River—From New Flanders Ambassador Caffery Bridge.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060904	Vermilion River B890 Basin, New Iberia Southern Drainage Canal.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060907	Franklin Canal	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
061101	Bayou Petite Anse	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060804	Intracoastal Waterway	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060901	Bayou Petite Anse	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
050402	Lake Arthur and Lower Mermentau.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
050602	Intracoastal Waterway	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
050701	Grand Lake	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
050702	Intracoastal Waterway	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
050703	White Lake	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060205	Bayou Teche—Headwaters at Bayou Courtableau to I–10.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060212	Chatlin Lake Canal and Bayou DuLac.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060701	Tete Bayou	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060702	Lake Fausse Point and Dauterive Lake.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060906	Intracoastal Waterway	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060910	Boston Canal and Associated Canals (Estuarine).	Oil & Grease	Assessment of new data and information shows it is Meeting WQS.
061103	Freshwater Bayou Canal	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
050501	Bayou Que de Tortue Headwaters to Mermentau River.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060902	Bayou Carlin (Delcambre Canal)—Lake Peigneur To Bayou Petite Anse.	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
060803	Vermilion River Cutoff	Oil & Grease	Assessment of new data and information shows it is meeting WQS.
061102	Intracoastal Waterway	Oil & Grease	Assessment of new data and information shows it is meeting WQS.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the 26 proposed determinations that TMDLs are not needed. EPA will review all data and information submitted during the public comment period and revise the determinations where appropriate.

Dated: March 7, 2001.

Joan E. Brown,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 01–6680 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 7, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 18, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls—CC Docket No. 92–77; 47 CFR Sections 64.703(a), 64.709, 64.710.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 1500.

Estimated Time Per Response: 466.1 hours (avg.).

Total Annual Burden: 669,157 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $198,000.

Frequency of Response: On occasion.

Needs and Uses: The Commission adopted rules to further the goals of 47 U.S.C. Section 226. Pursuant to Section 64.703(a), operator service providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. Section 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. Section 64.710 requires providers of interstate operator services of inmates at correctional institutions to identify themselves, audibly and distinctly, to the party to be billed, among other things. The disclosure rules will make it easier for callers using operator services provided at call aggregator phones, and prison-inmate phones, to obtain immediately the cost of the call, prior to the call being connected. The Commission has reviewed rates and charges contained in informational tariffs and instituted several formal as well as numerous informal investigations on receiving complaints from consumers, or on its own initiative, when OSP rates and related aggregator surcharges appeared to have been excessive.

OMB Control No.: 3060–0715.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information—CC Docket No. 96–116.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 6832.

Estimated Time Per Response: 90.28 hrs (avg.).

Total Annual Burden: 616,817 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $229,500.

Frequency of Response: On occasion; Third party disclosure.

Needs and Uses: In CC Docket No. 96–115, the Commission established rules to implement 47 U.S.C. Section 222. The rules are intended to further Congress's goals of fostering competition in telecommunications markets and to ensure the privacy of customer information. Among other things, carriers are permitted to use CPNI, without customer approval, under certain conditions. Carriers must obtain express customer approval to use CPNI to market service outside the customer's existing service relationship. Carriers must provide a one-time notification of customers' CPNI rights prior to any solicitation for approval. Carriers must maintain such records for a period of at least one year. Carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI. Carriers must establish a supervisory review process regarding carrier compliance with the rules in 47 CFR Part 64 for outbound marketing situations. All carriers must obtain on an annual basis a certification signed by a current officer attesting that he or she has personal knowledge that the carrier is in compliance with the Commission's rules. LECs must disclose aggregate customer information to others upon request. Section 222(c)(2) requires carriers to provide a customer's CPNI to any person designated in the written authorization. Telecommunications common carriers must provide subscriber list information gathered in their capacity as providers of telephone exchange service to any person upon request for the purpose of publishing directories. Carriers are obligated to provide updated subscriber list information and notices of changes in subscriber list information to the extent those changes reflect customers decision to cease having a telephone number listed.

OMB Approval No.: 3060–0206.

Title: Part 21—Multipoint Distribution Service.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 15,858.

Estimated Hours Per Response: Ranges from 0.083 hrs to 10 hrs depending on rule section.

Frequency of Response: On occasion.
Cost to Respondents: $1,244,000.
Estimated Total Annual Burden: 10,221 hours.
Needs and Uses: The information requested under Part 21 is used by the Commission staff to fulfill its obligations as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended, to determine the technical, legal and other qualifications of applicants to operate a station in the MDS services. The information is also used to determine whether grant of an application will service the public interest, convenience and necessity, as required by Section 309 of the Communications Act. The staff also uses this information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–6633 Filed 3–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 8, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 18, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0939.
Title: E911, Second Memorandum Opinion and Order.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for-profit, not-for-profit institutions, state, local or tribal government.
Number of Respondents: 50.
Estimated Time Per Response: 1 hour.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 50 hours.
Total Annual Cost: N/A.
Needs and Uses: In an effort to minimize delays in Enhanced 911 rule implementation, the Second Memorandum Opinion and Order provides that, in the case of disputes between wireless carriers and public safety answering points regarding E911 transmission methods or other technology, the parties involved may petition for Commission assistance in resolving their dispute. Thus, in order for the Commission to participate in negotiations, petitioners will have to provide the Commission with certain data concerning the dispute.

OMB Control No.: 3060–0959.
Title: Compatibility Between Systems and Consumer Electronics Equipment.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for-profit and not-for-profit institutions.
Number of Respondents: 102 respondents; 104 responses.
Estimated Time Per Response: 14–80 hours.
Frequency of Response: On occasion and semi-annual reporting requirements, and third party disclosure requirement.
Total Annual Burden: 1,720 hours.
Total Annual Cost: N/A.
Needs and Uses: The Report and Order imposes labeling requirements on digital television (DTV) receivers and other consumer electronics receiving devices. The requirements are designed to ensure that consumers understand the capability of digital television equipment to operate with cable television systems. The Report and Order also requires the cable and consumer electronics industries to report at intervals to the Commission on progress in implementing earlier agreements on technical standards for direct connection of digital television receivers to digital cable systems and on providing tuning and program scheduling information to support the navigation function of DTV receivers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–6634 Filed 3–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 7, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 18, 2001. If you anticipate that you will be

submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0411.

Title: Procedures for Formal Complaints Filed Against Common Carriers.

Form No.: FCC Form 485.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 760.

Estimated Time Per Response: .50–20 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, third party disclosure requirement and other reporting requirements.

Total Annual Burden: 15,436 hours.

Total Annual Cost: $165.00 per respondent or a total annual estimated cost of $125,400.

Needs and Uses: The Order on Reconsideration addresses several petitions for reconsideration and/or clarification of our rules that amended the procedures governing complaints filed against common carriers. In the First Report and Order, the Commission adopted rules designed, inter alia, to expedite the resolution of formal complaints filed against common carriers pursuant to Section 208 of the Act, and in the Second Report and Order, adopted the Accelerated Docket rules. The Order on Reconsideration also modifies specific rules governing pre-filing letters, answers, replies, payment verification requirements, and supplemental complaints for damages. The information will be used by Commission staff to determine the sufficiency of complaints and to resolve the merits of disputes between the parties.

OMB Control No.: 3060–0655.

Title: Requests for Waivers of Regulatory Fees Predicated on Allegations of Financial Hardship, MD Docket No. 94–19.

Form No.: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents: 240.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement.

Total Annual Burden: 240 hours.

Total Annual Cost: $3,200.

Needs and Uses: This information collection has been revised to include Section 8 waiver requests. Section 9 of the Communications Act of 1934, authorizes the FCC to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement, policy and rulemaking activities and its user information services. Licensees and permittees may request waiver of those fees. A number of requests for waivers are based on grounds of financial hardship but lack sufficient documentation to support a finding that a waiver should be granted. As a result, the FCC set forth the types of documentation that it will rely on to determine if waivers should be granted because of financial hardship, in order to give guidance to parties requesting waivers. Where parties have filed insufficient information with their waiver requests, the Commission will afford them the opportunity to perfect their waiver requests by making a showing set forth in MD Docket 94–19.

OMB Control No.: 3060–0108.

Title: Emergency Alert System, EAS Activation Report.

Form No.: FCC Form 201.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 1,300.

Estimated Time Per Response: .084 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 109 hours.

Total Annual Cost: N/A.

Needs and Uses: The Emergency Alert System (EAS) Activation Report postcard was developed as part of the EAS planning program. The program is a tri-agency agreement between the FCC, the NOAA National Weather Service, and the Federal Emergency Management Agency (FEMA). The National Advisory Committee recommended this postcard for use in the program.

The postcard allows the three agencies to assess the success of the program and identify the areas of the country that need further assistance in developing their local EAS plan.

OMB Control No.: 3060–0589.

Title: FCC Remittance Advice and Continuation Sheet.

Form No.: FCC Form 159 and 159–C.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 635,738.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 317,869 hours.

Total Annual Cost: N/A.

Needs and Uses: This form is being revised to include Facility Identification Number (FAC ID). This form is required for payment of regulatory fees, and for use when paying for multiple filings with a single payment instrument, or when paying by credit card. This form requires specific information to track payment history, and to facilitate the efficient and expeditious processing of collections by a lockbox bank.

The information will be used by the FCC for the purpose of collecting reporting any delinquent amounts arising of such person's relationship with the government.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–6635 Filed 3–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 7, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a)

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 18, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0355.

Title: Rate of Return Reports.

Form No.: FCC Forms 492 and 492A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 107.

Estimated Time Per Response: 8 hrs (avg.).

Total Annual Burden: 856 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Annually; Recordkeeping.

Needs and Uses: FCC Form 492 is filed by each local exchange carrier (LEC) or group of carriers who file individual access tariffs or who are not subject to sections 61.41 through 61.49 of the Commission's Rules. Each LEC or group of affiliated carriers subject to the previously stated sections file FCC Form 492A. Both forms are filed annually. The reports contain rate of return information and are needed to enable the Commission to fulfill its regulatory responsibilities.

OMB Control No.: 3060–0789.

Title: Modified Alternative Plan—CC Docket No. 90–571 (1997 Suspension Order).

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 35.

Estimated Time Per Response: 13.48 hrs (avg.).

Total Annual Burden: 472 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third party disclosure.

Needs and Uses: In CC Docket No. 9–571, the Commission suspended enforcement of the coin sent-paid requirement until 8/26/98. The Commission required that payphones be made accessible to TRS users during the suspension period pursuant to the Alternative Plan as set forth in a Memorandum Opinion and Order and Order issued in CC Docket No. 90–571. Among other things, the Alternative Plan requires the industry to: (1) Send a consumer education letter to TRS centers; (2) inform organizations representing the hearing and speech disability community before attending their regional and national meetings who will be present at the meeting, where the industry booth will be located and at what times the booth will be in operation; (3) publish an article in Consumer Action Network (CAN) respective organizations' magazines or newsletters; (4) send a letter directly to all CAN's members; (5) create laminated cards with visual characters that will provide a pictorial explanation to accompany the text describing access to TRS centers from payphones to be distributed to TRS users; and (6) work jointly with affected communities to draft and submit a report. The Commission imposed the third party disclosure requirements to educate TRS users about their ability to make relay calls from payphones, the payment methods available and the rates for the payphone calls. The report will help the Commission assess the effectiveness of the current consumer education programs.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–6636 Filed 3–16–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–37–G (Auction No. 37); DA 01–619]

Auction for FM Broadcast Construction Permits Postponed Until December 5, 2001; Freeze on FM Minor Change Applications Lifted

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the postponement of Broadcast Auction 37 and the lifting of the freeze on FM minor change applications.

DATES: Auction No. 37 is rescheduled for December 5, 2001.

FOR FURTHER INFORMATION: Auction and Industry Analysis Division: Kathy Garland, Wireless Telecommunications Bureau at (717) 338–2888; Kenneth Burnley, Legal Branch at (202) 418–0660. Audio Services Division: Lisa Scanlan at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released March 7, 2001. The complete text of the public notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

General Information

The Wireless Telecommunications Bureau and the Mass Media Bureau (collectively referred to as the ''Bureaus'') announce that the upcoming auction of vacant non-reserved band allotments in the FM broadcast service, scheduled to begin on May 9, 2001, is postponed until December 5, 2001, for reasons of administrative convenience. Except for the dates listed, the information provided in previous public notices remains unchanged. (See *''Auction Notice and Filing Requirements for FM Broadcast Construction Permits; Auction Rescheduled from February 21, 2001 to May 9, 2001; Minimum Opening Bids and Other Procedural Issues,'' 66 FR 8961 (February 5, 2001)*).

The new schedule is as follows:

Start Date for Submission of FCC Form 175—September 24, 2001

FCC Form 175 Filing Deadline—October 5, 2001

Upfront Payments—November 5, 2001
Mock Auction—December 3, 2001
Auction Begins—December 5, 2001

As a result of this action, the FM Minor Change Application Freeze Public Notice announced on January 19, 2001, (not published in the **Federal Register**) and scheduled to be effective from March 7, 2001 to March 19, 2001, is no longer necessary, and is lifted. The temporary freeze on minor change applications was designed to ensure that conflicts do not occur between minor change and preferred auction site proposals, a result that could add uncertainty and delay to the auction process. The freeze also applied to reserved band minor change applications because conflicts between such applications and preferred site coordinates are also possible.

Federal Communications Commission.

Lisa Scanlan,

Supervisory Attorney, Audio Services Division, Mass Media Bureau.

[FR Doc. 01–6693 Filed 3–16–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Occasional Qualitative Surveys.

OMB Number: 3064–0127.

Annual Burden:

Estimated annual number of respondents: 5,000.

Estimated time per response: 1 hour.

Average annual burden hours: 5,000 hours.

Expiration Date of OMB Clearance: March 31, 2001.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before April 18, 2001 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The collection involves the occasional use of qualitative surveys to gather anecdotal information about regulatory burden, problems or successes in the bank supervisory process (including both safety-and-soundness and consumer-related exams), and similar concerns.

Dated: March 13, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–6684 Filed 3–16–01; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Emergency Management Exercise Reporting System (EMERS) which collects data on the results of a State or local exercise or actual disaster response.

SUPPLEMENTARY INFORMATION: EMERS was designed in 1992 as a means of capturing information on the positive and negative results based on the conduct of an emergency management exercise or an actual disaster response. The revised EMERS 2.0 is an automated data collection software program that is Windows-based and will allow State and local emergency managers to download the program from a FEMA web site. It is based on 13 functional areas: Alert/Notification (Emergency Response); Warning (Public); Communication; Coordination/Control; Emergency Public Information; Damage Assessment; Health & Medical; Individual/Family Assistance; Public Safety; Public Works/Engineering; Transportation; Resource Management; and Continuity of Government.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Public Law 93–288, as amended) title III, section 313, states:

> The President shall conduct annual reviews of activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such program and consistency in policies for reimbursement of States under this Act.

Title VI, section 613 (a)(5) concerning financial contributions to States for necessary and essential State and local emergency preparedness personnel and administrative expenses provides that the State ''shall make such report in such form and content as the Director may require.''

Collection of Information

Title: Emergency Management Exercise Reporting System (EMERS).

Type of Information Collection: Reinstatement, with change of a previously approved collection for which approval has expired.

OMB Number: 3067–0248.

Form Numbers: 95–44.

Abstract: EMERS is an automated data collection software program that captures the positive and negative results of emergency management exercises and actual disaster occurrences. This data is used to analyze the capabilities of State and local governments to respond to disasters. FEMA will use this data to determine areas of strengths and weaknesses and actions that can be taken at the national level to improve programs that deliver funding to State and local governments. State and local governments use EMERS data to track exercise activity on an annual basis and to use the lessons learned for the development of corrective action plans, strategic planning and budgeting.

Affected Public: State, Local and/or Tribal Government.

Estimated Total Annual Burden Hours: 4,668.

Estimated Cost: Cost to the Federal Government is $122,449. The cost to State and local governments is $89,700.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Bruce Hildebrand, Preparedness, Training & Exercises Directorate, Readiness Division, Program Development Branch, 500 C Street, SW., Washington, DC, or call (202) 646–3114 or email bruce.hildebrand@fema.gov for additional information. Contact Ms. Anderson at (202) 646–2625 or by facsimile number (202) 646–3524 or by email *muriel.Anderson@fema.gov* for copies of the proposed collection of information.

Dated: March 12, 2001.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 01–6673 Filed 3–16–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 new information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning a national review of local mitigation planning.

SUPPLEMENTARY INFORMATION: There are three FEMA programs that provide either direct funding or insurance incentives in order to promote mitigation planning at the local level. They are the Flood Mitigation Assistance Program (FMA), the Hazard Mitigation Grant Program (HMGP), and the National Flood Insurance Program (NFIP) Community Rating System. Project Impact funds may also be used for local mitigation planning but will be excluded from this evaluation since the program has a separate evaluation instrument with the University of Delaware.

Anecdotal information regarding the value of hazard mitigation planning in producing viable and effective mitigation actions exists, but this has never been studied in a systematic way. The purpose of this review will be to (1) assess the impact that FEMA's local Mitigation planning initiatives have had on local planning; (2) identify communities with successful mitigation plans and (3) document ''best practices'' that led to the formulation of successful plans. For example, there is the assumption that the FMA planning requirement promotes successful projects. However, there is a need to objectively evaluate whether this is a true statement, and if so, why. As a result, this objective review will give us a better opportunity to understand planning effectiveness and ''best practices''.

Collection of Information

Title. Review of Local Mitigation Planning Initiatives and Practices.

Type of Information Collection. New.

OMB Number: NEW.

Abstract. The purpose of this information collection, in the form of a survey, is to support the FEMA Mitigation Directorate and the Office of the Inspector General in conducting a national review of local mitigation planning. The goal of the survey is to determine the extent to which communities are formulating, adopting and adhering to local mitigation plans, and to review the overall quality of these plans. Additional goals are to document the ''best practices'' and identify characteristics of successful planning programs at the local level.

Affected Public: Local or Tribal Governments.

Estimated Total Annual Burden Hours: 563.

Year of FEMA survey	No. of respondent (A) [1]	Annual frequency of survey (B)	No. of questions/average minutes to answer	Burden hours per respondents (C) [2]	Annual burden hours (A x B x C)
2001	125	1	36/2.5 minutes	1.50	187.50
2002	125	1	36/2.5 minutes	1.50	187.50
2003	125	1	36/2.5 minutes	1.50	187.50
Total	375	1		[3] 1.50	562.50

[1] The audit sampling plan calls for 90 communities to be contacted. However, we anticipate that we may need to interview more than one official per community because a single official may not know the answer to all survey questions. We assumed that less than half of the 90 communities would require a second interview. Even if all 90 communities require a second interview, neither respondent would answer all of the survey questions.

[2] Burden hours were calculated by: 1. Multiplying the number of questions by the average number of minutes required to answer each question (i.e., 36 questions × 2.5 minutes = 90 minutes) and 2. Dividing the product of 1) by 60 minutes (i.e., 90 minutes/60 minutes = 1.50 hours).

[3] The respondents are State or local community officials that hold positions of authority within their organizations. Based on their positions as experts in their field, they are generally expected to offer their professional opinions about Federal programs and initiatives. We anticipate that the interview may take longer than a typical survey because we are not offering the respondent a choice of answers. Our respondents will need time to formulate an answer and explain it.

Estimated Annual Cost to Respondents: $3,750. We estimate that it will take approximately $30.00 per respondent per year to complete the survey.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary Krueger, Program Analyst, Federal Emergency Management Agency, Mitigation Directorate, Program Support Division, Planning Branch, (202) 646–4189 for additional information. For copies of the proposed collection of information contact Ms. Anderson at (202) 646–2625, by facsimile (202) 645–3347, or by e-mail at muriel.anderson@fema.gov.

Dated: March 12, 2001.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 01–6674 Filed 3–16–01; 8:45 am]

BILLING CODE 6718–01–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 April 2, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. William Carl David; Stephen Paul David; Stephen Paul David, Jr.; William Robert David; Lauren Riche' David; Jeffrey Thomas David; and Joseph Jefferson David, all of New Roads, Louisiana, and Robert Jefferson David, New Orleans, Louisiana; to retain voting shares of Peoples Bancshares of Pointe Coupee Parish, Inc., New Roads, Louisiana, and thereby indirectly retain voting shares of Peoples Bank & Trust Company, New Roads, Louisiana.

2. Bradley M. Bolton, Red Bay, Alabama, as trustee; to retain voting powers of The Weatherford Foundation of Red Bay, Inc., Red Bay, Alabama, and thereby indirectly retain voting shares of Independent Bancshares, Inc., and Community Spirit Bank, both of Red Bay, Alabama.

Board of Governors of the Federal Reserve System, March 13, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–6672 Filed 3–16–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 2001.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Royal Bank of Canada, Montreal, Canada, and Rock Merger Subsidiary, Inc., Raleigh, North Carolina; to become bank holding companies by acquiring and merging with Centura Banks, Inc., Rocky Mount, North Carolina, and thereby indirectly acquire Centura Bank, Rocky Mount, North Carolina.

In connection with this proposal, applicants also have applied to engage in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. EvergreenBancorp, Inc., Seattle, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of EvergreenBank, Seattle, Washington.

Board of Governors of the Federal Reserve System, March 13, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–6671 Filed 3–16–01; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Proposed Modification: Catalog of Federal Domestic Assistance Publication Policy

AGENCY: Office of Acquisition Policy, Office of Governmentwide Policy, GSA.

ACTION: Notice of revision in publication policy with request for comment.

SUMMARY: The Catalog of Federal Domestic Assistance is authorized by the Federal Program Information Act, Public Law 95–220, as amended by Public Law 98–169. The laws require OMB to (1) collect and verity the accuracy of agency information regarding currently available Federal domestic assistance programs and (2) provide that information to GSA. GSA is to use the OMB-supplied information to (1) build and maintain a data base of Federal assistance information, (2) disseminate the information through a printed catalog; and (3) provide computerized online access to the information. OMB Circular No. A–89 provides a detailed description of the duties and responsibilities of Federal agencies, GSA, and OMB.

The printed Catalog has been published since 1973 on an annual basis in June with a mid-year update, usually in December. In addition, GSA now provides electronic access to the Catalog information through its web site (*www.cfda.gov*) and other media. The printed December update edition does not contain all of the information for every Catalog program. Instead, the printed update contains only the new and changed information since the June edition; the full text of new programs and section-by-section modifications of changed programs. The December update must be used in conjunction with the June edition to fully identify and understand programs. In practice, this is difficult and time-consuming. The two publications do not conveniently fit into a single binder. In contrast, the Catalog web site and other electronic media versions always contain the complete, fully updated text for every program.

The Federal Domestic Assistance Catalog Staff, Office of Acquisition Policy, is proposing to no longer publish the printed hard copy December update of the Catalog. The information will continue to be collected from agencies and updated in December each year. Electronic access to the updated information will continue to be available through the Catalog web site and other media. This action is being taken to reduce the paperwork associated with the Catalog and to reduce the cost of operations.

DATES: This change will be effective for the December, 2001 Catalog update. Comments are welcome and must be submitted on or before April 9, 2001. GSA will review all comments and will determine what policy modifications, if any, are necessary.

ADDRESSES: Comments concerning this notice should be submitted to: Kathy Hospodar, Federal Domestic Assistance Catalog Staff, Suite 101—Reporter's Building, 300 7th Street, SW., Washington, DC 20407, or e-mail to *kathy.hospodar@gsa.gov.*

Dated: February 15, 2001.

David A. Bradkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

[FR Doc. 01–6675 Filed 3–16–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Availability of Funds for Grants for the Bilingual/Bicultural Service Demonstration Program

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health, HHS.

ACTION: Notice of availability of funds and request for applications for the Bilingual/Bicultural Service Demonstration Grant Program.

Program Title

Bilingual/Bicultural Service Demonstration Grant Program.

OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number for the Bilingual/Bicultural Service Demonstration Program is 93.105.

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act, as amended.

Purpose

The purpose of this Fiscal Year 2001 Bilingual/Bicultural Service Demonstration Grant Program is to:

1. Improve and expand the capacity for linguistic and cultural competence of health care professionals and paraprofessionals working with limited-English-proficient (LEP) minority communities; and

2. Improve the accessibility and utilization of health care services among the LEP minority populations.

These grants are intended to demonstrate the merit of programs that involve partnerships between minority community-based organizations and health care facilities in a collaborative effort to:

- Address cultural and linguistic barriers to effective health care service delivery; and
- Increase access to effective health care for the LEP minority populations living in the United States.

Eligible Applicants

To qualify for funding, an applicant must:

1. Be a private non-profit, minority or public community-based organization which addresses health or human services (see definition found in this announcement).

2. Provide services to a targeted LEP minority community.

3. Have an established linkage with a health care facility. Local affiliates of national organizations which have an established link with a health care facility are eligible to apply. The linkage must:

- Involve two separate and distinct entities.
- Be documented in writing as specified under the project requirements described in this announcement.

The organization submitting the application will:

- Serve as the lead agency for the grant.
- Be responsible for management of the project.
- Serve as the fiscal agent for the federal grant awarded.

Organizations *are not* allowed to receive funding from more than one Office of Minority Health (OMH) grant program a time. An organization may submit only one proposal under this announcement.

Note: National, state-wide, and regional organizations, for-profit hospitals, universities, and schools of higher learning *may not* apply for these grants.

Availability of Funds

About $1.25 million is expected to be available for award in FY 2001. It is expected that 9 to 15 community-based organizations (CBOs) will receive awards.

Note: It is anticipated that $500,000 of the total funding will be awarded to projects that include HIV/AIDS as one of the targeted health problem areas.

Those applicants chosen through the competitive process:

- Are to begin their service demonstration programs on September 30, 2001.
- Will receive an award ranging from $75,000 to $150,000 total costs (direct and indirect) for a 12 month period.
- Will be able to receive noncompeting continuation awards for an additional 2 years. After year 1, funding is based on:

—The amount of money available; and
—Success or progress in meeting project objectives.

Note: For the non-competing continuation awards, grantees must submit continuation

applications, written reports, and continue to meet the established funding guidelines.

• Continuation awards are expected to range from $75,000 to $150,000. The actual funding level will depend on the availability of funds.

Use of Grant Funds

Budgets ranging between $75,000 to $150,000 total costs (direct and indirect) may be requested per year to cover costs of:

- Personnel
- Consultants
- Supplies including screening and outreach supplies
- Equipment
- Grant related travel
- Other grant related costs

Funds *may not* be used for:

- Medical treatment
- Building alterations or renovations
- Construction

Note: All budget requests must be fully justified in terms of the proposed purpose and objectives. Funds to attend an annual OMH grantee meeting must be included in the budget.

Background

In the United States today, millions of people are not able to speak, read, write, or understand the English language at a level that permits them to interact with their English only health care providers or social services agencies. This can result in barriers in patients' getting to programs, or delays or denial of their services or care. Often, the client may walk away with inaccurate or incomplete health information.

The OMH is committed to working with CBOs to offer activities and services for people with limited English skills.

OMH aims to reach people with limited English proficiency, many of whom are members of racial or ethnic populations. To that end, OMH began the Bilingual/Bicultural Service demonstration Program in 1993. The Program works to build communication bridges and reduce barriers to care for members of LEP communities though offering funding of demonstration projects.

Project Requirements

Each project funded under this demonstration program is to:

1. Address at least 1, but no more than 3 problem health areas identified in the section on Health Areas to be Addressed.

2. Carry out activities to improve and expand the capacity of health care providers and other health care professionals to deliver culturally and linguistically appropriate health care services to the target population.

3. Carry out activities to improve access to health care for the LEP population.

4. Have an *established,* formal linkage between the community-based organization and a health care facility, prior to submission of an application. The linkage must involve two separate and distinct entities.

A single signed agreement between the applicant organization and the partner organization must be submitted with the application. The agreement must specify in detail the roles and resources that each entity will bring to the project, and the terms of the linkage. The linkage agreement must cover the entire project period.

The document must be signed by individuals with the authority to represent the organization (e.g., president, chief executive officer, executive director).

Health Areas to be Addressed

In FY 2001, the Bilingual/Bicultural Service Demonstration Program will target 21 health areas which are part of the Healthy People 2010 focus areas.

An applicant is required to address at least 1, but no more than 3 of the following health areas for its demonstration project:

- Access to Quality Health Services
- Arthritis, Osteoporosis, and Chronic Back Conditions
- Cancer
- Chronic Kidney Disease
- Diabetes
- Environmental Health
- Family Planning
- Heart Disease and Stroke
- HIV
- Immunization and Infectious Disease
- Injury and Violence Prevention
- Maternal, Infant, and Child Health
- Mental Health and Mental Disorders Conditions
- Nutrition and Overweight
- Oral Health
- Physical Activity and Fitness
- Respiratory Diseases
- Sexually Transmitted Diseases
- Substance Abuse
- Tobacco Use
- Vision and Hearing

Application Kit

• For this grant, you must use form PHS 5161–1 (Revised June 1999 and approved by OMB under Control Number 0937–0189).

• You are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.

• To get an application kit, write to: Ms. Karen Campbell, Acting Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or, call Karen Campbell at: (301) 594–0758.

Where to Send Applications

Send the original and 2 copies of the complete grant application to: Ms. Karen Campbell, Acting Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852.

Application Deadline

To receive consideration, grant applications must be received by the OMH Grants Management Office by May 18, 2001. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

How to Get Help

In addition to contacting Karen Campbell for application kits, she may also be contacted for technical assistance on budget and business aspects of the application. For questions on the program and assistance in preparing a grant proposal, contact: Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or, call Cynthia Amis at: (301) 594–0769.

For additional assistance contact OMH Regional Minority Health Consultants listed in the grant application kit.

For health information call the OMH Resource Center at 1–800–444–6472.

Review of Application

• Applications will be screened upon receipt. Applications that are not complete or do not conform to or address the criteria of the announcement will be returned without comment.

• Each organization may submit no more than one proposal under this announcement.

• Organizations submitting more than one proposal will be deemed ineligible. The proposals will be returned without comment.

• Accepted applications will be reviewed for technical merit in accordance with PHS policies.

• Applications will be evaluated by an Objective Review Panel. Panel members are chosen for their expertise in minority health and their understanding of the unique health problems and related issues confronted by the racial/ethnic minority populations in the United States.

Application Review Criteria

The technical review of applications will consider the following 5 generic factors.

Factor 1: Background (15%)

- Demonstrated knowledge of the problem at the local level
- Demonstrated need within the proposed community and target population
- Demonstrated support and established linkage(s) in order to conduct the proposed model
- Extent and documented outcome of past efforts and activities with the target population

Factor 2: Objectives (15%)

- Merit of the objectives
- Relevance to the program purpose and stated problem
- Attainability in the stated time frames

Factor 3: Methodology (35%)

- Appropriateness of proposed approach and specific activities for each objective
- Logic and sequencing of the planned approaches in relation to the objectives and program evaluation
- Extent to which the applicant demonstrates access to the target population
- Soundness of the established linkage(s)

Factor 4: Evaluation (20%)

- Thoroughness, feasibility and appropriateness of the evaluation design, data collection and analysis procedures
- Clarity of the intent and plans to document the activities and their outcomes
- Potential for replication of the project for similar target populations and communities

Factor 5: Management Plan (15%)

- Applicant organization's capability to manage and evaluate the project as determined by:

—The qualifications of proposed staff or requirements for ''to be hired'' staff
—Staff level of effort
—Management experience of the applicant
—Experience of each member of the linkage as it relates to its defined roles and the project

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health, OMH and will take under consideration:

- The recommendations and ratings of the review panel
- Geographic and racial/ethnic distribution
- Whether the proposed project will take place in Empowerment Zones and Enterprise Communities

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) Progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under 45 CFR Part 74.51–74.52, with the exception of State and local governments to which 45 CFR Part 92, Subpart C reporting requirements apply.

Provision of Smoke-Free Workplace and Nonuse of Tobacco Products by Recipients of PHS Grants

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the OMH Grants Management Officer. The OMH does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements.)

Healthy People 2010: The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 web

site: *http://www.health.gov/healthypeople.* Copies of the *Healthy People 2010: Volumes I and II* can be purchased by calling (202) 512–1800 (cost $70 for printed version or $19 for CDROM). Another reference is the *Healthy People 2000 Review—1998–99.*

For 1 free copy of *Healthy People 2010,* contact NCHS: The National Center for Health Statistics, Division of Data Services, 6525 Belcrest Road, Hyattsville, MD 20782–2003; or telephone (301) 458–4636; ask for DHHS Publication No. (PHS) 99–1256.

This document may also be downloaded from the NCHS web site: *http://www.cdc.gov/nchs.*

Additional Background Information

In FY 1993, OMH launched the Bilingual/Bicultural Service Demonstration Program to specifically address the linguistic, cultural and social barriers the LEP minority populations encounter when accessing health services. In addition, the program recognized other factors which contribute to the poor health status of LEP minorities including:

- Inadequate number of health care providers and other health care professionals who are culturally competent and skilled in providing linguistically appropriate services
- Shortage of trained interpreters at the community level
- Limited knowledge about appropriate mechanisms to address language barriers in health settings
- Lack of effective partnerships between major mainstream provider organizations and LEP minority communities
- Geographic isolation
- Low economic status
- Lack of health insurance
- Organizational barriers

These factors continue to hinder the LEP populations' ability to access and attain quality health care. Therefore, it is essential that health care providers, health care professionals, and other staff become informed about the diverse linguistic, cultural and medical perspectives of the clientele.

Enhancement of cultural and linguistic competency among these individuals should increase LEP minority populations' knowledge of the Western health care model, and increase their access to and willingness to accept appropriate health care.

In a further effort to insure that all people entering the health care system receive equitable and effective treatment in a culturally and linguistically appropriate manner, the OMH finalized the National Standards on Culturally and Linguistically Appropriate Services (CLAS) in Health Care on December 22, 2000.

While these 14 standards are primarily directed at health care organizations, the principals and activities of culturally and linguistically appropriate services should be undertaken in partnership with communities being served. OMH encourages minority community-based organizations to work with partner health care facilities to implement activities addressing those CLAS standards that have applicability to the purposes of the Bilingual/Bicultural Service Demonstration Program.

Definitions

For purposes of this grant announcement, the following definitions are provided:

Community-Based Organization—Private, nonprofit organizations *and* public organizations that are representative of communities or significant segments of communities where the control and decision-making powers are located at the community level.

Cultural Competency—The ability to understand and appreciate cultural differences and similarities within, among and between groups. This requires a willingness and ability to draw on community-based values, traditions and customs, and to work with knowledgeable persons of and from the community in developing focused interventions, communications and other supports. (Orlandi, Mario A., 1992.)

Health Care Facility—A private, nonprofit or public facility that has an established record for providing comprehensive health care services to a targeted, LEP racial/ethnic minority community.

A health care facility may be a hospital, outpatient medical facility, community health center, migrant health center, or a mental health center. Facilities providing only screening and referral activities are not included in this definition.

Limited-English-Proficient Populations (LEP)—People from Minority Populations (see definition below) with a primary language *other than* English. These individuals must communicate in their main language in order to participate effectively in and benefit from any aid, service or benefit provided by the health provider.

Minority Community-Based Organization—Private, non-profit, community-based organizations or local affiliates of a national organizations that have: a governing board composed of 51 percent or more racial/ethnic minority members and a significant number of minorities in key program positions.

Minority Populations

- American Indian or Alaska Native
- Asian
- Black or African American
- Hispanic or Latino
- Native Hawaiian or Other Pacific Islander

Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

Dated: March 8, 2001.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 01–6715 Filed 3–16–01; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Availability of Funds for Community Programs to Improve Minority Health

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health, HHS.

ACTION: Notice of availability of funds and request for applications for the Community Programs to Improve Minority Health Grant Program.

Program Title: Community Programs to Improve Minority Health Grant Program.

OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number for the Community Programs to Improve Minority Health is 93.137.

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act (PHS), as amended.

Purpose: The purpose of this Fiscal Year (FY) 2001 Community Programs to Improve Minority Health Grant Program is to improve the health status of targeted minority populations through health promotion and disease risk reduction intervention programs.

This program is intended to demonstrate the effectiveness of community-based coalitions in:

- Developing, implementing, and conducting demonstration projects which coordinate integrated community-based educational screening and outreach services, and include linkages for access and treatment to minorities in high-risk, low-income communities; and
- Addressing sociocultural and linguistic barriers to health care.

Eligible Applicants

To qualify for funding, an applicant must meet both the criteria listed below:

1. Be a private non-profit, minority or public community-based organization which addresses health or human services, Historically Black College or University (HBCU), Hispanic Serving Institution (HSI), or Tribal College or University (TCU); and

2. Have an established community coalition of at least three discrete organizations that include a minority community-based organization and a health care facility such as a community health center, migrant health center, health department, or medical center to provide follow-up treatment services.

The organization submitting the application will:

- Serve as the lead agency for the grant;
- Be responsible for management of the project; and
- Serve as the fiscal agent for the federal grant awarded.

Organizations are not eligible to receive funding from more than one Office of Minority Health (OMH) grant program concurrently. An organization may submit only one proposal under this announcement.

Note: National, state-wide, and regional organizations may not apply for these grants. For-profit hospitals and local school districts are also ineligible, although they can be included in the project as a member of the community coalition they may not be the fiscal agent.

Local affiliates of national, state-wide, or regional organizations that meet the definition of a minority community-based organization are eligible to apply.

Availability of Funds

About $2.5 million is expected to be available for award in FY 2001. It is expected that 17 to 25 awards will be made.

Note: It is anticipated that $600,000 of the total funding will be awarded to projects that include HIV/AIDS as one of the targeted health problem areas.

Those applicants chosen through the competitive review process:

- Are to begin their service demonstration programs on July 1, 2001.
- Will receive an award ranging from $75,000 to $150,000 total costs (direct and indirect) for a 12 month period.
- Will be able to receive noncompeting continuation awards for an additional 2 years. After year 1, funding is based on:
  - —The amount of money available; and
  - —Success or progress in meeting project objectives.

Note: For the non-competing continuation awards, grantees must submit continuation applications, written reports, and continue to meet the established funding guidelines.

- Continuation awards are expected to range from $75,000 to $150,000. Actual funding levels will depend on the availability of funds.

Use of Grant Funds

Budgets ranging from $75,000 to $150,000 total costs (direct and indirect) may be requested per year to cover costs of;

- Personnel
- Consultants
- Supplies including screening and outreach materials
- Equipment
- Grant related travel
- Other grant related costs

Funds *may not* be used for:

- Medical treatment
- Building alterations or renovations
- Construction

Note: All budget requests must be fully justified in terms of the proposed purpose and objectives. Funds to attend an annual OMH grantee meeting must be included in the budget.

Background

This program is based on the hypothesis that the community coalition approach to health promotion and risk reduction can be effective in reaching minority target populations—especially those most at risk or hard to reach. Among the merits of using coalitions is the higher likelihood that:

1. The intervention will be culturally sensitive, credible, and more acceptable to the target population;

2. The project will address the health problem(s) within the context of related socio-economic issues; and

3. The effort will contribute to overall community empowerment by strengthening indigenous leadership and organizations.

The OMH is continuing, through this FY 2001 announcement, to promote the utilization of community coalitions to develop and implement health education, promotion, and disease risk reduction programs.

In FY 2001, eligibility for the Community Programs to Improve Minority Health Grant Program is being expanded to include HBCUs, HSIs, and TCUs because of their unique and, in many instances, historical relationship with the target communities.

Also in FY 2001, the Community Programs to Improve Minority Health Grant Program will target 21 of the health areas which are part of the *Healthy People 2010.* (Refer to the section on Health Areas to be Addressed in this announcement.) Applicants are to design innovative programs to address at least 1, but no more than 3, of these areas.

To learn more about the health disparities that exist among racial and ethnic minorities in the United States today, read applicable sections of *Healthy People 2010.* (See the section on Healthy People 2010 in this announcement for information on how to obtain a copy.)

Note: The Healthy People 2010 focus areas will also be listed in the grant application kit.

Project Requirements

Each project funded under this demonstration program is to:

1. Address at least 1, but no more than 3, of the health problem areas identified in the section on Health Areas to be Addressed.

2. Have an *established* coalition prior to submission of an application that is capable of ensuring that the target population is provided with a continuum of appropriate health care services and support.

The coalition must have the capacity to:

- Plan and coordinate services which reduce existing sociocultural and/or linguistic barriers to health care; and
- Carry out screening, outreach, and enabling services to ensure that clients follow up with treatment and treatment referrals.

3. Include at least 3 discrete entities in the coalition. This must include a minority community-based organization and a health care facility.

A single, signed agreement between the applicant organization, the health care facility, and the remaining coalition member(s) must be submitted with the application. The agreement must specify in detail the roles and resources that each entity will bring to the project, and the terms of the linkage. The linkage agreement must cover the entire project period.

The document must be signed by individuals with the authority to represent the organization (e.g., chief executive officer, executive director, president/chancellor, school principal).

Health Areas to be Addressed

In FY 2001, the Community Programs to Improve Minority Health Program will target 21 health areas which are part of the Healthy People 2010 focus areas.

An applicant is required to address at least 1, but no more than 3 of the following health areas for its demonstration project:

- Access to Quality Health Services
- Arthritis, Osteoporosis, and Chronic Back Conditions
- Cancer
- Chronic Kidney Disease
- Diabetes
- Environmental Health
- Family Planning
- Heart Disease and Stroke
- HIV
- Immunization and Infectious Disease
- Injury and Violence Prevention
- Maternal, Infant, and Child Health
- Mental Health and Mental Disorders
- Nutrition and Overweight
- Oral Health
- Physical Activity and Fitness
- Respiratory Diseases
- Sexually Transmitted Diseases
- Substance Abuse
- Tobacco Use
- Vision and Hearing

Application Kit

- For this grant, Form PHS 5161–1 (Revised June 1999 and approved by OMB under Control Number 0937–0189) must be used.
- An applicant is advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.
- To get an application kit, write to: Ms. Karen Campbell, Acting Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or call Karen Campbell at (301) 594–0758.

Where To Send Applications

Send the original and 2 copies of the complete grant application to: Ms. Karen Campbell, Acting Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852.

Application Deadline

To receive consideration, grant applications must be received by the OMH Grants Management Office by May 18, 2001. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

How To Get Help

In addition to contacting Karen Campbell for application kits, she may also be contacted for technical assistance on budget and business aspects of the application. For questions on the program and assistance in preparing a grant proposal, contact: Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852; or call: Cynthia Amis at (301) 594–0769.

For additional assistance contact the OMH Regional Minority Health Consultants listed in the grant application kit.

For health information call the OMH Resource Center at 1–800–444–6472.

Review of Applications

- Applications will be screened upon receipt. Applications that are not complete or that do not conform to or address the criteria of the announcement will be returned without comment.
- Each organization may submit no more than one proposal under this announcement.
- Organizations submitting more than one proposal will be deemed ineligible. The proposals will be returned without comment.
- Accepted applications will be reviewed for technical merit in accordance with PHS policies.
- Applications will be evaluated by an Objective Review Panel. Panel members are chosen for their expertise in minority health and their understanding of the unique health problems and related issues confronted by the racial/ethnic minority populations in the United States.

Application Review Criteria

The technical review of applications will consider the following 5 generic factors.

Factor 1: Background (15%)

- Demonstrated knowledge of the problem at the local level
- Demonstrated need within the proposed community and target population
- Demonstrated ties to the community
- Demonstrated support and established linkage(s) in order to conduct proposed model
- Extent and documented outcome of past efforts/activities with the target population

Factor 2: Objectives (15%)

- Merit of the objectives
- Relevance to the program purpose and stated problem
- Attainability of the objectives in the stated time frames

Factor 3: Methodology (35%)

- Appropriateness of proposed approach and specific activities for each objective
- Logic and sequencing of the planned approaches in relation to the objectives and program evaluation
- Extent to which the applicant demonstrates access to the target population
- Soundness of the established linkages

Factor 4: Evaluation (20%)

- Thoroughness, feasibility and appropriateness of the evaluation design, data collection and analysis procedures
- Clarity of the intent and plans to document the activities and their outcomes
- Potential for replication of the project for similar target populations and communities

Factor 5: Management Plan (15%)

- Applicant organization's capability to manage and evaluate the project as determined by:
  - The qualifications of proposed staff or requirements for ''to be hired'' staff
  - Proposed staff level of effort
  - Management experience of the applicant
  - Experience of each coalition member as it relates to its defined roles and the project
  - Clear lines of authority and accountability among the proposed staff within and between participating organizations

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health, OMH and will take under consideration:

- The recommendations and ratings of the review panel
- Geographic and racial/ethnic distribution
- Whether the proposed project will take place in Empowerment Zones and Enterprise Communities

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) Progress reports; (2) an annual Financial Status Report; and (3) a final progress report and

Financial Status Report in the format established by the OMH, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR Part 74.51—74.52, with the exception of State and local governments to which 45 CFR Part 92, Subpart C reporting requirements apply.

Provision of Smoke-Free Workplace and Non-use of Tobacco Products by Recipients of PHS Grants

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Acting Grants Management Officer. The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs'' Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

Healthy People 2010: The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information may be found on the Healthy People 2010 web site: *http://www.health.gov/healthypeople.* Copies of the *Healthy People 2010: Volumes I and II* can be purchased by calling (202) 512–1800 (cost $70.00 for printed version; $19.00 for CD-ROM). Another reference is the *Healthy People 2000 Review 1998–99.*

For a free copy of *Healthy People 2010,* contact: The National Center for Health Statistics (NCHS), Division of Data Services, 6525 Belcrest Road, Hyattsville, MD 20782–2003; or, telephone (301) 458–4636; ask for DHHS Publication No. (PHS) 99–1256.

This document may also be downloaded from the NCHS web site *http://www.cdc.gov/nchs.*

Definitions

For purposes of this grant announcement, the following definitions are provided:

Community-Based Organizations—Private nonprofit organizations *and* public organizations that are representative of communities or significant segments of communities where the control and decision-making powers are located at the community level.

Community Coalition—At least three (3) discrete organizations and institutions in a given community. The organizations work together on specific community concerns, and seek resolution of those concerns. A formalized relationship documented by written memoranda of understanding/agreement signed by individuals with the authority to represent the organizations (*e.g.,* chief executive officer, executive director, president/chancellor, school principal) is required.

Health Care Facility—A private nonprofit or public facility that has an established record for providing comprehensive health care services to a targeted, racial/ethnic minority community.

A health care facility may be a hospital, outpatient medical facility, community health center, migrant health center, or a mental health center. Facilities providing only screening and referral activities are not included in this definition.

Hispanic Serving Institutions—Any local education agency or institution of higher education, respectively, whose student population is more than 25 percent Hispanic (Executive Order 12900, February 22, 1994, Educational Excellence for Hispanic Americans, Section 5).

Historically Black Colleges and Universities—Institutions established prior to 1964, whose principal mission was, and is, the education of black Americans. (National Center for Education Statistics. Compendium: Historically Black Colleges and Universities: 1976–1994. September 1996. [NCES 96–902]).

Intervention—A combination of services designed to alter or modify a condition or outcome, or to change behavior to reduce the likelihood of a preventable health problem occurring or progressing further. Services include:

—Clinical preventive services (e.g., blood pressure screening)
—Information dissemination
—Environmental modifications
—Educational activities
—Coordinated networking activities among health and human service related programs (e.g., referral for child care services, job placement, literacy programs)

Minority Community-Based Organizations—Private non-profit, community-based organizations or local affiliates of national organizations that have a governing board composed of 51 percent or more racial/ethnic minority members and have a significant number of minorities employed in key program positions.

Minority Populations

- American Indian or Alaska Native
- Asian
- Black or African American
- Hispanic or Latino
- Native Hawaiian or Other Pacific Islander

(Revision to the standards for the classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997)

Risk Factor—-The environmental and behavioral influences capable of causing ill health with or without predisposition.

Sociocultural Barriers—Policies, practices, behaviors, and beliefs that create obstacles to health care access and service delivery. Examples of sociocultural barriers include:

- Cultural differences between individuals and institutions
- Cultural differences of beliefs about health and illness
- Customs and lifestyles
- Cultural differences in languages or nonverbal communication styles

Tribal Colleges and Universities—Those institutions cited in section 532 of the Equity in Education Land-Grants Status Act of 1994 (U.S.C. 301 note) or that qualify for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 et seq.), and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, Title II (25 U.S.C. 640a note).

Dated: March 8, 2001.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02001]

Grants for Education Programs in Occupational Safety and Health; Notice of Availability of Funds for Fiscal Year 2002

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for institutional training grants in occupational safety and health. This program addresses the ''Healthy People 2010'' priority area of occupational safety and health. The goal of the program is to provide an adequate supply of qualified personnel to carry out the purposes of the Occupational Safety and Health Act. The specific program objective is to provide financial assistance to eligible institutions or agencies to assist in providing an adequate supply of qualified professional occupational safety and health personnel. Projects are supported for Occupational Safety and Health Education and Research Center Training Grants (ERCs) and for Long-Term Training Project Grants (TPGs). ERCs are funded academic institutions that provide interdisciplinary graduate training and continuing education in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields. The ERCs also serve as regional resource centers for industry, labor, government, and the public. TPGs are funded academic institutions that primarily provide single-discipline graduate training in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields.

B. Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for an institutional training grant.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds and Types of Training Awards

In FY 2002, a total of approximately $16,200,000 is available for award. Approximately $10,280,000 of this total is available for non-competing continuation awards. Approximately $5,920,000 is available for competing continuation or new awards to fund ERC and TPG programs as described below:

1. For ERCs:

Approximately $5,520,000 of the total funds available will be utilized as follows:

a. Approximately $4,800,000 is available to award seven competing continuation or new ERC grants. This includes $280,000 to augment the support of occupational medicine residents. Awards range from $400,000 to $800,000 with the average award being $680,000.

b. Approximately $480,000 is available to award supplemental funds to eight competing continuation or new training grants; four of the awards are planned for $240,000 for Hazardous Substance Academic Training (HSAT) Programs and four of the awards are planned for $240,000 for Hazardous Substance Training (HST) Programs. The awards are to support the development and presentation of: continuing education and short courses (HST Programs) and academic curricula (HSAT Programs) for trainees and professionals engaged in the management of hazardous substances. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances.

c. Approximately $120,000 is available to award supplemental funds to two competing continuation or new training grants. These awards will support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety.

d. Approximately $120,000 is available to award supplemental funds to two new grants to support the enhancement of the ERC research training mission through the support of pilot project research training programs. The pilot projects should be related to the National Occupational Research Agenda (NORA).

2. For TPGs:

Approximately $400,000 of the total funds available will be utilized as follows:

To award approximately six competing continuation or new TPG grants. Awards will range from approximately $20,000 to $100,000, with the average award being $65,000. This includes $40,000 to augment the support of occupational medicine residents. These awards will support academic programs in the core disciplines (i.e., industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety and ergonomics) and relevant components (e.g., occupational injury prevention, industrial toxicology, ergonomics). These awards are intended to augment the scope, enrollment, and quality of training programs rather than to replace

funds already available for current operations.

3. It is expected that awards will begin on or about July 1, 2002, and will be made for a 12-month budget period within a project period of up to five years. Supplemental awards will be made for a 12-month budget period within a project period not to exceed that of the main training grant.

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. Program Requirements

The following are applicant requirements:

1. An ERC shall be an identifiable organizational unit within the sponsoring organization. Applicants must meet the following characteristics in order to be considered responsive. If the characteristics are not met, the application will be considered non-responsive and will be returned to the applicant without a review.

(a) Cooperative arrangements with a: medical school or teaching hospital (with an established program in preventive or occupational medicine); school of nursing or its equivalent; school of public health or its equivalent; or school of engineering or its equivalent. It is expected that other schools or departments with relevant disciplines and resources shall be represented and shall contribute as appropriate to the conduct of the total program, *e.g.,* epidemiology, toxicology, biostatistics, environmental health, law, business administration, and education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the intended interdisciplinary training and education will be engendered.

(b) An ERC Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director shall oversee the general operation of the ERC Program and shall, to the extent possible, directly participate in training activities. A Deputy Director shall be responsible for managing the daily administrative duties of the ERC and to increase the ERC Director's availability to ERC staff and to the public.

(c) Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the ERC. Each academic program, as well as the continuing education and outreach program, shall have a Program Director.

(d) Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

(e) A program for conducting education and training for four core disciplines: occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. There shall be a minimum of five full-time students or full-time equivalent students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of core and component programs together). ERCs are encouraged to recruit and train minority students to help address the under-representation of minorities among the occupational safety and health professional workforce. Although it is desirable for an ERC to have the full range of core programs, an ERC with a minimum of three academic programs of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of: new and innovative academic programs that are relevant to the occupational safety and health field, *e.g.*, ergonomics, industrial toxicology, occupational injury prevention, and occupational epidemiology; and to innovative technological approaches to training and education. ERCs must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches. ERCs should address the importance of providing training and education content related to special populations at risk, including minority workers and other sub-populations specified in the National Occupational Research Agenda (NORA) special populations at risk category.

(f) A specific plan describing how trainees in core and component academic programs will be exposed to the principles of all other occupational safety and health core and allied disciplines. ERCs that apply as a consortium (contracting with other institutional partners) generally have geographic, policy and other barriers to achieving this ERC characteristic and, therefore, must give special, innovative, attention to thoroughly describing the approach for fulfilling interdisciplinary interaction between students.

(g) Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopedics, pathology, radiology, neurology, perinatal medicine, psychiatry, etc., and on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialities and the curriculum of other schools such as engineering, business, and law.

(h) An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and TPGs. Programs to address the under-representation of minorities among occupational safety and health professionals shall be encouraged. Specific efforts should be made to conduct outreach activities to develop collaborative training programs with academic institutions serving minority and other special populations, such as Tribal Colleges and Universities, Historically Black Colleges and Universities, and Hispanic-Serving Institutions. Examples of outreach activities might include activities such as: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (e.g., Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary

educational institutions (e.g., high school science fairs and career days) as well as to labor, management and community associations.

(i) A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the ERC is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Priority shall be given to establishing new and innovative training technologies, including distance learning programs and to short-term programs designed to prepare a cadre of practitioners in occupational safety and health. Where appropriate, it shall be professionally acceptable that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety personnel working in the workplace. Further, the ERC shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated capability for implementing such training directly and through other institutions or agencies in the region. The ERC should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

(j) A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the ERC. The Board should meet at least annually to advise an ERC Executive Committee and to provide periodic evaluation of ERC activities. The Executive Committee shall be composed of the ERC Director and Deputy Director, academic Program Directors, the Director for Continuing Education and Outreach and others whom the ERC Director may appoint to assist in governing the internal affairs of the ERC.

(k) A plan to incorporate research training into all aspects of training and, in research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the ERC intends to strengthen existing research training efforts, how it will integrate research training activities into the curriculum, field and clinical experiences, how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine, and how it will build on and utilize existing research opportunities in the institution. Each ERC is required to identify or develop a minimum of one, preferably more, areas of research focus related to work environment problems. Consideration shall be given to the CDC/NIOSH priority research areas identified in the National Occupational Health Research Agenda (NORA). Further information regarding NORA may be found at the CDC/NIOSH home page: *http://www.cdc.gov/niosh.* The research training plan will address how students will be instructed and instilled with critical research perspectives and skills. This training will emphasize the importance of developing and working on interdisciplinary teams appropriate for addressing a research issue. It should also prepare students with the skill necessary for developing research protocols, pilot studies, outreach efforts to transfer research findings into practice, and successful research proposals. Such components of research training will require the ERCs to strive toward developing the faculty composition and administrative infrastructure essential to being Centers of Excellence in Occupational Safety and Health Research Training that are required to train research leaders of the future. The plan should address the incremental growth of such elements and evaluation of the plan commensurate with funds available. In addition to the research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for acquiring equipment, if appropriate, and a plan for developing research-oriented faculty.

1. Evidence in obtaining support from other sources, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

2. TPG applicants must document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. There shall be a minimum of three full-time students or full-time equivalent students in each academic program. Applicants should address the importance of providing training and education content related to special populations at risk, including minority and disadvantaged workers. The types of training currently eligible for support are:

(a) Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas of greatest occupational safety and health need. Strong consideration will be given to the establishment of innovative training technologies including distance learning programs.

(b) Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

(c) Special technical or other programs for long-term training of occupational safety and health technicians or specialists.

E. Application Content

Applications will be evaluated on the basis of the Program Requirements, Other Requirements, and Evaluation Criteria sections listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 15 pages per program. Prepare the application single-sided and single-spaced, staying within the margin limitations indicated on the form and continuation pages. The print must be clear and legible. Use standard size, black letters that can be clearly copied. Do not use photo reduction. Prepare all graphs, diagrams, tables, and charts in black ink. The application must contain only material that can be photocopied. Do not include course catalogue and course brochures. When additional space is needed to complete any of the items, use plain white paper (8 ½ by 11 inches), leave ½ inch margin on each side, identify each item by its title, and type the name of the program director and the grant number (if the application is a competitive renewal) in the upper right corner of each page. All pages,

including Appendices should be numbered consecutively at least ½ in from the bottom edge.

Note: Please consult the detailed Recommended Outline for Preparation of Competing New/Renewal Training Grant Applications provided in each application kit (CDC 2.145 A).

F. Submission and Deadline

Applications should be clearly identified as an application for an ERC Training Grant or TPG Training Grant.

Application

Submit the original and two copies of CDC 2.145 A—ERC or TPG (OMB Number 0920–0261). Forms are in the application kit. Forms and instructions are also available on the CDC home page: *http://www.cdc.gov.* On or before July 5, 2001, submit the application to the Grants Management Specialist identified in Section J of this announcement, ''Where to Obtain Additional Information''.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria. The initial peer review will be conducted by means of a panel meeting or site visit. The purpose of the initial review is to obtain basic information regarding elements of the proposed training grant program and to provide a technical report as input to the Special Emphasis Panel. The final official peer review will be conducted by a Special Emphasis Panel appointed by CDC.

In reviewing ERC grant applications, the evaluation criteria are as follows:

1. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. Special consideration should be given to the development of programs addressing the under-representation of minorities among occupational safety and health professionals. Indicators of regional need should include measures utilized by the ERC such as previous record of training and placement of graduates. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

2. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the ''Characteristics of an Education and Research Center'' (see D.1).

3. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration shall be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

4. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Academic training including the number of full-time and part-time students and graduates for each core and component program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. Competence, experience and training of the ERC Director, the Deputy ERC Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to ERC goals. An example of institutional commitment to the long-term stability of ERC programs is the commitment of tenured or tenure-track faculty positions to each participating academic program.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of the integration of research experience into the curriculum, and field and clinical experiences. In institutions seeking funds for doctoral and post-doctoral (physician training) level research training, evidence of a plan describing the research and research training the ERC proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

13. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the region served by the Center. Examples could include a continuing education needs assessment, a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the employment history and contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

14. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report(Competing Continuation applications only).

In reviewing supplements to ERC grants, consideration will be given to:

1. *Hazardous Substance Training Program in Education and Research Centers*—The evaluation criteria are as follows:

a. Relevance of the proposed project to each element of the characteristics of a hazardous substance training program.

b. Comprehensiveness and soundness of the training plan developed to carry out the proposed activities. This is based on a documented need for the training and evidence to support the approach used to provide the required training. It includes description of the scope and magnitude of the hazardous substance problem in the region served by the ERC and current activities and training efforts.

c. Education and experience of the Project Director, faculty, and staff assigned to this project with respect to handling, managing or evaluating hazardous substance sites and to the training of professionals in this field.

d. Creativity and innovation of the project leadership with respect to marketing the courses, structure in attracting trainees and/or providing incentives for training.

e. Extent to which the applicant considered the work of relevant agencies involved in hazardous substance activities, including EPA, and cooperated with these agencies in developing and implementing this training program.

f. Suitability of facilities and equipment available for this project.

g. Appropriateness of the budget to carry out the planned activities.

2. *Agricultural Safety and Health Education Programs in Education and Research Centers*—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

c. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

d. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Previous record of academic training in agricultural safety and health including the number of full-time and part-time students and graduates, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in agricultural safety and health and record of outreach activity and assistance to agricultural groups within the ERC region.

f. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to Center goals.

i. Academic and physical environment in which the training will be conducted, including access to appropriate occupational agricultural settings.

j. Appropriateness of the budget required to support the agricultural safety and health education program. This includes the budget for the academic program and the continuing education and outreach program.

k. Evidence of a plan describing the agricultural safety and health training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

3. *Hazardous Substance Academic Training Program in Education and Research Centers*—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the proposed training program toward meeting the needs of the job market, especially within the applicant's region. The needs assessment should consider the regional requirements for hazardous substance training, information dissemination and special industrial, labor or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy regional needs for training in the areas outlined by the application, including Program projected enrollment and recruitment and current workforce populations.

c. The extent to which the HSAT curriculum content and design includes: Formalized training objectives; minimal course content to achieve a degree or successful completion of the specialty area requirements; course descriptions; course sequence; additional related courses open to occupational safety and health students; time devoted to lecture, laboratory, and field experience; and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

d. Previous record of academic and/or short course training delivered in the hazardous substances field, including the number and type of students trained. Previous record of hazardous substances outreach activity and assistance to hazardous substance groups within the ERC's region.

e. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, student evaluations from academic and continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

f. The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

g. Institutional commitment to HSAT Program goals.

h. Academic and physical environment in which the training will be conducted.

i. Appropriateness of the budget required to support the training courses developed, including accounting for the academic staff's time.

j. Evidence of a plan describing the hazardous substances academic training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty,

facilities and equipment available and needed, and methods for implementing and evaluating the program.

k. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

l. Extent to which the applicant has collaborated with state and federal agencies having hazardous substance management functions, including the U.S. Environmental Protection Agency, and has cooperated with the agencies in developing and implementing this program.

4. *ERC Supplemental Pilot Project Research Training Programs*—The evaluation criteria are as follows:

a. Relevance of the proposed program, including objectives that are specific and consistent.

b. Adequacy of the plan proposed to conduct the pilot projects program, including procedures for reviewing and funding projects, the scientific review mechanism, program quality assurance. Human Subjects—Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Are all procedures in compliance with applicable published regulations?

c. Extent to which the applicant demonstrates collaboration with other research training institutions in the region, including NIOSH Training Project Grantees.

d. Education and experience of the proposed Research Training Program Director and faculty in the occupational safety and health field, including the utilization of pilot projects as a research training mechanism.

e. Appropriateness of the proposed budget to carry out the planned activities.

f. Adequacy of the plan to evaluate the effectiveness of the proposed pilot projects program.

g. Gender and minority issues—Are plans to include both sexes and minorities and their subgroups adequately developed (as appropriate for the scientific goals of the project)? Are strategies included for the recruitment and retention of human subjects? (See Attachment 1, AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.)

In reviewing TPG applications, the evaluation criteria are as follows:

1. Need for training in the program area outlined by the application. This should include documentation of a plan for student recruitment, projected enrollment, job opportunities, regional need both in quality and quantity, and for programs addressing the under-representation of minorities in the profession of occupational safety and health.

2. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration shall be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

4. Curriculum content and design which should include formalized program objectives, minimal course content to achieve degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches. There should also be evidence of integration of research experience into the curriculum, and field and clinical experiences.

5. Previous records of training in this or related areas, including placement of graduates.

6. Methods proposed to evaluate effectiveness of the training.

7. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant? An example of institutional commitment to the long-term stability of TPG programs is the commitment of tenured or tenure-track faculty positions to each academic program.

8. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

9. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved. The program director must be a full-time faculty member.

10. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

11. Advisory Committee: Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need. The Committee should meet at least annually to provide advice and periodic evaluation of TPG activities.

12. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the employment history and contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

13. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report(Competing Continuation applications only).

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports (annual and may be incorporated as component of non-competing continuation applications);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and progress reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in Section J of this announcement, ''Where to Obtain Additional Information''.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1* Human Subjects Requirements
AR–2* Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research AR–
AR–3* Animal Subjects Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

*=Applies to ERC Supplemental Pilot Project Research Training Program applications only.

Data collection initiated under this training grant program has been approved by the Office of Management and Budget under Number 0920–0261. ''NIOSH Training Grants, 42 CFR part 86, Application and Regulations,'' Expiration Date 1/31/2004.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 21(a) of the Occupational Safety and Health Act [29 U.S.C. 670 (a)]. The Catalog of Federal Domestic Assistance number is 93.263.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet at *http://www.cdc.gov.*

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. Please refer to Program Announcement 02001 and specify ERC or TPG when you request information. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sonia V. Rowell, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 02001, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, Email address: srowell@cdc.gov.

For program technical assistance, contact: John T. Talty, Principal Engineer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–7, Cincinnati, OH 45226–1998, Telephone (513) 533–8241, Email address: jtt2@cdc.gov.

Dated: March 12, 2001.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–6642 Filed 3–16–01; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0078]

Agency Information Collection Activities; Proposed Collections; Comment Request; Assessment of Physician and Patient Attitudes Toward Direct-to-Consumer Promotion of Prescription Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on two proposed collections of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on surveys of physicians and patients to examine the impact of direct-to-consumer (DTC) promotion of prescription drugs.

DATES: Submit written or electronic comments on the collections of information by May 18, 2001.

ADDRESSES: Submit electronic comments on the collections of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collections of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Assessment of Physician and Patient Attitudes Toward Direct-to-Consumer Promotion of Prescription Drugs

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA is responsible for ensuring that the labeling and advertising of prescription drugs is truthful and not misleading. Section 502(n) of the act (21 U.S.C. 352(n)) prohibits the advertising of prescription drugs that is false or misleading or that fails to provide required information about product risks. Although advertising of prescription drugs was once primarily addressed to health professionals, consumers increasingly have become a primary target audience, and DTC advertising has dramatically increased in the past few years. However, DTC advertising raises many questions and issues. While it may alert consumers to new information and facilitate treatment of their medical problems, it also may confuse consumers and adversely impact the relationship between patients and their health care providers. In August 1997, when the agency issued its draft guidance on consumer-directed broadcast advertisements, FDA announced that it intended to evaluate the effects of the guidance and of DTC promotion in general within 2 years of finalizing the guidance. The guidance was finalized on August 9, 1999 (64 FR 43197). In the notice announcing

availability of the final guidance, FDA reiterated its intent to evaluate the effects of the guidance, including effects on the public health, within 2 years. As part of that evaluation, the agency conducted a baseline public information collection focused on recent patients, concerning the effects of DTC advertising on patient-doctor interactions and attitudes toward DTC advertising in appropriate, and other forms of information technology.

The purpose of the proposed information collection is to follow up on the agency's 1999 patient survey and expand information collection to include physicians. FDA needs information from physicians and patients about their reactions to, and behaviors that stem from, DTC prescription drug advertising in order to develop policy on appropriate requirements for regulating drug product promotional materials.

Two data collections will be conducted: A patient survey and a physician survey. The patient survey will be conducted through randomized telephone interviews with a national probability sample consisting of 775 adults 18 years of age and over who have recently visited a physician. The sample will be limited to those respondents who have seen a doctor or other health care professional in the last 3 months. Patient respondents will be asked their views about any prescription drug they may have received and prescription drugs in general, and their attitudes and behavior in relation to DTC advertising. Demographic information will also be collected.

The physician survey will be conducted through telephone interviews with a national probability sample of office-based physicians who engage in-patient care at least half of the time. The sampling frame of physicians will consist of names drawn from the American Medical Association's Physician Masterfile. In an effort to maximize the response rate for physicians, prenotification letters will be mailed to all potential physician respondents. The survey itself will cover DTC-related patient interactions, perceived patient outcomes, attitudes toward appropriate DTC categories, and general opinions about DTC advertising. Demographic information will also be collected.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
11,625 (consumer screener)	1	11,625	.017	197.6
775 (consumer survey)	1	775	.333	258.1
3,333 (physician screener)	1	3,333	.017	56.7
500 (physician survey)	1	500	.250	125.0
Total				637.4

[1] There are no capital costs or operating and maintenance costs associated with these collections of information.

Dated: March 12, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–6690 Filed 3–16–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1373]

Agency Information Collection Activities; Announcement of OMB Approval; Mammography Facilities, Standards, and Lay Summaries for Patients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Mammography Facilities, Standards, and Lay Summaries for Patients'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 26, 2000 (65 FR 64222), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0309. The approval expires on February 29, 2004. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: March 12, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–6688 Filed 3–16–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1246]

Agency Information Collection Activities; Announcement of OMB Approval; Food Safety Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Safety Survey'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 18, 2000 (65 FR 50541), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0345. The approval expires on February 29, 2004. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: March 12, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–6689 Filed 3–16–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83F–0164]

Nalco Chemical Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2B3627) proposing that the food additive regulations be amended to provide for the safe use of 2-(4-thiazolyl)benzimidazole as a component of adhesives and paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW.,Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 17, 1983 (48 FR 27834), FDA announced that a food additive petition (FAP 2B3627) had been filed by Calgon Corp., Box 1346, Pittsburgh, PA 15320. (Calgon Corp. was subsequently purchased by Nalco Chemical Co.) The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of 2-(4-thiazolyl)benzimidazole as a component of paper and paperboard for use in food contact applications and that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of 2-(4-thiazolyl)benzimidazole as a component of adhesives. Nalco Chemical Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: February 27, 2001.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–6367 Filed 3–16–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of modified or altered system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a system of records, ''A Current Beneficiary Survey (CBS), HHS/HCFA/OACT, System No. 09–70–6002.'' We propose to delete published routine use number 2 authorizing disclosure to the Bureau of the Census, and an unnumbered routine use authorizing disclosure to the Social Security Administration. Routine use number 2 unnecessarily duplicated Exception 4 of the Privacy Act allowing release of data to the Bureau of the Census. We propose to add a new routine use for release of information to another federal agency to broaden the scope of release for activities related to this system of records. We will modify the name of this system to read, ''Medicare Current Beneficiary Survey (MCBS).'' The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide clarity to HCFA's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other HCFA (SOR).

The primary purpose of the system of records is to maintain a research database for HCFA and other researchers that is capable of producing data sets suitable for both longitudinal and cross-sectional analysis to be used to: (1) Produce projections for current programs and proposed program changes, (2) produce national level estimates of health care expenditures by the aged and disabled, and (3) provide a research database that can be used to provide guidance to program management and policies. Information in this system will also be used to: support research of policy issues, quality and effectiveness of care, and of epidemiological projects, support regulatory and policy functions performed within the agency or by a contractor or consultant, another federal agency, support constituent requests made to a congressional representative, and support litigation involving the agency related to this system of records. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that HCFA provide an opportunity for interested persons to comment on the proposed routine uses, HCFA invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: HCFA filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 12, 2001. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Sydney P. Galloway, Privacy Act Coordinator, Systems, Technical, and Analytic Resources Group, Office of Strategic Planning (OSP), HCFA, Mailstop C3–24–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–6645. The e-mail address is sgalloway@hcfa.gov.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified (SOR)

Statutory and Regulatory Basis for (SOR)

In 1990, HCFA established a (SOR) under the authority of section 1875 of the Social Security Act (42 United States Code (U.S.C.) 139511), entitled ''Studies and Recommendations.'' Notice of this system, ''A Current Beneficiary Survey (CBS), HHS/HCFA/OACT, System No. 09–70–6002,'' was published in the **Federal Register** on Tuesday, September 4, 1990 (55 Fed. Reg. 35957).

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains a random sampling of individuals enrolled for hospital insurance (Part A) and/or supplemental medical benefits (Part B) under the Medicare program. Information contained in this system include the name of beneficiary, health insurance claim (HIC) number, age, sex, race, education, military service history, income data, marital status, medical utilization and cost data, prescription drug usage and cost data, health and functional status, health insurance coverage, medical condition status, household composition data, and medical provider names.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release CBS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of CBS. HCFA has the following policies and procedures concerning disclosures of information which will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after HCFA:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to maintain a research database that is capable of producing data sets suitable for both longitudinal and cross-sectional analysis to: (1) Produce projections for current programs and proposed program changes, (2) produce national level estimates of health care expenditures by the aged and disabled, and (3), provide a research database that can be used to provide guidance to program management and policies.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

(2) Remove or destroy at the earliest time all individually-identifiable information; and

(3) Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

(d) Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

The collected data will provide the research, evaluation and epidemiological projects a broader, longitudinal, national perspective of the data. HCFA anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare patients and the policy that governs the care. HCFA understands the concerns about the privacy and confidentiality of the release of data for a research use. Disclosure of data for research and evaluation purposes may involve aggregate data rather than individual-specific data.

2. To agency contractors, or consultants who have been engaged by the agency to assist in accomplishment of a HCFA function relating to the purposes for this system of records and who need to have access to the records in order to assist HCFA.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into an award or similar agreement with a third party to assist in accomplishing HCFA function relating to purposes for this system of records.

HCFA occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. HCFA must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

3. To another federal agency to enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds.

Other federal agencies in their administration of a federal health program may require MCBS information in order to support evaluations and monitoring of reimbursement for services provided.

4. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before HCFA. The Member of Congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and that the use of such records is deemed by the agency to be for a purpose that is compatible with the purposes for which the agency collected the records.

Whenever HCFA is involved in litigation, or occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved.

IV. Safeguards

The MCBS system will conform with applicable law and policy governing the privacy and security of federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' HCFA has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that HCFA is using to ensure the security of this system and the information within it.

A. *Authorized users:* Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, HCFA is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or work station and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential individual identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. *Physical Safeguards:* All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the MCBS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the MCBS system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all transmission connections to the system. As a result, Netscape controls all information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. *Procedural Safeguards:* All automated systems must comply with federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System of Records on Individual Rights

HCFA proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

HCFA will monitor the collection and reporting of MCBS data. MCBS information on individuals is completed by agency personnel and submitted to HCFA through standard systems located at different locations. HCFA will utilize a variety of onsite and offsite edits and audits to increase the accuracy of MCBS data.

HCFA will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights including not collecting individually identifiable data for non-HCFA individuals. HCFA will collect only that information necessary to perform the system's functions. In addition, HCFA will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: February 9, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

09–70–6002

SYSTEM NAME:

Medicare Current Beneficiary Survey (MCBS) System, HHS/HCFA/OSP.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains a random sampling of individuals enrolled for hospital insurance (Part A) and/or supplemental medical benefits (Part B) under the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system include the name of the beneficiary, health insurance claim number (HIC) number, age, sex, race, education, military service history, income, marital status, medical utilization and cost, prescription drug usage and cost data, health and functional status, health insurance coverage, medical condition status, household composition and medical provider names.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this system of records is given under of section 1875 of the Social Security Act (42 United States Code (USC) 1395ll), entitled, ''Studies and Recommendations.''

PURPOSE(S):

The primary purpose of the system of records is to maintain a research database for HCFA and other researchers that is capable of producing data sets suitable for both longitudinal and cross-sectional analysis to be used to: (1) Produce projections for current programs and proposed program changes, (2) produce national level estimates of health care expenditures by the aged and disabled, and (3) provide a research database that can be used to provide guidance to program management and policies. Information in this system will also be used to: Support research of policy issues, quality and effectiveness of care, and of epidemiological projects, support regulatory and policy functions performed within the agency or by a contractor or consultant, other federal agencies, support constituent requests made to a congressional representative, and support litigation involving the agency related to this system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine use in this system meets the compatibility requirement of the Privacy Act. We are proposing to modify the following routine use disclosures of information which will be maintained in the system:

1. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

2. To agency contractors, or consultants who have been engaged by the agency to assist in accomplishment of a HCFA function relating to the purposes for this system of records and who need to have access to the records in order to assist HCFA.

3. To another federal agency to enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds.

4. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and that the use of such records is deemed by the agency to be for a purpose that is compatible with the purposes for which the agency collected the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the name, and HIC of the beneficiary.

SAFEGUARDS:

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the MCBS system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs ten years after the final action of the research project is completed.

SYSTEM MANAGERS AND ADDRESS:

Director, Systems, Office of Strategic Planning, HCFA, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HIC, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

HCFA obtains the identifying information contained in this records system from Medicare enrollment records, Medicare bill records, Medicare provider records, Medicare beneficiaries and or their representatives, and Medicare carriers and intermediaries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–6538 Filed 3–16–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 2001.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: April 9, 2001; 9:30 a.m.–5:30 p.m. April 10, 2001; 9:00 a.m.–4:00 p.m.

Place: The Doubletree Hotel Park Terrace on Embassy Row 1515 Rhode Island Avenue, NW., Washington, DC 20005.

The meeting is open to the public.

Agenda items will include, but not be limited to: Welcome; plenary discussion of Interdisciplinary Education; presentations by speakers representing: the HRSA Bureau of Health Professions; Health Care Associations; Committee members; the Division of Interdisciplinary, Community-Based Programs (DICP); and Bureau of Health Professions (BHPr) staff supporting Committee activities; presentation of Interdisciplinary, Community-Based Case Studies; and defining standards for the Committee report due to the Secretary and the Congress in November 2001.

Meeting content will be based on the Committee's charge under Section 756 of the Public Health Service Act, to include discussion and draft of the Committee report and scheduling of topics of the next Committee meeting in June 2001.

Public comment will be permitted before lunch and at the end of the Committee meeting on April 9, 2001. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Mr. Leo Wermers, Principal Staff Liaison, Division of Interdisciplinary, Community-Based Programs, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1648.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of Interdisciplinary, Community-Based Programs will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but wish to make an oral statement may register to do so at the Doubletree Hotel Park Terrace on Embassy Row, Washington, DC on April 9, 2001. These persons will be allocated time as the Committee meeting agenda permits.

Anyone requiring information regarding the Committee should contact Mr. Wermers, Division of Interdisciplinary, Community-Based Programs, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1648.

Dated: March 12, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–6630 Filed 3–16–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Confidentiality of Alcohol and Drug Abuse Patient Records—(OMB No. 0930–0092, Extension, no change) Statute (42 U.S.C—290dd–2) and regulations (42 CFR Part 2) require Federally conducted, regulated, or directly or indirectly assisted alcohol and drug abuse programs to keep alcohol and drug abuse patient records confidential. Information requirements are (1) written disclosure to patients about Federal laws and regulations that protect the confidentiality of each patient, and (2) documenting ''medical personnel'' status of recipients of a disclosure to meet a medical emergency. The annual burden estimates for these requirements are summarized in the table below.

	Annual respondents	Responses per respondent	Burden per response in hrs	Annual burden
Disclosure 42 CFR 2.22	10,000	150	.25 hrs	375,000
Recordkeeping 42 CFR 2.51	10,000	2	.25 hrs	5,000
Total	10,000			380,000

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 12, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–6677 Filed 3–16–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Correction to a Fiscal Year (FY 2001) Funding Opportunities Notice

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Correction to a Notice of Funding Availability regarding the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services, Grants for Statewide Family Networks.

SUMMARY: This notice is to inform the public that there is a correction to the SAMHSA/CMHS Guidance for Applicants announcement No. SM01–004 entitled Grants for Statewide Family Networks, published in the **Federal Register** on March 12, 2001 (Volume 66, Number 48, pages 14407–14409). Under the eligibility section, number 2, the word ''solely'' is being deleted from the original paragraph. The paragraph should now read:

The entities' organizational mission and scope of work must have a statewide scope and focus on families who have children, youth and adolescents age 18 and under or 21 and under if served by an Individual Education Plan; with serious emotional, behavioral, or mental disorder.

Dated: March 13, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–6691 Filed 3–16–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Correction to a Fiscal Year (FY 2001) Funding Opportunities Notice

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Correction to a Notice of Funding Availability regarding the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services, Technical Assistance Center for Statewide Family Networks Program.

SUMMARY: This notice is to inform the public that there is a correction to the SAMHSA/CMHS Guidance for Applicants announcement No. SM01–005 entitled Cooperative Agreement for a Technical Assistance Center for Statewide Family Networks, published in the **Federal Register** on March 12, 2001 (Volume 66, Number 48, pages 14409–14410). Under the eligibility section, number 2, the word ''solely'' is being deleted from the original paragraph. The paragraph should now read:

The entities' organizational mission and scope of work must have a statewide scope and focus on families who have children, youth and adolescents age 18 and under or 21 and under if served by an Individual Education Plan; with serious emotional, behavioral, or mental disorder.

Dated: March 13, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–6692 Filed 3–16–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–18]

Notice of Submission of Proposed Information Collection to OMB; Early Doctoral Student Grant Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 18, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-

mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Early Doctoral Student Grant Program.

OMB Approval Number: 2528–XXXX.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Doctoral student will receive grants to prepare research paper related to HUD subjects.

Respondents: Individuals or households, Not-for-profit institutions.

Frequency of Submission: Semi-annually.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
80		1.56		21.68		2,710

Total Estimated Burden Hours: 2,710.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information officer.

[FR Doc. 01–6650 Filed 3–16–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–19]

Notice of Submission of Proposed Information Collection to OMB; American Housing Survey (AHS)–2001 National Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 18, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0017) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (1) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: American Housing Survey (AHS)—2001 National Survey.

OMB Approval Number: 2528–0017.

Form Numbers: AHS–26, AHS–27, AHS–28.

Description of the Need for the Information and its Proposed Use: The 2001 AHS–N is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for the nation. The study also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issues.

Respondents: Individuals or households.

Frequency of Submission: Biennially.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
55,000		0.86		.64		30,517

Total Estimated Burden House: 30,517.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–6651 Filed 3–16–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–200–1050–ET; AZA–31024]

Cancellation of Proposed Withdrawal; Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

In FR Doc. 01–3821 published in the **Federal Register** issue of February 15, 2001, make the following corrections:

1. On page 10511, in the third column, lines 8 to 11 of the SUMMARY paragraph, delete ''This notice opens the lands that are not located within the Agua Fria National Monument to surface entry and mining.''

2. On page 10512, in the first column, replace the last two paragraphs (lines 6 through 49 from the top) with ''At 9 a.m. on March 19, 2001, the segregative effect for the lands described in the Notice of Proposed Withdrawal in the **Federal Register**, FR 99–20274, August 6, 1999, will terminate.''

Dated: March 1, 2001.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 01–6838 Filed 3–16–01; 8:45 am]

BILLING CODE 3410–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of Revised Outer Continental Shelf Official Protraction Diagrams.

SUMMARY: Notice is hereby given that effective with this publication, two NAD 27-based Outer Continental Shelf Official Protraction Diagrams, last revised on November 1, 2000, are on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Copies of Leasing Maps and Official Protraction Diagrams (OPDs) are $2.00 each. These may be purchased from the Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Mangement Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519 or (800) 200–GULF.

SUPPLEMENTARY INFORMATION: In accordance with Title 43, Code of Federal Regulations, these diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic areas they represent.

Outer Continental Shelf Official Protraction Diagrams in the Western Gulf of Mexico Planning Area

Description/Date

NG15–05 Keathley Canyon—November 1, 2000

NG15–08 Sigsbee Escarpment—November 1, 2000

[**Note**: ''Sigsbee Escarpment'' is a new name for NG15–08.]

[**Note:** The rest of the Outer Continental Shelf Leasing Maps and Official Protraction Diagrams in the Western Gulf of Mexico Planning area will be revised in the near future.

Leasing Maps and OPDs may be obtained in two digital formats: *.gra* files for use in ARC/INFO and *.pdf* files for viewing and printing in Acrobat. Copies are also available for download at *http://www.gomr.mms.gov/homepg/lsesale/mapdiag.html.*

Dated: March 13, 2001.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 01–6683 Filed 3–16–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region, Rock Creek Park; Notice of Meeting and Request for Public Comment

The National Park Service is seeking public comments regarding its consideration to ease its overnight mooring restriction at Washington Harbor, changing the overnight mooring closure from Midnight until 6 a.m., to 2 a.m, until 6 a.m.

A public meeting will be held on April 2, from 7 p.m. until 9 p.m., at the Thompson's Boat Center at Virginia Avenue, N.W., and the Rock Creek and Potomac Parkway, in Washington, DC.

SUPPLEMENTARY INFORMATION: Pursuant to 36 CFR 1.5(a), the National Park Service has had for a number of years an overnight mooring restriction at Washington Harbour that has been from midnight until 6 a.m. It is considering easing the restriction by changing it to 2 a.m. until 6 a.m. The National Park Service requests public comment on this proposed change. Oral and written comments will be accepted at the public meeting which will be held at the address and time listed above. Written comments will also be accepted from now until May 2, 2001, and should be sent to Rock Creek Park, 3545 Williamsburg Lane, NW, Washington, DC 20008–1207.

All written comments will be available for public review. We anticipate that we will either tape record or transcribe oral comments that are submitted at the April 2 meeting, and that these comments will also be available for public review.

FOR FURTHER INFORMATION CONTACT: Rock Creek Park Superintendent Adrienne Coleman at (202) 282–1063.

Dated: March 1, 2001.

Joseph M. Lawler,

Acting Regional Director, National Capital Region.

[FR Doc. 01–6744 Filed 3–16–01; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–924 (Preliminary)]

Mussels From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–924 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of

imports from Canada of mussels, provided for in subheading 0307.31.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by April 26, 2001. The Commission's views are due at the Department of Commerce within five business days thereafter, or by May 3, 2001.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 12, 2001.

FOR FURTHER INFORMATION CONTACT: Sioban Maguire (202–708–4721), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on March 12, 2001, by Great Eastern Mussel Farms, Tenants Harbor, Maine.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on April 2, 2001 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Sioban Maguire (202–708–4721) not later than March 28, 2001, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 5, 2001 a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 14, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–6746 Filed 3–16–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–445]

In the Matter of Certain Plasma Display Panels and Products Containing Same; Notice of Commission Decision not to Review an Initial Determination Amending the Complaint and Notice of Investigation to Add a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') amending the complaint and notice of investigation in the above-captioned investigation to add Fujitsu Hitachi Plasma Display Limited (''FHP'') as a respondent.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, tel. (202) 205–3096. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing the Commission's internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at

http://www.dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 22, 2001, based on a complaint filed on behalf of the Board of Trustees of the University of Illinois and Competitive Technologies, Inc. The four respondents named in the complaint were Fujitsu Limited, Fujitsu General Limited, Fujitsu General America Corp., and Fujitsu Microelectronics, Inc.

On February 2, 2001, complainants moved to amend the complaint and notice of investigation to add FHP as a fifth respondent. The motion was supported by the Commission investigative attorney, but opposed by the original respondents. On February 21, 2001, the ALJ issued an ID (Order No. 5) granting the motion. No party petitioned for review of the ID.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 CFR § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR § 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone (202) 205–2000.

Dated: March 12, 2001.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–6669 Filed 3–16–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–427]

U.S. Market Conditions for Certain Wool Articles

AGENCY: International Trade Commission.

ACTION: Change in deadline for written submissions in connection with the Commission's interim letter to USTR.

EFFECTIVE DATE: March 12, 2001.

FOR FURTHER INFORMATION CONTACT: For general information, contact Kim Freund (202–708–5402; kfreund@usitc.gov) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091; wgearhart@usitc.gov) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*).The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: Effective February 12, 2001, the Commission instituted an investigation on U.S. market conditions for certain wool articles and established a deadline for the receipt of written submissions in connection with the preparation of the interim letter for USTR (see 66 FR 11315, Feb. 23, 2001). The Commission has changed the deadline for receiving written submissions from March 7, 2001 to 20 calendar days (or the next workday thereafter if the 20th day falls on a weekend or holiday) following the U.S. Department of Commerce's publication of a notice in the **Federal Register** soliciting requests from U.S. manufacturers of men's and boys' worsted wool suits, suit-type jackets, and trousers to modify the limitations on the quantity of imports of worsted wool fabrics under the TRQs provided for in HTS headings 9902.51.11 and 9902.51.12. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Interested parties may monitor the Department of Commerce's release of its solicitation for requests by accessing the Department of Commerce's Internet server (*http://otexa.ita.doc.gov*).

For further information concerning this investigation, see the Commission's notice of investigation cited above.

Issued: March 13, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–6670 Filed 3–16–01; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Immigrant Petition for Alien Workers.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 18, 2000 at 65 FR 563330, allowing for emergency OMB review and approval and a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 18, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 an assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of response.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–140, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to classify a person under section 203(b)(1), 203(b)(2), or 203(b)(3) of the Immigration and Nationality Act. The data collected on this form will be used by the INS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 96,000 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 96,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 9, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–6735 Filed 3–16–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0176–2000]

Agency Information Collection Activities; Announcement of OMB Approval for Recording and Reporting Occupational Injuries and Illnesses

AGENCY: Occupational Safety and Health Administration, DOL.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a collection of information regarding the recording of occupational injuries and illnesses has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: David Schmidt, Directorate of Information Technology, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1886.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 7, 2000 (65 FR 42034–42035), the Agency announced its intent to request renewal of its current OMB approval for 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses (less 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents and 1904.17, Annual OSHA Injury and Illness Survey of Ten or More Employers). In accordance with Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has renewed its approval for the information collection and assigned OMB control number 1218–0176. The approval expires December 31, 2001. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid control number.

Dated: February 23, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–6449 Filed 3–16–01; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences; Committee of Visitors (1110).

Date/Time: March 26, 27, and 28, 2001, 8:30 a.m. to 5 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Contact Person: Dr. Maryanna Henkart, Division Director for Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, (703) 292–8440.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Type of Meeting: Part open (see agenda below):

Agenda

Closed: March 26 (10 a.m.–5 p.m.); March 27 (8:30 a.m.–1 p.m., and 2 p.m.–5 p.m.); and March 28 (8:30 a.m.–1 p.m. and 2 p.m.–5 p.m.)—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of programs in the Division of Molecular and Cellular Biosciences.

Open: March 26 (8:30 a.m.–10 a.m.); March 27 (1 p.m.–2 p.m.); and March 28, 2001 (2 p.m.–2:30 p.m.)—To assess the results of NSF program investments in the Molecular and Cellular Biosciences Division. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

**Reason for Late Notice:* Conflicting schedules of members and the necessity to proceed with the review of proposals.

Dated: March 14, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–6738 Filed 3–16–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 72–37]

Exelon Generation Company, LLC Dresden Independent Spent Fuel Storage Installation Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 to Exelon Generation Company, LLC (EGC). The requested exemption would allow EGC to deviate from the requirements of Certificate of Compliance 1008 (the Certificate), Appendix B, Items 1.4.6.a, 1.4.6.b and 1.4.6.d and place HI–STAR 100 Cask Systems, loaded with spent nuclear fuel, on a concrete storage pad with a concrete thickness of less than or equal to 28 inches, concrete compressive strength of less than or equal to 6,000 psi at 28 days, and soil effective modulus of elasticity of less than or equal to 16,000 psi at the Dresden Nuclear Power Station (Dresden) Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated January 11, 2001, EGC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 to deviate from the requirements of Certificate of Compliance 1008, Appendix B, Items 1.4.6.a, 1.4.6.b and 1.4.6.d. EGC is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K.

EGC plans to use the HI–STAR 100 Cask System to store spent nuclear fuel, generated at the Dresden Nuclear Power Station, at an ISFSI located in Morris, Illinois, on the Dresden Nuclear Power Station site. The Dresden ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting EGC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214, EGC will be authorized to place loaded HI–STAR 100 Casks Systems on cask storage pads that include the following characteristics:

(1) Concrete Thickness: ≤ 28 inches

(2) Concrete Compressive Strength: ≤ 6,000 psi at 28 days

(3) Soil Effective Modulus of Elasticity: ≤ 16,000 psi

The storage pad characteristics specified above would be in lieu of those specified in Certificate of Compliance 1008, Appendix B, Items 1.4.6.a, 1.4.6.b, and 1.4.6.d, respectively. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On August 4, 2000, the cask designer, Holtec International (Holtec), submitted to NRC an application to amend Certificate of Compliance 1008. The requested amendment includes revision to the storage pad specifications in Item1.4.6 in Appendix B to the Certificate and requests approval of a second set of cask pad parameters. Item 1.4.6.a requires a concrete thickness of less than or equal to 36 inches; the analysis performed by Holtec demonstrates that this requirement can be revised to specify a concrete thickness of less than or equal to 28 inches. Item 1.4.6.b requires a concrete compressive strength of less than or equal to 4,200 psi at 28 days; the analysis performed by Holtec demonstrates that this requirement can be revised to specify a concrete compressive strength of less than or equal to 6,000 psi at 28 days. Item 1.4.6.d includes the requirement that the soil effective modulus of elasticity be less than or equal to 28,000 psi; the analysis performed by Holtec demonstrates that this requirement can be revised to specify that the soil effective modulus of elasticity be less than or equal to 16,000 psi. The NRC staff has reviewed the application and determined that placement of HI–STAR 100 Cask Systems on storage pads with the revised characteristics would have minimal impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action

There are a number of Dresden Unit 1 spent fuel assemblies in the Dresden Unit 2 spent fuel pool. To maintain full core offload capability in the Dresden Unit 2 spent fuel pool once new fuel arrives in the Summer of 2001, EGC needs to begin loading spent fuel into storage casks in Spring of 2001. Unless the exemption is granted or the Certificate is amended, the storage pads at the Dresden ISFSI will not be in full conformance with the Certificate. Because the 10 CFR part 72 rulemaking to amend the Certificate will not be completed prior to the date that EGC plans to begin loading HI–STAR 100 Cask Systems, the NRC is granting this exemption based on the staff's technical review of information submitted by EGC and Holtec.

Environmental Impacts of the Proposed Action

The potential environmental impact of using the HI–STAR 100 Cask System was initially presented in the Environmental Assessment (EA) for the Final Rule to add the HI–STAR 100 Cask System to the list of approved spent fuel storage casks in 10 CFR 72.214 (64 FR 171, 09/03/99). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2). This section also requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, ''Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation].''

The HI–STAR 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents.

The HI–STAR 100 Cask System consists of a stainless steel multi-purpose canister and a steel overpack. The welded MPC provides confinement and criticality control for the storage and transfer of spent nuclear fuel. The overpack provides radiation shielding and structural protection of the MPC during storage and handling operations. Special design feature requirements for the cask and for the site are specified in Certificate of Compliance 1008, Appendix B. These include the storage pad design characteristics.

Considering the specific cask and site design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

The staff performed a safety evaluation of the proposed exemption and the Certificate amendment. The HI-STAR amendment requests a revision to Item 1.4.6 of Appendix B to the Certificate of Compliance (CoC), which defines some of the design requirements for cask pad. The CoC amendment requests specific approval for an additional set of cask pad parameters.

The exemption requests authorization to utilize the additional set of cask pad parameters presented in the CoC amendment.

The staff found that the proposed exemption is consistent with the cask drop and tipover analyses presented in the revised Safety Analyses Report for the HI–STAR 100 Cask System and do not reduce the safety margin. In addition, the staff has determined that placement of loaded HI–STAR 100 Cask Systems on storage pads with a (1) concrete thickness of less than or equal to 28 inches, (2) concrete compressive strength of less than or equal to 6,000 psi at 28 days, and (3) soil effective modulus of elasticity less than or equal to 16,000 psi does not pose any increased risk to public health and safety. Furthermore, the proposed action now under consideration would not change the potential environmental effects assessed in the initial rulemaking (64 FR 171, 09/03/99).

Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impacts as a result of placing loaded HI–STAR 100 Cask Systems on storage pads with a concrete thickness of less than or equal to 28 inches, concrete compressive strength of less than or equal to 6,000 psi at 28 days, and soil effective modulus of elasticity less than or equal to 16,000 psi.

Alternative to the Proposed Action

Since there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact.

Agencies and Persons Consulted

On February 9, 2001, Mr. F. Niziolek, Reactor Safety Section Head, Illinois Department of Nuclear Safety, was contacted about the Environmental Assessment for the proposed action and had no comments.

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 EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 so that EGC may place loaded HI–STAR 100 Cask Systems on concrete storage pads with a concrete thickness of less than or equal to 28 inches, concrete compressive strength of less than or equal to 6,000 psi at 28 days, and soil effective modulus of elasticity less than or equal to 16,000 psi at the Dresden 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 exemption.

The request for exemption was docketed under 10 CFR part 72, Docket 72–37. For further details with respect to this action, see the exemption request dated January 11, 2001, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852, or from the publicly available records component of NRC's Agencywide Document Access and Management System (ADAMS). ADAMS is accessible from the NRC web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 8th day of March 2001.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–6652 Filed 3–16–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24892; 812–12130]

Nuveen Investments, et al.; Notice of Application

March 13, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY: Applicants request an order to permit certain registered unit investment trusts to acquire shares of registered management investmentcompanies and unit investments trusts both within and outside the same group of investment companies.

APPLICANTS: Nuveen Investments, Nuveen Tax-Free Unit Trusts and Nuveen Unit Trusts.

FILING DATES: The application was filed on June 8, 2000, and amendments were filed on January 2, 2001, and February 26, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 5, 2001, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicants' Representation

1. The Nuveen Unit Trusts and Nuveen Tax-Free Unit Trusts (''Trusts'') and their series (''Trust Series'') are unit investment trusts registered under the Act and sponsored by Nuveen Investments (''Sponsor''). The Sponsor, a Delaware corporation, is a wholly-owned subsidiary of The John Nuveen Company.

2. Applicants requests relief to permit the Trusts Series to invest in (a) registered investment companies that are part of the same ''group of investment companies'' (as that term is defined in section 12(d)(1)(G) of the Act) as the Trust (''Affiliated Funds''), and (b) registered investment companies that are not part of the same group of investment companies as the Trust (''Unaffiliated Funds,'' together with the Affiliated Funds, the ''Funds''). The Unaffiliated Funds may include unit investment trusts (''Unaffiliated Underlying Trusts'') and open-end or closed-end management investment companies (''Unaffiliated Underlying

Funds''). Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be ''exchange-traded funds'' that are registered under the Act as unit investment trusts or open-end management investment companies and have received exemptive relief to sell their shares on a national securities exchange at negotiations prices. Applicants request that the relief also apply to future Trust Series and unit investment trusts registered under the Act and sponsored by the Sponsor that invest in the Funds.[1]

3. Applicants states that the requested relief will benefit unitholders by providing investors with a professionally selected, diversified portfolio of investment company shares through a single investment vehicle.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to by owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or unit investment trust acquired by a registered unit investment trust if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that they may not rely on section 12(d)(1)(G) because a Trust Series will invest in Unaffiliated Funds in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Trust Series to acquire shares of a Fund and a permit a Fund to sell shares to a Trust Series beyond the limits set forth in sections 12(d)(1)(A), (B), and (C).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund or funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and protection of investors.

5. Applicants state that the proposed arrangement will not result in undue influence by a Trust Series or its affiliates over Funds. To limit the control that a Trust Series may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Sponsor, the Trust Series, and certain affiliates (individually or in the aggregate) from controlling an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over Unaffiliated Funds, applicants propose conditions 2 through 6, stated below, to preclude a Trust Series and its affiliated entities from taking advantage of an Unaffiliated Fund with respect to transactions between the entities and to ensure that transactions will be on an arm's length basis.

6. As an additional assurance that an Unaffiliated Fund understands the implications of an investment by a Trust Series under the requested order, a Trust Series and Unaffiliated Fund will execute an agreement prior to the investment stating that the board of directors of the Unaffiliated Fund, if any, and the investment adviser to or sponsor of the Unaffiliated Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that an Unaffiliated Fund may choose to reject an investment from the Trust Series.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that a condition to the order would provide that any sales charges and/or service fees (as those terms are defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers (''NADS Conduct Rules'')) charged with respect to Units of a Trust Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules. In addition, the trustee to a Trust Series (''Trustee'') will waive or offset fees otherwise payable by the Trust Series in an amount at least equal to any compensation (including fees paid pursuant to plan adopted by an Unaffiliated Underlying Fund under rule 12b–1 under the Act (''12b–1 Fees'')) received by the Sponsor or Trustee, or an affiliated person of the Sponsor or Trustee, from an Unaffiliated Fund in connection with the investment by a Trust Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants not that a Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that a Trust Series' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Trust Series and Affiliated Funds might be deemed to be under the common control of the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor. Applicants also state that a Trust Series and a Fund might become affiliated persons if the Trust

[1] All investment companies that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application.

Series acquires more than 5% of the Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent a Fund from selling shares to and redeeming shares from a Trust Series.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Funds will be based on the net asset values of the Funds. Applicants state that the proposed arrangement will be consistent with the polices of each Trust Series and Fund, and with the general purposes of the Act.

Applicant's Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. (a) The Sponsor, (b) any person controlling, controlled by, or under common control with the Sponsor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act sponsored or advised by the Sponsor or any person controlling, controlled by, or under common control with the Sponsor (collectively, the ''Group'') will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 35% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. A Trust Series and its Sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a ''Trust Series Affiliate'') will not cause any existing or potential investment by the Trust Series in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Trust Series or a Trust Series Affiliate and the Unaffiliated Fund or its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities.

3. Once an investment by a Trust Series in the securities of an Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, the board of directors of the Unaffiliated Underlying Fund, including a majority of the disinterested directors, will determine that any consideration paid by the Unaffiliated Underlying Fund to a Trust Series or a Trust Series Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

4. No Trust Series or Trust Series Affiliate will cause an Unaffiliated Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is the Sponsor or a person of which the Sponsor is an affiliated person (each an ''Underwriting Affiliate''). An offering during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an ''Affiliated Underwriting.''

5. The Board of directors of an Unaffiliated Underlying Fund, including a majority of the disinterested directors, will adopt procedures reasonably designed to monitor any purchases by the Unaffiliated Underlying Fund of securities in Affiliated Underwritings once an investment by a Trust Series in the securities of the Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of directors will review these purchases periodically, but not less frequently than annually, to determine whether the purchase were influenced by the investment by the Trust Series in shares of the Unaffiliated Underlying Fund. The board of directors will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from Underwriting Affiliates have changed significantly from prior years. The board of directors shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

6. An Unaffiliated Underlying Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period not less than 6 years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first 2 years in an easily accessible place, a written record of each purchase made once an investment by a Trust Series in the securities of an Unaffiliated Underlying Fund exceeded the limits of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

7. Prior to an investment in an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), the Trust Series and the Unaffiliated Fund will execute an agreement stating, without limitation, that the board of directors of the Unaffiliated Fund, if any, and the investment adviser to or sponsor of the Unaffiliated Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a

Trust Series will notify the Unaffiliated Fund of the investment. At such time, the Trust Series also will transmit to the Unaffiliated Fund a list of the names of each Trust Series Affiliate and Underwriting Affiliate. The Trust Series will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Trust Series will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period not less than 6 years from the end of the fiscal year in which any investment occurred, the first 2 years in an easily accessible place.

8. The Trustee will waive or offset fees otherwise payable by a Trust Series in an amount at least equal to any compensation (including 12b–1 Fees) received by the Sponsor or Trustee, or an affiliated person of the Sponsor or Trustee, from an Unaffiliated Fund in connection with the investment by a Trust Series in the Unaffiliated Fund.

9. Any sales charges and/or service fees (as those terms are defined in Rule 2830 of the NASD Conduct Rules) charged with respect to Units of a Trust Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6687 Filed 3–19–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44066; File No. SR–Amex–00–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC and Amendment Nos. 1 and 2 To Amend Amex Rule 590, Minor Rule Violation Fine Systems

March 12, 2001.

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 August 17, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Amex amended the proposal on December 7, 2000.[3] On January 29, 2001, the Amex again amended the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 590, Minor Rule Violation Fine Systems. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 Exchange has had a Minor Rule Violation Fine Plan (''Plan'') since 1976 that provides a simplified procedure for the resolution of minor violations of certain rules. Codified in Amex Rule 590, the plan has three distinct sections: Part 1 (''General Rule Violations''), which covers more substantive matters, the violation of which are nonetheless deemed ''minor;'' Part 2 (''Floor Decorum''), which covers floor decorum and operational matters; and Part 3 (''Reporting Violations''), which covers the late submission of routine reports.

The Exchange's Enforcement Department and its Minor Floor Violation Disciplinary Committee (''Committee'')[5] divide responsibility for administering Part 1 of Amex Rule 590. The Enforcement Department enforces those rules enumerated in paragraph (g) of Part 1 of Amex Rule 590, and the Committee enforces the rules enumerated in paragraph (h). Part 1 of Amex Rule 590 allows the Enforcement Department and the Committee to issue abbreviated ''written statements'' to persons who may have violated the specified rules identifying the rules violated, the act or omission constituting the violation, and the amount of the fine.

The issuance of a ''written statement'' by the Enforcement Department of the Committee does not constitute a finding of guilt. Persons receiving a written statement may plead ''no contest'' and return the statement to the Exchange with the specified fine. In the alternative, persons who are charged under the plan may contest the fine and receive a hearing before an Exchange Disciplinary Panel (''Panel''). The Panel that hears contested Committee matters currently is composed of a hearing officer and two members of the Committee that did not participate in the decision to issue the fine.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 1, 2000 letter from William Floyd-Jones, Jr., Esq., Assistant General counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC and attachments (''Amendment No. 1''). In Amendment No. 1, the Amex made technical changes to the proposed rule language to clarify which language was added and which language was rearranged.

[4] *See* January 26, 2001 letter from William Floyd-Jones, Jr., Esq. to Nancy J. Sanow, Assistant Director, Division, SEC and attachments (''Amendment No. 2''). While the cover letter indicates that Amendment No. 2 replaces and supersedes the original filing, Amendment No. 2 only replaces and supersedes the proposed rule language provided in the original proposal and Amendment No. 1. Telephone conversation March 12, 2001 between William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, and Joseph P. Morra, Special Counsel, Division, SEC.

[5] The Exchange established the Committee in 1993. *See* Securities Exchange Act Release No. 32989 (September 29, 1993), 58 FR 52122 (October 6, 1993) (SR–Amex–92–11). Originally, the Committee had authority to issue fines for the following violations: (1) failure to comply with SEC Rule 11Ac1–4, commonly referred to as the ''Firm Quote'' rule, and honoring a ten-up market for customer option orders; (2) failure to quote options markets within the maximum quote spread differentials; (3) failure to comply with option solicitation procedures; (4) violation of the off-floor trading prohibition; (5) failure to comply with the Exchange's Auto-Ex policy relating to signing on and off the Auto-Ex system; (6) failure to properly mark, identify and represent floor orders as required under Exchange rules; and (7) violation of the Exchange's delayed opening policy. Over time, the following violations were added to the list of rules enforced by the Committee: (8) violation of the ''2, 1 and ½ Point Rule,'' (9) failure to comply with stop order procedures and approval requirements; (10) failure to obtain Floor Official approval when establishing, increasing, or liquidating a position; (11) violation of ITS rules relating to pre-opening applications, and the Trade Through, Locked Markets, and Block Trade policies; (12) failure to comply with requirements relating to agency crosses; (13) failure to submit properly completed Specialist Floor Broker Questionnaires; and (14) failure to obtain Exchange approval for proprietary electronic devices.

The Exchange believes that the proposed changes to Amex Rule 590 will make the Plan more efficient and timely. Under the proposal, the size and composition of the Committee would be changed from ten persons, all Floor members, to six persons consisting of two Amex staff, three Floor members, and one representative of an ''upstairs'' member firm. As is currently the case with the Committee, the Amex Board would appoint the persons that are eligible to serve on the Committee.

As a result of the change in the composition of the Committee, the Panel that hears contested fines would no longer include two members of the Committee in addition to the professional hearing officer. Instead, the Panel would be selected in accordance with Article V, Section 1(b)(4) of the Exchange Constitution or Amex Rule 345 as appropriate.

As described below, the Exchange proposes to add five violations to the list of rules under the Enforcement Department's jurisdiction in Part 1 of Amex Rule 590. The Exchange also seeks to transfer responsibility for enforcing three rules from the Committee to the Enforcement Department and move certain routine reports from Part 1 to Part 3 where the Exchange believes they more properly belong.

The proposed changes would transfer to the Enforcement Department rule violations pertaining to the SEC's Firm Quote rule, [6] specialists trading with orders on the limit order ''book,'' and the improper taking or supplying of securities to fill customer orders. The proposed revisions also would add five violations that previously were not included in Part 1 to the list of rules under the Enforcement Department's jurisdiction [7] and would rephrase and reorder a number of the violations enforced by the Committee and the Enforcement Department under Part 1.[8]

Under the proposal, routine filings that are currently under the jurisdiction of the Committee (*e.g.,* the Specialist Floor Broker Questionnaire) would be shifted to Part 3, and would be enforced by the Trading Analysis Department. In addition, a failure by a Registered Equity Market Maker to file certain reports would be shifted from the Enforcement Department's jurisdiction to the Trading Analysis Department's jurisdiction under Part 3. Further, since the rule requiring members and member firms to timely file Form U–5s (Uniform Termination Notices) was recently added to the Membership Department's jurisdiction under Part 3,[9] the Exchange proposes to delete this rule from Part 1.

The Exchange proposes to remove three rule violations from Amex Rule 590 altogether: (1) Members trading ahead of customer orders (Amex Rule 150); (2) leaving orders with more than one broker (Amex Rule 157), and (3) off-Floor trading (Amex Rule 958(g)).

Part 1 currently has graduated fine schedules for individuals and member organizations with progressively higher fines for second, third, and subsequent offenses occurring within a ''rolling'' 12–month period.[10] The Plan further provides that the Enforcement Department and the Committee may impose fines for a second or subsequent offense in the case of a first or second offense if the circumstances warrant a more substantial penalty than called for by the schedule. For example, if the Committee finds that a particular violation is more serious than the norm, the Committee may impose the maximum fine, notwithstanding the fact that the violation may be a first offense within the rolling 12-month period.

The Exchange has determined that most violations covered under the Plan could be included in an expanded 24-month review period. In addition, certain rules that may be violated more frequently, such as the Firm Quote rule or rules requiring the submission of audit trail data, are best enforced using a ''patterns and practices'' approach, where market participants are evaluated both in terms of their overall performance and relative to their peers. For these types of rules, using a ''patterns and practices'' approach, the Exchange believes that extending the time period is also appropriate.

The Exchange believes that an extension of the rolling time period is appropriate only if it is coupled with explicit authority to combine separate violations into a single offense under the Plan, where appropriate. The Exchange, therefore, proposes that Amex Rule 590(e) be amended to clarify the authority of the staff and the Committee to combine violations under paragraphs (g) and (h) of Amex Rule 590. The staff and Committee would be permitted to aggregate violations when the number of violations is determined based upon a program of comprehensive surveillance, thereby enabling the staff or Committee to analyze large amounts of regulatory data and craft appropriate remedies, including minor fines, without being held to rigid schedules or being compelled to bring formal disciplinary action based on a minimal number of surveillance breaks. The staff and Committee also would be permitted to aggregate similar violations generally if the conduct was unintentional or negligent, if there was no injury to public investors, or if the violations resulted from a single systemic problem or cause that has since been corrected.

2. Statutory Basis

The Amex 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)(1),[12] 6(b)(6),[13] and 6(b)(7) [14] in particular, in that it is designed to enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange believes the proposal will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes the proposal will provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

[6] 17 CFR 240.11 Ac1–1.

[7] The five new rules are: (1) violation of the Exchange's short sale borrowing policies; (2) violation of SEC Rule 11 Ac1–4 (commonly referred to as the ''Limit Order Display Rule,'' 17 CFR 240.11 Ac1–4); (3) violation of the Exchange's rules regarding the deactivation of Quote Assist; (4) failure to liquidate positions as directed by the Exchange that are over applicable position limits; and (5) failure to comply with Exchange restrictions on transactions and exercises.

[8] Currently, ''Failure to properly mark or identify and represent Floor orders as required under Exchange rules. (Rules 108, 109, 111, 114, 150–157, 950(a)–(d), 958, Commentary .09, and 958A(b))'' is listed as a single entry in Part 1 of the Plan. Because the rules cited under this violation cover some of the Exchange's principal requirements for trading equities and options, and since responsibility for enforcing these rules under the Plan will be divided between the Enforcement Department and the Committee or removed entirely from the Plan, the existing single entry will be divided into multiple entries reflecting its constituent rules. Thus, while the proposed list of rules enforced under Part 1 may appear much longer than it is currently, only five new violations are being added to the Plan.

[9] *See* Securities Exchange Act Release No. 41735 (August 12, 1999), 64 FR 45294 (August 19, 1999) (SR–Amex–99–24).

[10] Violations that occur outside the 12–month rolling review period are not counted in determining whether a particular violation is a second, third or subsequent offense.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(6).

[14] 15 U.S.C. 78f(b)(7).

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 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.

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 Amex. All submissions should refer to file number SR–Amex–00–48 and should be submitted by April 9, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6664 Filed 3–16–01; 8:45 am]

BILLING CODE 8010–01–M

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44065; File No. SR–AMEX–01–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Increase the Maximum Permissible Number of Equity and Index Option Contracts in an Order Entered Through the Amex Order File System

March 12, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 28, 2001, the American Stock Exchange LLC (''Amex'' 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 Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

Amex proposes to increase from 250 to 2500 the maximum permissible number of equity and index option contracts in an order that may be entered in the Amex Order File System. Although this limit does not appear in the Exchange's rules as such, Amex will notify members of the increase in this limit by issuing an information circular.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Amex, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on March 12, 2001.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex Order File (''AOF'') handles limit orders routed to specialists' order books and orders routed to Auto-Ex, an automatic execution system that executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered. In October 1999, Amex filed to expand from 100 to 250 the number of option contracts that a member or member firm may enter directly into an Exchange specialist's order book (the Amex Order Display Book or ''AODB'') from off the Exchange's trading floor using AOF.[4]

The Exchange now proposes to further increase from 250 to 2500 the maximum permissible number of option contracts in an order that can be entered through AOF directly into the AODB.[5] By increasing the size of orders eligible for entry into the AOF, members and member firms will be able to send a larger percentage of orders directly to a specialist's order book for execution resulting in increased automated order handling. This increased automated order handling will benefit customers, as well as members and member firms, by expanding the option orders eligible for automated handling, further ensuring the orderly and timely delivery, processing, and execution of such orders.

Amex believes that, since its introduction, AOF/AODB has been successful in enhancing execution and operational efficiencies. Amex anticipates that the proposed increase to the AOF's parameters should further increase the enhanced execution and operational efficiencies realized since the introduction of the AOF.

2. Statutory Basis

Amex states that the proposed rule change is consistent with Section 6(b) of the Act [6] in general and furthers the objectives of section 6(b)(5) [7] in that it is designed to prevent fraudulent and

[4] *See* Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

[5] Although this filing would give the Exchange authority to increase the limit to 2500 contracts, Amex may for business or operational reasons set the actual limit at less than 2500 contracts. Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Amex, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on March 12, 2001.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Amex represents that the proposed rule change would effect a change in an existing order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. Amex concludes, therefore, that the proposal has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(5)[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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–Amex–01–11 and should be submitted by April 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6665 Filed 3–16–01; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44062; File No. SR–CHX–00–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Preopening Orders

March 12, 2001.

I. Introduction

On October 18, 2000, the Chicago Stock Exchange, Incorporated (''Exchange'' or ''CHX''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the CHX rule governing preopening orders in Nasdaq/NM securities[3] to explicitly define ''preopening orders'' in Nasdaq/NM securities, and to explicitly provide for a single price opening at or better than the NBBO at the first unlocked, uncrossed market. On December 20, 2000, the CHX filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change was published in the **Federal Register** on January 22, 2001.[5] No comments were received on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The Exchange proposes to amend the CHX rule governing preopening orders in Nasdaq/NM securities to provide for additional clarity regarding the types of orders eligible for treatment as preopening orders and the price at which such orders will be filled. The Exchange represents that because Article XX, Rule 37(a)(4) of the Exchange's rules does not explicitly define what constitutes a preopening order in the case of Nasdaq/NM securities, there has been some confusion as to which orders are eligible for treatment as preopening orders, and consequently, some unintended execution guarantees. The proposed rule change will expressly provide that, for an order to be considered a preopening order, an order must be received at or prior to 8:25 a.m. (Central Time) of the date of the opening.

The Exchange also proposes to provide additional clarity regarding the price at which each preopening order will be filled. Currently, the rule provides that preopening orders for Nasdaq/NM securities must be filled ''at the Exchange opening trade price.'' The Exchange believes that it is in the best interest of its order-sending firms and their customers to provide for greater specificity as to the parameters governing the fill price for preopening orders. Accordingly, the proposed rule change provides that each preopening order must be filled ''on a single price opening at or better than the NBBO at the first unlocked, uncrossed market.''

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CHX Article XX, Rule 37(a)(4).

[4] In Amendment No. 1, the CHX clarified the proposed rule text to reflect that the 8:25 a.m. cutoff time for preopening orders is ''Central Time.'' *See* Letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 20, 2000 (''Amendment No. 1'').

[5] *See* Securities Exchange Act Release No. 43835 (January 11, 2001), 66 FR 6718.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[7] 15 U.S.C. 78f(b)(5).

and to protect investors and the public interest.

The Commission finds that the Exchange's amendments to its rule governing preopening orders provides greater clarity and alleviates some confusion for investors as to what constitutes ''preopening orders'' in Nasdaq/NM securities and how such orders are priced. The CHX proposal explicitly defines preopening orders in Nasdaq/NM securities as those orders received at or prior to 8:25 a.m. (Central Time) on the date of the opening. The CHX proposal also specifies that each preopening order must be filled on a single price opening at or better than the NBBO at the first unlocked, uncrossed market.

The Commission finds that the Exchange's proposed rule change is consistent with the Act because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest, by providing more specificity and clarity for order-sending firms and their customers regarding its rule governing preopening orders in Nasdaq/NM securities.

IV. Conclusion

For the foregoing reasons, the Commission finds that the CHX's proposal to amend its rule governing preopening orders in Nasdaq/NM securities, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–00–31), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6666 Filed 3–16–01; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44067; File No. SR–NASD–01–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend NASD Rule 4330(f) to Require a Nasdaq Issuer to Apply for Initial Inclusion Following a Reverse Merger With a Non-Nasdaq Entity

March 13, 2001.

I. Introduction

On October 9, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act),'' [1] and Rule 19b–4 thereunder,[2] a proposal to amend paragraph (f) of NASD Rule 4330, ''Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria,'' to require a Nasdaq issuer to apply for initial inclusion following a Reverse Merger, as defined below, with a non-Nasdaq entity, and to make conforming changes to IM–4300, ''Interpretive Material Regarding Future Priced Securities.'' The proposed rule change was published for comment in the **Federal Register** on February 7, 2001.[3] No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

NASD Rule 4330(f) requires a Nasdaq issuer to comply with all applicable initial inclusion requirements under Nasdaq rules if the issuer enters into a merger, consolidation, or other types of acquisition with a non-Nasdaq entity which results in a change of control and either a change in business or a change in the financial structure of the Nasdaq issuer.

Nasdaq notes that it adopted NASD Rule 4330(f) [4] in 1993 to address concerns associated with non-Nasdaq entities seeking a ''backdoor listing'' on Nasdaq through a business combination involving a Nasdaq issuer.[5] In these combinations, a non-Nasdaq entity purchased a Nasdaq issuer in a transaction that resulted in the non-Nasdaq entity obtaining a Nasdaq listing without qualifying for initial listing or being subject to the background checks and scrutiny normally applied to issuers seeking initial listing.

According to Nasdaq, some issuers and their counsel have expressed uncertainty regarding the circumstances under which NASD Rule 4330(f) is applicable. Therefore, Nasdaq proposes to amend NASD Rule 4330(f) to indicate that an issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the Nasdaq issuer [6] and the potential for the non-Nasdaq entity to acquire a Nasdaq listing (for purposes of NASD Rule 4330(f), such transaction is referred to as a ''Reverse Merger''). To provide further clarification, NASD Rule 4330(f), as amended, sets forth a list of non-exclusive factors which Nasdaq will consider when determining whether a Reverse Merger has occurred. These factors include changes in the management, board of directors, voting power, ownership, and financial structure of the Nasdaq issuer. Nasdaq will also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity. Nasdaq believes that these proposed amendments will clarify NASD Rule 4330(f) for issuers while continuing to prevent ''backdoor listings'' on Nasdaq.

Nasdaq also proposes to make conforming changes to IM–4300.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[8] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

According to Nasdaq, some issuers have expressed uncertainty regarding

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43907 (January 30, 2001), 66 FR 9398.

[4] When the Nasdaq adopted the rule, it appeared in Section 3(f) of Part II to Schedule D of the NASD By-Laws.

[5] *See* Securities Exchange Act Release No. 32264 (May, 4, 1993), 58 FR 27760 (May 11, 1993) (order approving File No. SR–NASD–93–07).

[6] It is not necessary to obtain a majority interest in order for a change of control to occur.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*–3(b)(6).

the applicability of NASD Rule 4330(f) when a Nasdaq issuer combines with a non-Nasdaq entity. To clarify NASD Rule 4330(f), the proposal amends NASD Rule 4330(f) to indicate that issuers must apply for initial inclusion following a Reverse Merger. NASD Rule 4330(f), as amended, provides a non-exclusive list of factors Nasdaq will consider to determine whether a Reverse Merger has occurred.

The Commission believes that the proposal should clarify NASD Rule 4330(f) and provide guidance to issuers concerning the circumstances under which an issuer that combines with a non-Nasdaq entity must apply for initial inclusion. At the same time, the Commission believes that NASD Rule 4330(f), as amended, will continue to protect investors and the public interest by helping to prevent ''backdoor listings'' on Nasdaq.

The Commission finds that the conforming changes to IM–4300 will make IM–4300 consistent with NASD rule 4330(f), as amended, and provide guidance concerning the circumstances under which the conversion of a Future Priced Security could result in a Reverse Merger.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–01–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6663 Filed 3–16–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44061; File No. SR–Phlx–01–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Providing Compensation to Hearing Panelist

March 9, 2001.

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 February 6, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Disciplinary Rules, specifically Rule 960.5, to include a provision that allows hearing panelists to be compensated in connection with certain extraordinary matters. The text of proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and the 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 purpose of the proposed rule change is to amend the Exchange's current Disciplinary Rules to include a provision that would allow hearing panelists to be compensated in certain instances. Pursuant to Exchange rules, a hearing on a Statement of Charges is held before a Hearing Panel composed of three persons that are appointed by the Chairman of the Business Conduct Committee (''BCC'').[3] At times, hearings and related proceedings[4] are lengthy and complex, and thereby require a protracted time commitment on behalf of the hearing panelists. The Exchange believes that in those extraordinary cases, hearing panelists should be compensated for their time devoted to hearing-related matters. By providing compensation pursuant to specific guidelines, the Exchange should continue to attract qualified and experienced hearing panelists.

The proposed amendment specifically provides that hearing panelists appointed by the Chairman of the Exchange's BCC may be compensated in extraordinary cases, as determined by the Chairman of the BCC, in consultation with the Chairman of the Board of Governors (''Board''). Factors to be considered when determining whether a case is extraordinary include, but are not limited to, the anticipated length of time of the hearing; the complexity and serious nature of the matter; and magnitude of the potential penalty.

In general, compensation will be paid only for attending (in person or by telephone) formal hearings, formal pre-hearing conferences or hearing panel deliberations, and not for conversations with staff, or telephone calls for the purpose of scheduling or other administrative matters. No compensation will be paid unless the Chairman of the BBC makes an affirmative determination that certain tasks warrant compensation. The Chairman of the BCC may also establish any caps or limits on compensation to hearing panelists for a given matter.[5] Compensation for attending a formal hearing or other meeting, or participating in a telephone conference regarding the same, will be paid at the same rate and on the same terms as Board members' compensation for service on a Standing Committee with the understanding that any multiple meetings and/or hearings on the same day would be considered a single meeting for the purposes of compensation.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 960.5(a)(1).

[4] Related proceedings may include pre-hearing conferences, motions requesting the production of documentary evidence and witnesses, and conferences relating to the proceedings.

[5] The Chairman of the BBC must notify the Chairman of the Finance Committee of a determination to pay compensation and an estimate therefore. The Chairman of the Finance Committee shall report to the Finance Committee (without identifying the matter in question) and ensure that a provision is made for such compensation in the Exchange's budget, unless the expenditure is already provided for in existing budget categories in the relevant annual budget.

[6] For example, if a Board member, who is also a hearing panelist, attends a Board meeting and a pre-hearing conference on the same day, that member would be compensated at the rate that is equivalent to attending one meeting.

Section 6 of the Act,[7] in general, and with Sections 6(b)(5),[8] 6(b)(6)[9] and 6(b)(7)[10] in particular, in that: (1) It promotes just and equitable principles of trade and protects investors and the public interest; (2) it is designed to ensure that Exchange members and persons associated with members are appropriately disciplined for violations of the provisions of the Act, the rules and regulations thereunder, or the rules of the Exchange; and (3) it provides a fair procedure for the disciplining of Exchange members and persons associated with members by helping to ensure that the Exchange continues to attract experienced panelists for all hearings, including complex and protracted matters.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate or unnecessary burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submission 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 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–01–16 and should be submitted by April 9, 2001.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange requests accelerated approval pursuant to Rule 19(b)(2)(B)[11] in order to expedite the adoption of amended Phlx Rule 960.5(a)(4). After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange,[12] and that accelerated approval is appropriate.

Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(7) of the Act.[13] This Section requires, among other things, that the rules of an exchange provide a fair procedure for disciplining members and persons associated with members. The Commission believes that if hearing panelists are compensated for the time they devote to hearing-related matters that are extraordinary, as proposed by the Exchange, experienced panelists may be more incline to preside over hearings that involve complex and protracted matters, thus helping to ensure that members receive hearings before panelists qualified to hear them.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** in order allow the Exchange to more quickly implement its policy to compensate hearing panelists when extraordinary circumstances warrant payment.

It Is Therefore Ordered, pursuant to Section 19(b)(2)[14] of the Act that the proposed rule change (SR–Phlx–01–16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6667 Filed 3–16–01; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 19s(b)(2)(B).

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation.

[13] 15 U.S.C. 78f(b)(7).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–162]

WTO Dispute Settlement Proceeding Regarding Antidumping Act of 1916

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice of the date by which the United States is to respond to the recommendations and rulings of the Dispute Settlement Body (''DSB'') of the World Trade Organization (''WTO'') in United States—Antidumping Act of 1916. The Antidumping Act of 1916 was the subject of separate disputes brought by the European Communities (the ''EC''), and Japan. In both cases, Japan and the EC alleged that this statute is inconsistent with obligations of the United States under the General Agreement on Tariffs and Trade 1994 (''GATT 1994'') and the Agreement on Implementation of Article VI of GATT 1994 (''the Antidumping Agreement''). In both cases, the panels determined that the 1916 Act is inconsistent with Article VI of GATT and certain provisions of the Antidumping Agreement; the WTO Appellate Body affirmed the panel's findings in both cases. In October 2000, the United States confirmed to the DSB its commitment to implement the recommendations and rulings of the DSB in a manner which respects U.S. WTO obligations. As a result of arbitral proceedings the United States has a period of ten months from the date of adoption of the panel report—i.e., until July 26, 2001—to implement the recommendations and rulings of the DSB. The USTR invites written comments from the public concerning the manner in which it should respond.

DATES: Comments should be submitted by April 16, 2001, to be assured of timely consideration by the USTR in developing a response to the DSB recommendations and rulings.

ADDRESSES: Comments are to be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: U.S.—Antidumping Act of 1916 dispute, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508.

FOR FURTHER INFORMATION CONTACT: Rhonda K. Schnare, Associate General Counsel, (202) 395–3582.

SUPPLEMENTARY INFORMATION: On November 11, 1999, the EC submitted a

request for the establishment of a WTO dispute settlement panel to examine the Antidumping Act of 1916. The DSB established a panel for this purpose on February 1, 2000, and the panel was composed on April 1, 1999. On March 31, 2000, after full briefing and hearings, the panel issued recommendations and rulings.

Separately, on June 3, 1999, Japan also submitted a request for the establishment of a WTO dispute settlement panel to examine the same matter. The DSB established a panel for this purpose on July 26, 1999, and the panel was composed on August 11, 1999. On May 29, 2000, after full briefing and hearings, the panel issued its recommendations and rulings.

Thereafter, the United States appealed both panel reports to the WTO Appellate Body. After further briefing and a hearing, the Appellate Body issued a report affirming the panel reports on August 28, 2000. The Appellate Body's recommendations and rulings were adopted by the DSB on September 26, 2000.

In October 2000 the United States affirmed that it would implement the DSB's recommendations and rulings. On November 17, 2000, the EC and Japan requested arbitration on the reasonable period of time for the United States to implement the DSB's recommendations and rulings. The arbitrator issued a report on February 28, 2001, granting the United States a period of ten months, or until July 26, 2001, to implement the DSB's recommendations and rulings.

Major Issues Raised and Legal Basis of the Complaint

The EC and Japan both alleged that the 1916 Act is inconsistent with Articles III and VI of GATT 1994 and various provisions of the Antidumping Agreement. Specifically, in addition to Article III of GATT 1994, the EC alleged that the 1916 Act is inconsistent with Articles VI:2 and VI:1 of GATT 1994 and Articles 1, 2, 3, 4, 5 of the Antidumpting Agreement.

Japan alleged that the 1916 Act is inconsistent with article VI:2 of GATT and 18.1 of the Antidumping Agreement, which Japan asserted permits the imposition of antidumping duties as the only possible remedy for dumping. Japan also alleged that the 1916 Act is inconsistent with Articles 1, 2, 3, 4, 5, 9 and 11 of the Antidumping Agreement and Article XI of GATT 1994.

Finally, both the EC and Japan asserted that the United States failed to comply with Article XVI:4 of the Marakesh Agreement establishing the WTO which requires that Members bring their laws into compliance with their obligations under the WTO agreements.

In the EC dispute, the panel found that the 1916 Act is inconsistent with Article VI:1 and VI:2 of the GATT 1994; Articles 1, 4, and 5.5 of the Antidumping Agreement; and Article XVI:4 of the WTO Agreement. Specifically, the panel found that 1916 Act violates Article VI because it does not provide exclusively for the material injury test set forth under Article VI, and that by providing for the imposition of treble damages, fines or imprisonment instead of antidumping duties, the 1916 Act violates Article VI:2. The panel also found that by not requiring that cases be filed by or behalf of a domestic industry, the Act violates the Antidumping Agreement's standing provision in Article 4: and that the Act fails to provide the notice required by Article 5 of the Antidumping Agreement.

Similarly, in the Japan dispute, the panel found that the 1916 Act violates Article VI:1 and VI:2 of GATT 1994. The panel also found that the Act is inconsistent with the procedural requirements in Articles 1, 4.1, 5.1, 5.2, 5.4 of the Antidumping Agreement, and Articles 18.1 and 18.4 of the Anti-dumping Agreement by virtue of the other procedural violations. Article 5.1 requires that a request for initiation of an anti-dumping investigation be made by or on behalf of the domestic industry. Article 4.1 defines ''domestic industruy'' for the purpose of the AntiDumping Agreement. Article 5.4 requires the investigating authorities to determine hat an application is supported by those producers whose collective output constitutes more than 50 per cent of the total production of the like product of those producers supporting or opposing the application, and Article 5.2 requires that the application include evidence of dumping, injury and causation.

In both cases, the panel declined to reach the GATT Article III claim and found that the United States is in violation of Article XVI:4 of the WTO Agreement only to the extent that it is in violation of other WTO provisions. In the Japan case, the panel also declined to rule upon the GATT Article XI claim.

The disputes were combined for purposes of briefing and hearings before the WTO Appellate Body, which affirmed the panel's findings in both cases.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR maintains a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. the public file will include all non-confidential comments received by the USTR from the public in response to this request. An appointment to review the public file (Docket WTO/D–162, United States—Anti-dumping Act of 1916) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 01–6752 Filed 3–16–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–9009]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 2115–0073

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR comprises Alternative Compliance for International and Inland Navigation Rules—33 CFR Parts 81 and 89. Before submitting the ICR to OMB, the Coast Guard is requesting comments on the ICR described below.

DATES: Comments must reach the Coast Guard on or before May 18, 2001.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG 2001–9009], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for this request. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2001–9009], and give the reason for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Alternative Compliance for International and Inland Navigation Rules—33 CFR Parts 81 and 89.

OMB Control Number: 2115–0073.

Summary: The information collected provides an opportunity for the owner, operator, builder, or agent of a unique vessel to present her or his reasons why the vessel cannot comply with existing International or Inland Navigation Rules and how it might achieve alternative compliance. If one is appropriate, the Coast Guard issues a Certificate of Alternative Compliance.

Need: Certain vessels cannot comply with the International Navigation Rules (33 U.S.C. chapter 30) or Inland Navigation Rules (33 U.S.C. chapter 34). The Coast Guard therefore provides an opportunity for alternative compliance. However, it cannot determine whether alternative compliance is appropriate, or what kind of alternative compliance might be necessary, without this collection.

Respondents: Owners, operators, builders, and agents of vessels.

Frequency: One-time application.

Burden Estimate: The estimated burden is 153 hours a year.

Dated: March 5, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 01–6742 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Instructions for Continued Airworthiness: In-Service Inspection of Safety Critical Turbine Engine Parts at Piece-Part Opportunity

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of advisory circular on in-service inspection of safety critical turbine engine parts at piece-part opportunity.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of advisory circular (AC) No. 33.4–2, Instructions for Continued Airworthiness: In-Service Inspection of Safety Critical Turbine Engine Parts at Piece-Part Opportunity.

DATES: The Engine and Propeller Directorate, Aircraft Certification Service, issued AC 33.4–2 on March 8, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Liptak, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238–7749; fax: (781) 238–7199; e-mail: mark.liptak@faa.gov. The subject AC is available on the Internet at the following address: www.faa.gov/avr/air/acs/achome.htm.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on March 17, 2000 (65 FR 14641) to announce the availability of the proposed AC and invite interested parties to comment.

Background

This AC provides guidance and acceptable methods, but not the only methods, that may be used to demonstrate compliance with the requirements of 14 CFR 33.4, Instructions for Continued Airworthiness, for in-service inspections of safety critical turbine engine parts at piece-part opportunity. Analysis of fifteen years of transport aircraft accident and incident data shows that the leading cause of engine related CAAM level 3 and 4 accidents for turbofan engines is the uncontained failure of safety critical parts. The failure of safety critical parts can present a significant hazard to an aircraft by releasing fragments that can penetrate the cabin or fuel tanks, damage control surfaces, or sever flammable fluid or hydraulic lines. To significantly reduce the occurrence of these incidents, part features most critical to safety should be subjected to in-service inspections at each piece-part opportunity during their service lives, using methods that detect flaws that could lead to failure.

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

Issued in Burlington, Massachusetts, on March 9, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–6701 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–21]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a petition seeking relief from specified requirements of 14 CFR, and dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 9, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls, (202) 267–8033, or Vanessa Wilkins, (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 14, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2001–9034.
Petitioner: Bombardier Aerospace.
Section of 14 CFR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought: To provide Bombardier Aerospace relief from the static pressure test requirement of § 25.1435(b)(1), for the hydraulic system on the Bombardier Continental Business Jet Model BD–100–1A10 airplane.

Dispositions of Petitions

Docket No.: FAA–2001–8738.
Petitioner: DHL Airways, Inc.
Section of 14 CFR Affected: 14 CFR 121.344(b)(3).
Description of Relief Sought/Disposition: To allow DHL to operate two Airbus 300B4–200 series airplanes (Registration Nos. N367DH and N366DH) without installing in each airplane, the required digital flight data recorder upgrade for a period of 90 days following approval of the Avitas supplemental type certificate, or August 20, 2001, whichever is earlier. *Grant, 02/22/2001, Exemption No. 7429.*

Docket No.: FAA–2001–8616.
Petitioner: Palm Air Incorporated.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit PAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 03/06/2001, Exemption No. 7453*

Docket No.: FAA–2001–8615.
Petitioner: Aerolineas Argentinas.
Section of 14 CFR Affected: 14 CFR 145.47(b).
Description of Relief Sought/Disposition: To permit Aerolineas Argentinas to use the calibration standards of the Instituto Nacional de Technologia Industrial in lieu of the calibration standards of the National Institute of Standards and Technology to test its inspection and test equipment. *Grant, 02/26/2001, Exemption No. 6584B.*

Docket No.: FAA–2000–8388.
Petitioner: AirNet Systems, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit AirNet to assign copies of inspection procedures manual (IPM) to key individuals and place copies of the IPM in strategic locations rather than giving a copy of the IPM to each of its supervisory and inspection personnel. *Grant, 02/26/2001, Exemption No.* 7452.

Docket No.: FAA–2001–8938
Petitioner: Central Oregon Coast Air Services, LLC.
Section of 14 CFR Affected: 135.143(c)(2)
Description of Relief Sought/Disposition: To permit COCAS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 03/06/2001, Exemption No. 7454.*

Docket No.: FAA–2000–8165.
Petitioner: Garret Aviation/The Jet Center.
Section of 14 CFR Affected: 14 CFR 25.813(e).
Description of Relief Sought/Disposition: To permit the installation of interior doors between passenger compartments on the Bombardier Global Express airplane, Model BD–700–1A10. *Grant, 03/07/2001, Exemption No. 7455.*

Docket No.: FAA–2001–8684.
Petitioner: Northwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.709(b)(3).
Description of Relief Sought/Disposition: To permit Northwest to use electronic signatures signatures generated by its SCEPTRE electronic recordkeeping system in lieu of a physical signature to satisfy the airworthiness release or aircraft log entry signature requirements. *Grant, 02/26/2001, Exemption No. 6575B.*

[FR Doc. 01–6699 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

[Docket No. FAA–2001–9119]

Federal Aviation Administration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA will convene a two-day public meeting addressing liability and risk-sharing for commercial space launch and reentry activities. Public views obtained at the meeting will be included in a report to Congress. In layman's terms, the report is intended to include a variety of views and comments concerning whether the government should continue to provide the potential for assurance of financial risk-based support beyond insurance

that launch licensees are required to obtain. The report will provide background and information on the appropriateness and effectiveness of current risk-sharing arrangements under law, and the need to continue or modify laws governing liability risk-sharing for commercial launches and reentries beyond December 31, 2004.

DATES: The meeting will take place on April 25–26, 2001, from 9:00 am to 4:30 pm, and will continue thereafter during a two week on-line public forum accessible through the Internet.

ADDRESSES: The meeting will take place in the FAA Auditorium, located at 800 Independence Avenue, SW., 3rd floor, Washington, DC 20591. Further information regarding the on-line public forum will be provided by public notice approximately three weeks before the public meeting. Persons unable to participate in either the public meeting or the on-line public forum may mail or deliver views, in writing and in duplicate, to the U.S. Department of Transportation Dockets, Docket No. FAA–2001–9119, 400 Seventh Street, SW., Washington, DC, 20590, or may do so electronically by sending them to the Documents Management Systems (DMS) at the following Internet address: *http://dms.dot.gov/*, by May 11, 2001. Written views, as well as a transcript of the public meeting, may be examined in Room PL 401 at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, between 10 am and 5pm weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms Esta M. Rosenberg, Senior Attorney-Advisory, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, U.S. Department of Transportation (202) 366–9320, or Mr. Ronald K. Gress, Manager, Licensing and Safety Division, Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation (202) 267–7985.

SUPPLEMENTARY INFORMATION:

Background

Congress has directed the Secretary of Transportation to conduct a comprehensive and multi-faceted study of the liability risk-sharing regime applicable to U.S. commercial space transportation. Under delegated authority, the Federal Aviation Administration (FAA)'s Associate Administrator for Commercial Space Transportation (AST) is responsible for preparing the report required by the Commercial Space Transportation Competitiveness Act of 2000 (referred to in this Notice as the Space Competitiveness Act), Public Law 106–405. The report contents, as prescribed by Congress, are delineated below and must present the views of interested Federal agencies as well as the public. The purpose of the public meeting is to elicit views from interested members of the public regarding the different aspects of risk sharing required to be addressed in the report and to do so in a public forum. There will be other opportunities for the interested public to provide input to the FAA. These include an on-line public forum that will continue for two weeks following the public meeting and future opportunities to submit views, in writing, to the FAA.

The Space Competitiveness Act, enacted in October 2000, extends for an additional 4-year term the existing statutory liability risk-sharing regime for commercial space transportation, popularly referred to as indemnification. Under the statutory program, FAA-licensed operators conducting space launch and reentry activities share with the U.S. Government the risk of liability, chiefly to uninvolved persons, for injury, damage or loss associated with licensed operations. Originally due to expire in 1993, the indemnification provisions of 49 USC Subtitle IX, chapter 701, popularly referred to as the Commercial Space Launch Act or CSLA, were extended in 1993, for an additional six years, followed by a one year extension in 1999. Passage in 2000 of the Space Competitiveness Act ensures that FAA-licensed operators will be eligible for indemnification under statutorily prescribed procedures through the year 2004, and for some time thereafter as long as their substantially complete launch or reentry license application has been submitted to the FAA by the end of 2004. The most recent extension of the indemnification provisions was accompanied by the requirement to prepare a comprehensive report on the need to continue further, beyond the year 2004, the risk-sharing scheme of the CSLA in its present or modified form.

The U.S. commercial launch industry has had an impressive safety record. There has never been a request for indemnification under the statutory program. In fact, the FAA is unaware of any third-party claims having been processed under the statutorily-directed financial responsibility program. Nevertheless, since the statutory risk allocation program was first enacted by Congress in 1988, U.S. launch operators have maintained that indemnification is critical to their ability to conduct launch operations without ''betting the company'' and to compete successfully with foreign launch services providers offering customers government-backed assurances that their liability exposure will be covered without risk or additional cost to the customer. The report mandated by the Space Competitiveness Act is intended to facilitate congressional consideration of a further extension of the existing program, and the need for any changes to the program, when it next expires December 31, 2004.

Liability Risk-Sharing for U.S. Commercial Space Transportation

Activities

Indemnification is one element of a comprehensive risk allocation program detailed in the CSLA and explained in final rules issued by the FAA to implement the statute. (*See* ''Financial Responsibility Requirements for Licensed Launch Activities; Final Rule,'' 63 FR 45592–45625, issued August 26, 1998, and ''Financial Responsibility Requirements for Licensed Reentry Activities; Final Rule,'' 65 FR 56670–56705, issued September 19, 2000. Both rulemaking documents are available by accessing AST's Internet home page: http://ast.faa.gov.) The FAA's financial responsibility regulations for commercial space transportation are codified at 14 CFR parts 440 and 450.

Under a three-tiered approach to risk allocation, launch and reentry licensees are effectively relieved of the risk of potentially catastrophic and unlimited liability associated with hazardous launch or reentry operations. The first tier of liability risk is that having the greatest likelihood of occurrence. It is managed through an FAA requirement for a demonstration of financial responsibility, typically private liability insurance purchased by a licensee authorized to conduct a launch or reentry. The liability to third parties of all participants, including the U.S. Government, involved in a licensed launch or reentry must be covered by the licensee's insurance. The amount of coverage is prescribed by the FAA based on an assessment of risk, known as a maximum probable loss analysis, to third parties and third-party or uninvolved property, up to a statutory limit of $500 million.

The second tier of liability risk is for losses to third parties and third-party or uninvolved property in excess of required insurance. Under the current statutory scheme, responsibility for covering excess claims is allocated to the Government under a procedure,

known as indemnification, whereby Congress may appropriate up to $1.5 billion, as adjusted for post-January 1, 1989 inflation, to cover successful third-party claims under a compensation plan prepared by the FAA and submitted by the President.

This arrangement benefits all participants in licensed launch and reentry activities, including the Government at no cost to the Government. Coverage of the Government's responsibility for damage or loss to third parties is significant because of its liability exposure as a participant in supporting launches and reentries at federal ranges and as a signatory to the Outer Space Treaties. Specifically, under the Convention on International Liability for Damage Caused by Space Objects (Liability Convention), the United States is absolutely liable for damage caused on Earth or to aircraft in flight, outside of U.S. territory, when the United States is a launching State under the terms of the Outer Space Treaties. The current statutory liability risk-sharing regime ensures that the Government's treaty-based financial responsibility for commercial launch and reentry activities will, in all probability, be satisfied by private insurance and without cost to the U.S. taxpayer.

Above the combined amount of insurance plus congressionally authorized payment, or indemnification, responsibility for covering third-party liability returns to the licensee or other liable party. As a general matter, managing the third tier of liability risk is therefore the responsibility of commercial entities involved in licensed activity.

Indemnification under the CSLA ensures that relief will be available to compensate injured persons not involved in space activity but who suffer damage or loss as a result of a launch or reentry accident, as well as Government personnel as defined by FAA regulations, who suffer loss or injury in supporting a commercial launch or reentry. Only successful claims for third-party injury, damage or loss may be eligible for Government indemnification. Indemnification does not cover claims for damage or loss to a launch vehicle or reentry vehicle, or to a satellite or other payload. Nor is it intended to cover losses sustained by employees of commercial entities involved in licensed activity. As explained in the above-referenced rulemaking documents, private entities involved in a licensed launch or reentry are responsible for managing their own damage or loss and that of their employees. To ensure this result, the CSLA directs certain contractual arrangements among the various launch or reentry participants to address the risk of damage or loss to their property and personnel involved in launch or reentry activities. FAA regulations include a contractual agreement, known as an ''Agreement for Waiver of Claims and Assumption of Responsibility,'' documenting this arrangement among the various participants. (See appendix B to 14 CFR parts 440 and 450, respectively.) The statutory risk-sharing program does not dictate risk management decisions for private entities involved in space activities beyond the required waiver of claims agreement just described. An owner of a launch or reentry vehicle or payload may choose to insure its property through private insurance, or not.

The current statutory liability risk-sharing regime has been credited with reducing launch costs by virtue of requirements for comprehensive insurance covering all participants, and by significantly limiting the threat of litigation and its associated costs among participants in licensed activity. It has also been cited as a critical component in building the international competitiveness of the U.S. space transportation industry by placing U.S. launch services providers on a more equal footing with their competition. For example, Arianespace, still the primary competitor of the U.S. launch industry, continues to offer customers full indemnification by the French Government for third-party liability that exceeds required insurance of 400 million French francs (currently, approximately $80 million).

Recently, the statutory risk-sharing regime was extended to reentry vehicles, including reusable launch vehicles (RLVs), through enactment of the Commercial Space Act of 1998. Although no commercial RLV concept is sufficiently mature for FAA licensing consideration, extension of the risk-sharing program to licensed reentry activities has been regarded as critical to RLV development and ability to operate commercially, just as it was to the ability of U.S. industry to offer commercial expendable launch vehicle services beginning in the late 1980s through the present.

Report Requirements

Seven specific areas of study and analysis are identified in the Space Competitiveness Act and the FAA seeks public views on each of them. Although recommendations on appropriate modifications to existing law are required as part of the report, the FAA is advised that the principal purpose of the report is to provide an understanding of the factual and legal bases for continuing or modifying the indemnification and statutory risk-sharing program, as opposed to formulation of policy that may involve statutory changes.

The seven areas of study are listed below along with some associated issues preliminarily identified by the FAA to stimulate, but not limit or direct, consideration of the issues by the public. The report mandated by the Space Competitiveness Act is broad in its required scope and coverage and the interested public is urged to explore the issues in depth. For this reason, the FAA is providing weeks of advance notice of the public meeting. The report shall:

1. Analyze the adequacy, propriety, and effectiveness of, and the need for, the current liability risk-sharing regime in the United States for commercial space transportation.

2. Examine the current liability and liability risk-sharing regimes in other countries with space transportation capabilities.

As previously noted, Arianespace offers customers government-backed relief from liability risk exposure arising out of a launch accident. Other governments offer varying forms of financial support to address potential liability of launch providers and their customers. The FAA seeks information and public views on the ability of U.S. launch services providers to compete effectively with foreign providers in the context of the current risk-sharing regime and their ability to continue to do so if the regime were absent or modified. Specifically, the FAA is interested in the impact indemnification has on the ability of U.S. providers to attract and retain customers, both foreign and domestic, under the present scheme and the potential effects ending or changing the current scheme could have on sustaining and enhancing the international competitiveness of the U.S. space transportation industry.

3. Examine the appropriateness of deeming all space transportation activities to be ''ultrahazardous activities'' for which a strict liability standard may be applied and which liability regime should attach to space transportation activities, whether ultrahazardous activities or not.

Government indemnification has been made available to industries that have been deemed ultrahazardous in nature, such as nuclear energy generation, and subject by courts to a strict liability standard. Similarly, under special provisions, such as Public Law 85–804, government contractors engaging in

unusually hazardous activities for the government may receive assurances of government indemnification above the limit of insurance that is available at reasonable cost. Where a strict liability standard applies, liability is not based upon a lack of care on the part of the entity conducting the activity. Rather, liability is found because of the dangerous and risky nature of the activity. Indemnification under such circumstances is desirable to an operator to address the potentially unlimited or open-ended liability that would attach in the event of injury, damage or loss to third parties.

In the context of a licensed launch in the United States, consisting of certain pre-flight ground operations as well as ignition and flight of a launch vehicle, is the current liability risk-sharing regime necessary and appropriate for all licensed launches and launch activities? The FAA is interested in information and public views as to whether it is reasonable and appropriate to separate licensed activities that may be deemed ultrahazardous and therefore subject to a strict liability standard by a court from those that would not be so considered.

4. Examine the effect of relevant international treaties on the Federal Government's liability for commercial space launches and how the current domestic liability risk-sharing regime meets or exceeds the requirements of those treaties.

As stated above, the United States accepts liability for certain damage when it is a launching State under the Outer Space Treaties, that is, when it launches or procures the launch of a space object or when the launch takes place from U.S. territory or a U.S. facility. (Liability Convention, Article I.) A ''space object'' includes component parts of a space object as well as its launch vehicle and parts thereof. *Id.* Liability for damage on the ground or to aircraft in flight outside of U.S. territory is absolute, but is fault-based when damage occurs elsewhere, such as in outer space. In the latter instance, the government is liable if the damage is due to the fault of the government or persons for whom the government is responsible. Under Article VI of the ''Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,'' a State Party to the treaty bears international responsibility for activities in outer space carried on by non-governmental entities. Such activities require authorization and *continuing supervision* by the appropriate State Party to the treaty. (Emphasis added.)

By regulation, the FAA requires launch insurance for a term of 30 days following a licensed launch; however, the Government's liability as a signatory to the Outer Space Treaties may extend beyond the event of conducting a launch or reentry. The FAA seeks information and public views on the adequacy of the existing statutory and regulatory program in light of treaty obligations undertaken by the United States. The Outer Space Treaties are available by accessing the United Nations Internet site.

5. Examine the appropriateness, as commercial reusable launch vehicles enter service and demonstrate improved safety and reliability, of evolving the commercial space transportation liability regime towards the approach of the airline liability regime.

The airline liability regime differs from that applicable to commercial space transportation in several ways. Unlike its acceptance of an international liability regime applicable to damage on the ground or to aircraft resulting from certain space activities when the United States is a launching State under the Liability Convention as explained in item 4, above, the United States has not accepted a comparable regime for airline liability and is not party to a multilateral agreement under which the U.S. Government accepts financial responsibility for covering damage on the ground arising out of civil aircraft operation. Department of Transportation economic regulations require U.S. and foreign air carriers to have liability insurance coverage in certain minimum amounts, on a per person and per occurrence basis, to cover injury, loss or damage to the traveling public and persons on the ground. *See* 14 CFR parts 205 and 298. There is no provision for government indemnification of commercially operated civil aircraft for third-party liability above required insurance. The FAA seeks information and views from the public on the appropriateness and adequacy of transitioning management of liability for space launch and reentry vehicle operations to a program resembling that used to address airline liability. What factors should be considered in determining whether and when it would be appropriate to do so?

6. Examine the need for changes to the Federal Government's indemnification policy to accommodate the risks associated with commercial spaceport operations.

Licensed launch site and reentry site operators, popularly referred to as spaceports, currently participate in the liability risk-sharing regime as a contractor to the launch or reentry licensee when their site is used to support a licensed launch or reentry. If a launch accident occurred, for example, insurance obtained by the launch licensee would cover claims of third parties against the licensed launch site operator and that operator would be eligible for government payment of excess claims, or indemnification, if third-party claims exceeded the required amount of insurance. At other times, such as when there is no launch vehicle present, the CSLA does not provide statutory authority for payment by the Government of third-party claims resulting from operation of a launch or reentry site separate from licensed launch or reentry activities. Those risks are managed in the same manner as other industrial risks, that is, as part of an operator's business plan for managing the risk of liability through insurance or other financial protection. The FAA seeks information and public views on the adequacy of the existing statutory scheme as it affects licensed launch site and reentry site operators.

7. Recommend appropriate modifications to the commercial space transportation liability regime and the actions required to accomplish those modifications.

Public Meeting Format

Interested members of the public are invited to participate in the public meeting by offering views on any or all of the areas of study identified above. In order to assure all participants an opportunity to present views, persons interested in participating in the meeting should reserve time for their presentations by contacting AST directly at (202) 267–7793.

Additional information regarding the on-line public forum, as well as additional details concerning the public meeting, will be made available in the weeks preceding the public meeting through notice in the **Federal Register** and on the AST Internet home page: *http://ast.faa.gov.*

Issued in Washington, DC on March 12, 2001.

Joseph A. Hawkins,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 01–6697 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 197; Rechargable and Starting Batteries

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–197 meeting to be held April 10–11, 2001, starting at 9:00 a.m. The meeting will held RTCA Inc., 1140 Connecticut Ave., NW., Suite 1020, Washington, DC 20036.

At the request of the Federal Aviation Administration, RTCA has established a new Special Committee (SC–197) to develop Minimum Operational Performance Standards (MOPS) for the Construction, Performance, and Testing of Rechargable and Starting Batteries as Power Sources for Equipment Installed in Aircraft. The FAA would then consider adopting the RTCA standard by reference in a Technical Standard Order.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Review Meeting Agenda; (3) Review of RTCA and Federal Advisory Committee Procedures; (4) Review FAA Aircraft Battery Requirements; (5) Review SC–197 Terms of Reference; (6) Identify Goals/Develop Work/Plans Examine Milestones; (7) Organize Work Groups/Determine Leadership/Establish Interim Milestones; (8) Announce Work Group Leaders/Assign Tasks and Work Groups/Begin Work Group Breakout Sessions; April 11: (9) Working Groups meetings; Plenary Session: (10) Working Groups Reports; (11) Proposed Schedules for Subsequent Meetings; (12) Other Business; (13) Establish Agenda for Next Meeting; (14) Date and Location of Next Meeting; (15) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or *http://www.rtca.org* (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 12, 2001.

Janice L. Peters,

Designated Official.

[FR Doc. 01–6695 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility charge (PFC) at Alpena County Regional Airport, Alpena, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Alpena County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 18, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan K. Holland of the Alpena County Regional Airport at the following address: Alpena County Regional Airport, 1617 Airport Road, Alpena, Michigan 49707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Alpena County Regional Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Alpena County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 5, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Alpena County Regional Airport was substantially complete within the requirements of section 158.25 of Part 1568. The FAA will approve or disapprove the application, in whole or in part, no later than May 16, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–01–C–00–APN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2001.

Proposed charge expiration date: August 1, 2009.

Total estimated PFC revenue: $268,480.00.

Brief description of proposed projects: Taxiway holdline signs and radio control; runway 19 precision approach path indicator and runway end identifier lights; groove and mark runway 01/19; rehabilitate runway 07/25 and medium intensity lighting; field lighting/tower electrical modifications; runway/taxiway signage and marking; rehabilitate and expand terminal apron; deer control fencing; rehabilitate high intensity runway lights (HIRL) for runway 01/19 and taxiway ''D'' (engineering only); rehabilitate HIRL runway 01/19 and taxiway lights; reconstruct taxiway ''D''; surface runway 01/19, overlay taxiways ''H'' and ''C'', and aprons (engineering only); overlay runway 13/31, taxiway ''H'', surface runway 01/19.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may upon request, inspect the application, notice, and other documents germane to the application in person at the Alpena County Regional Airport.

Dated: March 6, 2001.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 01–6696 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Hartsfiled Atlanta International Airport, Atlanta, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Hartsfiled Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 18, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Art Bacon, Aviation Business Manager of the City of Atlanta's Department of Aviation at the following address: Art Bacon, Aviation Business Manager, City of Atlanta, Department of Aviation, P.O. Box 20509, Atlanta, GA 30320–2509.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Atlanta under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Terry Washington, P.E., Program Manager, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, Telephone Number: 404–305–7143. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at ATL under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 23, 2001, the FAA determined that the application to use the revenue from a PFC submitted by the City of Atlanta was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 24, 2001. The following is a brief overview of the application.

PFC Application No.: 00–02–U–00–ATL.

Level of the PFC: $4.50.

Charge effective date: May 1, 1997.

Proposed charge expiration date: February 1, 2004.

Total estimated PFC revenue: $544,613,096.

Brief description of proposed project(s): Design and construct Eastside Terminal; Design and construction of Roadway improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) and Commuter or Small Certified Air Carriers (CAC).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Atlanta's Department of Aviation.

Issued in Atlanta, Georgia on Friday, March 9, 2001.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 01–6700 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to use the revenue from a Passenger Facility Charge (PFC) at Juneau International Airport, Juneau, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invite public comment on the application to use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990). (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 18, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David S. Stelling, Acting Manager, Alaskan Region Airports Division, 222 West 7th, Box 14, Anchorage, AK 99513.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allan A. Heese, Airport Manager, of the Juneau International Airport at the following address: Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK 99801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Juneau International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Programming Specialist, Alaskan Region Airports Division, Planning and Programming Branch, AAL–611A, 222 W 7th, Box 14, Anchorage, AK 99513, (907) 271–5443. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#01–04–C–00–JNU) to use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 28, 2001, the FAA determined that the application to use the revenue from a PFC submitted by City and Borough of Juneau, Juneau International Airport, Juneau, Alaska, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 8, 2001.

The following is a brief overview of the application.

Application number: 01–04–C–00–JNU.

Level of the proposed PFC: $3.00.

Charge effective date: October 1, 1998.

Charge expiration date: July 31, 2000.

Total estimated PFC revenue: $32,298.

Brief description of proposed project: Develop east end general aviation area.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: FAA, Alaskan Region Airports Division, Anchorage, Alaska.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Juneau International Airport.

Issued in Anchorage, Alaska on February 28, 2001.

David S. Stelling,

Acting Manager, Airports Division, Alaskan Region.

[FR Doc. 01–6698 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (01–04–C–00–RIC) To Impose and Use The Revenue From a Passenger Facility Charge (PFC) at Richmond International Airport, Richmond, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent To Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a passenger facility charge (PFC) at Richmond International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 18, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Arthur Winder, Project Manager, WASHINGTON AIRPORTS DISTRICT OFFICE, 23723 Air Freight Lane, Suite 210, Dulles, Va. 22016.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jon E. Mathiasen, Executive Director, Capital Region Airport Commission, at the following address: Capital Region Airport Commission, 1 Richard E. Byrd Terminal Drive, Richmond International Airport, Virginia 23250–2400.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Capital Region Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Program Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Va. 22016, (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Richmond International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 16, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Capital Region Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 17, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–4–C–00–RIC.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2015.

Proposed charge expiration date: November 1, 2016.

Total estimated PFC revenue: $4,570,342.

Brief description of proposed project(s):

Extend Taxiway ''U'' (Impose & Use)
Repair/Replace Storm Drain system 2/20 (Impose & Use)
Refurbish Existing Concourse & Terminal (Impose & Use)
Deicing Collection System (Impose & Use)
Expand Concourse C and Apron (Impose & Use)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 On-demand air taxi/commercial operators (ATCO)

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the FAA Regional Airports Office located at: Federal Aviation Administration, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Richmond International Airport.

Issued in Dulles, VA. 22016, February 20, 2001.

Terry J. Page,

Manager, Washington Airports District Office.

[FR Doc. 01–5029 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–2000–33.94–R0]

Policy for Use of Structural Dynamic Analysis Methods for Blade Containment and Rotor Unbalance Tests

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; policy statement.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy for evaluating the use of structural dynamic analysis methods for blade containment and rotor unbalance tests.

DATES: The FAA issued policy statement number ANE–2000–33.94–R0 on March 8, 2001.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jay.turnberg@faa.gov*; telephone: (781) 238–7116; fax: (781) 238–7199. The policy statement is available on the Internet at the following address: *http://www.faa.gov/avr/air/ane/ane110/hpage.htm*. If you do not have access to the Internet, you may request a copy of the policy by contacting the individual listed in this section.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on January 10, 2001 (66 FR 2043) to announce the availability of the proposed policy and invite interested parties to comment.

Background

Engine manufacturers are developing and using various types of structural dynamic analysis methods to support both engine certification activities and aircraft manufacturers' certification activities. The FAA has developed policy to provide guidance for evaluating the use of structural dynamic analysis methods to show compliance with the requirements of § 33.94 of Title 14 of the Code of Federal Regulations, ''Blade containment and rotor unbalance tests.'' This policy specifically addresses paragraph (a) of § 33.94 for engine design and configuration changes. This policy does not create any new requirements.

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

Issued in Burlington, Massachusetts, on March 9, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directions, Aircraft Certification Service.

[FR Doc. 01–6702 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2001–8889

Applicant: I & M Rail Link, LLC, Mr. Scott F. Woodward, Chief Engineer, Post Office Box 16330, Missoula, Montana 59808–6330

I&M Rail Link, LLC seeks approval of the proposed modification of the traffic control system, on the single main track, between Chillocothe and Braymer, Missouri, on the First Subdivision, consisting of the discontinuance and removal of controlled signals 16RA, and 16L at East Dawn, milepost 431.9; the discontinuance and removal of controlled signals 14R, and 14LA at West Dawn, milepost 432.8; 22R, and the installation of new back to back intermediate signals 4332 and 4333 at milepost 432.35.

The reason given for the proposed changes is that the siding track between East Dawn and West Dawn was retired by the previous owner, thereby eliminating the need for the controlled signals.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on March 12, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–6734 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioners' arguments in favor of relief.

Minnesota Northern Railroad and St. Croix Valley Railroad (Docket Number FRA–2000–8368)

The Minnesota Northern Railroad and St. Croix Valley Railroad have petitioned for a permanent waiver of compliance for one locomotive, ILSX 904, from the requirements of Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing.

This locomotive is intended for primary use on the St. Croix Valley Railroad in and near Hinkley, Minnesota. The St. Croix Valley Railroad operates in East Central Minnesota, the location of the railroad is largely rural, approximately 50% cultivated farm land and 50% wooded.

Interested parties are invited to participated in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2000–8368) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communication concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 7th Street, SW., Washington, DC. All documents in the public docket are available for inspection and copying on the internet at the docket facility's WEB site at http://dms.dot.gov.

Issued in Washington, DC on March 12, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–6733 Filed 3–16–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

[STB Ex Parte No. 585]

Surface Transportation Board

AGENCY: Surface Transportation Board

ACTION: Policy statement on use of third-party contracting In preparation of environmental documentation.

SUMMARY: This policy statement discusses the Surface Transportation Board's practice of using third-party contractors to aid in preparing environmental documentation necessary to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and related environmental laws in Board proceedings.

DATES: This policy statement is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Victoria Rutson, (202) 565–1545 or Evelyn Kitay, (202) 565–1563 [TDD/TYY for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) often uses third-party contractors to assist in preparing Environmental Assessments (EAs) [1] or Environmental Impact Statements (EISs) [2] to fulfill the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), and related environmental laws in our rail licensing decisions. The public has, on occasion, raised concerns regarding whether an environmental document prepared by the Board's environmental staff with the assistance of a contractor paid for by a railroad applicant presents an impartial and unbiased analysis. Also, applicants have at times objected to their lack of control over the costs of an environmental analysis in certain proceedings, particularly when the scope of work needed to complete the environmental review in complex cases is more far-reaching than originally contemplated, due to the discovery of unanticipated environmental issues that need to be addressed. Below, we review the requirements of NEPA and the environmental regulations concerning third-party contracting. In addition, we summarize our third-party contracting process, respond to the concerns raised by some regarding our current third-party contracting procedures, and explain why we believe that our approach, although not without problems, is the most appropriate one for this agency.

Background

NEPA requires federal agencies ''to the fullest extent possible'' to consider the environmental consequences ''in every recommendation or report on major federal actions significantly affecting the quality of the human environment.'' [3] The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed agency action before it is implemented, in order to minimize or avoid potential negative environmental impacts.[4] While NEPA requires that we take a hard look at the environmental consequences of our licensing decisions, it does not mandate a particular result. Thus, once the adverse environmental effects of a proposed action have been adequately identified and evaluated, we may conclude that other values outweigh the environmental costs.[5]

Our Section of Environmental Analysis (SEA) assures that the Board meets its responsibilities under NEPA. SEA provides us with an independent environmental review of these proposals for which an environmental review is triggered by NEPA and our implementing regulations at 49 CFR part 1105 (generally rail line constructions, abandonments, and mergers). SEA prepares an EA or EIS, as appropriate, and provides technical advice and recommendations to the Board on environmental matters.

Third-party contracting is a voluntary arrangement in which the applicant pays for a contractor to assist SEA by developing environmental analyses necessary for compliance with NEPA and related environmental laws, [6] under SEA's direction, control, and supervision. Our environmental rules at 49 CFR 1105.10(d) specifically permit the use of third-party contractors, if approved by SEA. The third-party contracting process, discussed below in more detail, has generally worked well in more than 50 Board (and Interstate Commerce Commission) proceedings.[7]

The Board's Third-Party Contracting Process

SEA follows certain steps when preparing environmental documents with the aid of third-party contractors. The first step is to inform applicants about the third-party contractor option. As stated above, third-party contracting is a voluntary arrangement. Applicants can choose either (1) to retain a third-party contractor to assist in the preparation of the environmental document or (2) to prepare an environmental (and historic) report on their own, evaluating the potential environmental impacts and any reasonable alternatives to the proposed action, and submit the report with, or prior to, the time they file their project with the Board.[8] In the former case, the third-party contractor assists in the preparation of the environmental document, working under the direction, supervision, and control of SEA, and the applicant's obligation to submit an environmental and historic report is waived.[9] In the latter case, SEA prepares the environmental document using the material provided by the applicant in the environmental and historic report as a starting point.

Once an applicant decides to use a third-party contractor to assist in the preparation of the environmental document, the next step in the process is to select a third-party contractor. SEA maintains a list of approved third-party contractors, comprised of individuals and firms with expertise and experience in environmental review of rail or transportation projects.[10] When an applicant expresses an interest in using a third-party contractor, SEA furnishes the applicant a copy of the third-party contractor list. The applicant indicates which contractor from the list it would prefer to use by formally requesting in writing SEA's approval of that contractor.[11] SEA decides whether to

[1] An EA is a concise public document issued by the agency that contains sufficient information for determining whether to prepare a full Environmental Impact Statement or to make a finding of no significant impact. *See* Council on Environmental Quality (CEQ), *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,* at 40 CFR 1508.9; 49 CFR 1105.4(d).

[2] An EIS is the detailed written statement required by the National Environmental Policy Act for a major federal action significantly affecting the quality of the human environment. *See* 40 CFR 1508.11; 49 CFR 1105.4(f).

[3] 42 U.S.C. 4332(2)(C). CEQ has defined ''major federal actions'' to include projects regulated or approved by federal agencies. 40 CFR 1508.18.

[4] *Marsh v. Oregon Natural Resources Council,* 490 U.S. 360, 371 (1989).

[5] *See Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 350 (1989); *City of Auburn v. United States,* 154 F. 3d 1025, 1031–33 (9th Cir. 1998), *cert. denied,* 527 U.S. 1022 (1999) (*City of Auburn*).

[6] *See Implementation of Environmental Laws,* 7 I.C.C.2d 807, 817 (1991) (*Environmental Laws*). The government-wide regulations implementing NEPA, promulgated by CEQ, expressly permit the use of third-party contractors in the preparation of an EA or an EIS. 40 CFR 1506.5(c). CEQ regulations provide that agencies using contractors to aid in the preparation of environmental documents will be responsible for selecting the contractors, will provide the contractors with guidance and supervision in the preparation of the document, and will independently evaluate the document before approval. Contractors must sign a disclosure statement prior to beginning work, indicating that they are disinterested parties to the project.

[7] Most of the concerns that have been raised regarding the third-party contracting process focus on two particularly controversial proceedings involving unique and unanticipated environmental issues that resulted in higher than expected costs associated with the third-party contracting process: STB Finance Docket No. 33388, *CSX Corp.—Control and Operating Leases/Agreements—Conrail, Inc.* (Draft EIS served Dec. 12, 1997; Final EIS served May 22, 1998) (*Conrail*), and STB Finance Docket No. 33407, *Dakota, Minnesota & Eastern Railroad Corp. Construction into the Powder River Basin* (Draft EIS served Sept. 27, 2000) (*DM&E*).

[8] Environmental and historic reports must include the material required by our regulations at 49 CFR 1105.7 and 1105.8.

[9] *See* 49 CFR 1105.10(d).

[10] This list was initially derived from responses to a solicitation placed by SEA in the *Commerce Business Daily.* SEA staff reviewed the responses received for experience in preparing EAs and EISs, and knowledge of and experience in analyzing environmental issues, particularly those related to transportation projects. SEA has periodically updated the third-party contractor list. Currently, there are 48 individuals and firms on the list.

[11] Applicants can propose to have a contractor added to the list if the contractor furnishes information showing that the contractor has the requisite qualifications.

grant the request and responds to the applicant in writing. SEA's approval is subject to the contractor signing a disclosure statement that it has no financial interest in the outcome of the applicant's proposal.[12] SEA's process allows the applicant to have some input in the selection of the third-party contractor, while enabling SEA to retain ultimate responsibility. Our environmental regulations at 49 CFR 1105.4(j) make it clear that, while the applicant may participate in choosing the contractor, ''to avoid any impermissible conflict of interest * * * the railroad may not be responsible for the selection or control of independent contractors [emphasis supplied].'' [13]

After the third-party contractor has signed and returned the disclosure statement to SEA, SEA prepares a Memorandum of Understanding (MOU), which SEA, the applicant, and the third-party contractor must all sign. The MOU outlines the conditions and procedures each party must follow in preparing the environmental document. Under the MOU, the applicant's primary responsibility is to pay for the contractor's services; the contractor's primary responsibility is to assist SEA in preparing the environmental document as SEA directs; and SEA's primary responsibility is to supervise and direct the contractor's work. The MOU provides that the applicant will not attempt to improperly influence the contractor's work, and that the contractor will cooperate fully with SEA. The MOU clarifies that SEA, not the applicant, is in control of the preparation of the environmental analysis, even though the applicant is paying the contractor's bills. The specific responsibilities of SEA, the applicant, and the third-party contractor detailed in a typical MOU are set forth below.

(a) *SEA's Responsibilities.* While the exact language of an MOU will depend on the facts and circumstances of the particular case, each MOU explains that SEA is ultimately responsible for the preparation of the appropriate environmental document, and that SEA will furnish guidance on the environmental analysis, participate in the preparation of the environmental document, independently evaluate the environmental document and add its expertise through review and revision, if necessary.

(b) *The Contractor's Responsibilities.* Each MOU makes clear that the contractor shall provide: environmental expertise; a good working knowledge of NEPA and related environmental laws and regulations; the capability to perform appropriate environmental impact analyses; representatives to attend meetings; the ability to prepare thorough, readable, technically sound, and informative environmental documentation, as well as related charts, maps, and diagrams; and expertise in data management.

Every MOU states that the contractor may engage subcontractors to perform work on the project, but that all work performed by subcontractors will also be under the direction, control, supervision, and final approval of SEA. MOUs also typically require the contractor to perform work in a ''timely, responsive, satisfactory, and cost-effective manner * * *''

(c) *The Applicant's Responsibilities.* Each MOU states that the applicant is responsible for all costs of the third-party contractor, including administrative and clerical costs associated with preparation and production of environmental documents.

The final step before beginning preparation of the environmental document is the development of a Work Plan that describes the work to be performed by the contractor, sets forth a proposed schedule for completing the work, names the individual members of the contractor's staff who will be primarily responsible for the project, and outlines environmental tasks that will need to be performed for the project known to date (for example, preparation of a biological assessment under the Endangered Species Act, 16 U.S.C 1531 *et seq.*). The Work Plan is prepared by the third-party contractor, in consultation with SEA and the applicant. SEA has the authority to amend the scope of work and monitors the contractor on a regular basis to ensure that the work is progressing efficiently and cost-effectively. SEA also has the authority to remove the contractor for cause or approve termination of the contract between the applicant and the contractor.[14] If SEA removes the contractor or approves the termination of the contract, SEA works to replace the contractor with another qualified contractor as soon as practicable.

Once all of the preliminary matters have been settled, SEA and the contractor begin working together to prepare the environmental document under SEA's direction and control.[15] The preparation of every environmental document includes extensive contact and cooperation between the contractor and SEA. For example, SEA (1) conducts regular informational briefings with the contractor (by meetings and telephone); (2) determines the format of the environmental document and the scope of the environmental analysis; (3) conducts site inspections with the applicant, the contractor, and other environmental experts, as appropriate; (4) works with the contractor to consult with Federal, state, and local agencies, Native American Tribes, members of the public, and other interested parties, as appropriate; (5) reviews, edits, and revises the environmental document; and (6) coordinates and directs the efforts to reach conclusions regarding potential environmental impacts and develop recommended environmental mitigation measures. The process ensures that SEA retains ultimate control over the work product and protects the independent nature of the environmental document and the contractor's work.

Additionally, the extensive public participation that is an integral part of the environmental review process guarantees that the environmental document will reflect multiple points of view and reduces the possibility of one-sided or applicant-biased environmental analyses.[16] SEA and the contractor typically conduct public outreach at the early stages of the environmental analysis, to promote notice of the

[12] This practice prevents conflict of interest problems and assures the objectivity of the third-party contractor in the environmental review process. *See* 40 CFR 1506.5(c) (requiring a contractor disclosure statement); *Sierra Club* v. *Marsh,* 714 F. Supp. 539, 553 (D. Me. 1989), quoting CEQ guidance for implementing NEPA, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026 (1981) (*Forty Questions*), 46 FR at 18031 (this conflict of interest regulation is intended to preserve the ''objectivity and integrity of the NEPA process'').

[13] *See also* 40 CFR 1506.5(c) (''It is the intent of these regulations that the contractor be chosen solely by the lead agency * * * to avoid any conflict of interest.''); *Forty Questions,* Question 16 (''the agency must select the consulting firm, even though the applicant pays for the cost of preparing the EIS * * * [T]he applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with section 1506.5(c)''). There have been few challenges to the third-party contracting process. In *Citizens Against Burlington, Inc.* v. *Busey,* 938 F.2d 190, 202 (D.C. Cir. 1991), *cert. denied,* 502 U.S. 994 (1991), however, the court concluded that the agency ''was obliged to pick a contractor itself, and not to delegate the responsibility.'' The court rejected an agency's claim that its concurrence in the applicant's choice of the contractor was sufficient.

[14] In most cases, the applicant and contractor enter into a separate contract detailing general rates to be charged and others costs to be assessed for various services. The agency does not participate in this process.

[15] *See* 49 CFR 1105.4(j); 49 CFR 1105.10(d); 40 CFR 1506.5(c) (CEQ regulations requiring that the agency ''shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents'').

[16] *See City of Auburn,* 154 F.3d at 1032.

proposal and to obtain input on potential environmental impacts and issues associated with the project. Under our environmental rules, an opportunity for public review and comment is provided on every EA and Draft EIS.[17] SEA, working with the contractor, then incorporates and responds to the comments in preparing a final EIS or post-EA.[18]

Other agencies participate in the environmental review process as well, which adds further checks and balances to the process and makes the environmental documents required by NEPA more comprehensive. One of the first tasks SEA directs a third-party contractor to undertake is the preparation of consultation letters to appropriate Federal, state and local agencies. All agencies are encouraged to participate and submit comments during the Board's environmental review process. Moreover, SEA may request agencies that have jurisdiction under other laws over some aspect of the proposal, or agencies that have ''special expertise with respect to any environmental issue,'' to participate as ''cooperating agencies'' in the Board's environmental review process.[19]

In short, our third-party contracting process provides an effective means to prepare an independent, comprehensive environmental analysis that meets the requirements of NEPA and related environmental laws. The contractors function as an extension of SEA's staff. They work under SEA's direction to collect and verify environmental information from the railroads, consulting agencies, other interested parties, and the general public; conduct unbiased environmental analysis; develop appropriate environmental criteria and methodologies for analyzing particular environmental issue areas; and prepare environmental documentation and mitigation options.

Concerns That Have Been Expressed

At times, members of the public and certain applicants have raised concerns about the Board's third-party contracting process. The public has questioned whether any environmental document prepared with the assistance of a contractor paid by the railroad constitutes an impartial analysis, and whether the work of a contractor paid by the railroad is influenced by the applicant-railroad. We believe that adequate safeguards exist that ensure the neutrality of the third-party contracting process. As discussed above, SEA remains fully responsible for the contents of the EA or EIS and closely monitors the work of the contractor throughout the environmental review process. There is extensive public outreach to ensure public awareness of the proposals before the agency and participation in the process. Also, SEA issues every EA or EIS in draft form for public review and comment and consults with appropriate Federal, state and local agencies. A final environmental document is then prepared responding to the comments, which also are made public.

Applicants' concerns primarily focus on the cost and lack of control over the scope of the environmental review.[20] Specifically, certain applicants have complained that the Board's third-party contracting process prohibits them from controlling the scope of work that will be required to complete the environmental analysis, while requiring them to fully fund the contractor's work.

Because the potential environmental impacts of a project cannot always be predicted at the beginning of the environmental review process, particularly in large rail construction cases or major rail mergers such as *Conrail*, it can be difficult to estimate accurately the amount of work—and consequently, the amount of money—that will be needed to complete the requisite hard look at the environmental consequences of our licensing decisions. At times, the potential environmental impacts associated with a rail proposal initially may appear to be less than what comes to light as the agency and its contractor begin looking more closely at the proposal. Frequently, consultation with Federal, state, and local agencies, as well as input from the public, serves to disclose additional potential environmental impacts that must be analyzed and, if possible, avoided or mitigated. In fact, one of the objectives of the environmental review process under NEPA is to detect and appropriately analyze all potential environmental impacts, and as potential impacts come to light during the environmental review process, the agency is required to supplement or even rewrite an environmental document as necessary.[21] Unanticipated public controversy may develop as the public learns more about a proposal, or additional alternatives beyond those that were anticipated when the environmental review was initiated, may be found that need to be considered. In other words, environmental review is a dynamic process that can entail unavoidable delay in completing the environmental analysis that NEPA requires and increased environmental review costs.

As our regulations state, we encourage the use of third-party contractors because they expedite and facilitate the environmental analysis.[22] Without the use of third-party contractors, particularly in complex cases such as *Conrail* and *DM&E*, the Board would not have the in-house resources to perform a legally sufficient environmental analysis in a timely manner. The Board does not have, and likely will never have, funding available to it to increase its staff sufficiently to make the third-party contractor resources unnecessary.

Moreover, the Board lacks the broad range of in-house technical experts that third-party contractors can tap. Environmental analyses in Board proceedings are becoming increasingly complex, requiring the input of a number of experts in highly technical fields, such as atmospheric science and meteorology, anthropology and ethnography, geographic information system (GIS) analysis, acoustical engineering, and environmental justice analysis. Almost all environmental documents prepared by SEA require the input of some experts. However, individual experts are needed only on a periodic basis, as issues requiring their specific area of expertise do not arise in every case before the Board requiring environmental review. Thus, it would be impractical and prohibitively expensive for a small agency such as the Board to employ its own experts in these highly technical areas on a full-time basis.

Furthermore, while third-party contractors, as private businesses, are free to commit their staff resources to as many or as few clients as they wish, the Board, as a government agency, cannot refuse to conduct environmental analyses and produce environmental documents due to limited staff. In order to prepare appropriate environmental

[17] *See* 49 CFR 1005.10(a), (b).

[18] *Id.*

[19] Cooperating agencies typically have their own decisions to make regarding a particular project and tend to adopt the environmental analysis prepared by another agency (known as the lead agency) and base their decision upon it. One environmental document therefore includes information necessary to fulfill the requirements of NEPA and related environmental laws for both the lead and cooperating agencies. 40 CFR 1501.5, 1501.6. The Board may also be invited to participate as a cooperating agency in an environmental analysis for which another Federal agency is the lead.

[20] See the comments of the Norfolk Southern Railway Company filed in response to the notice of proposed rulemaking in STB Ex Parte No. 582 (Sub–No. 1), *Major Rail Consolidation Procedures.*

[21] *See* CEQ 1983 Memorandum, *Guidance Regarding NEPA Regulations*, 48 FR 34263, 34264 (1983).

[22] *See* 49 CFR 1105.10(d); *Environmental Laws*, 7 I.C.C.2d at 817.

documents without the assistance of third-party contractors, the Board would need more resources to hire additional staff with the necessary expertise to undertake highly technical environmental analyses. But again, even if additional staff could be hired, the increased number would doubtless not be sufficient to replace third-party contractor resources, particularly in complex cases. Third-party contractors with access to staff with varied expertise enable SEA to prepare environmental documents and conduct analyses more efficiently, effectively, and in a more timely manner than if SEA were working alone.

Certain applicants have expressed concern about the significant costs that they can incur with the third-party contractor process.[23] However, SEA oversight and review over the environmental review process minimize delay and unnecessary costs as much as possible. As discussed above, for each case in which a third-party contractor is used, a Work Plan is developed that sets forth a proposed schedule for completing the work and outlines the necessary environmental tasks. SEA then monitors the contractors on a regular basis to ensure that the work is progressing as efficiently and cost effectively as possible. Moreover, when other agencies act as cooperating agencies, as in *DM&E*, duplication is minimized because those agencies are not performing their own analyses independent of the Board's process, which facilitates efficient environmental review and lowers the applicant's ultimate costs. In certain cases, as already noted, significant issues do surface during the environmental review process that were not anticipated at the beginning of the process, which must be evaluated and do increase the costs of the environmental review process using third-party contractors. While these costs cannot be avoided without calling into question the legal sufficiency of the environmental review, SEA oversight again serves to minimize unnecessary costs as much as possible.

We have examined the processes used by other agencies to see if we could improve our process and allow applicants to better control costs without compromising the need to ensure the independent nature of the contractor's environmental analysis. We conclude that our current process, although not without problems, offers the best available alternative for preparing the environmental documentation needed to fulfill the Board's NEPA obligations.

Some agencies have policies similar or identical to ours. For example, the Federal Energy Regulatory Commission's (FERC) procedure for third-party contracting is essentially the same as our process.[24] After applicants decide to use third-party contractors, they select which contractor they would prefer to use from FERC's list of approved contractors.[25] FERC makes the final decision as to whom to hire as the contractor, and then the selected contractor executes a disclosure statement indicating that it has no conflict of interest. The parties then prepare and sign a Memorandum of Agreement, which describes each party's duties. Like the Board, the applicant in proceedings before FERC is responsible for paying the contractor for the preparation of the environmental document and executes a separate contract with the contractor detailing general rates and costs. FERC supervises the contractor's work and retains ultimate responsibility for the finished product.

The third-party contracting process used by the U.S. Environmental Protection Agency (EPA) in the preparation of EISs, outlined at 40 CFR 6.604(g)(3), is also similar to our process in several respects.[26] EPA requires the applicant to pay for the contractor's services, while retaining control and supervisory authority over the environmental analysis. Additionally, EPA allows applicants to provide some input as to their choice of contractor, but retains ultimate responsibility for the final selection of the third-party contractor. EPA and the applicant enter into a MOU that governs the third-party contracting arrangement, and the contractor must sign a disclosure statement prior to beginning work. In the MOU, EPA and the applicant also agree upon a general time frame for the completion of various parts of the EIS, and set forth the scope of the EIS in as much detail as possible.[27] If EPA determines that additional analysis beyond the scope of the original MOU is needed, the MOU may be amended to cover the additional work at the applicant's expense, or EPA may elect to complete the analysis itself.[28] Unlike the Board, EPA has a separate process for contracting directly with consultants to prepare EISs and has funding to pay for the services of these consultants.[29]

Other agencies either have separate funding for contractors, or they may require applicants to place funds for paying contractors into separate accounts that are subject to oversight by agency officials. For example, the Federal Aviation Administration (FAA) has separate funds to pay contractors who prepare environmental documents for airport development projects; applicants must pay for hiring contractors to prepare environmental documents in other matters.[30] Although separate funds or accounts might reduce some of applicants' concerns regarding the costs incurred in the use of third-party contractors in Board proceedings, the process to create and regulate separate third-party contractor funds or accounts would be burdensome and complex for the parties as well as for a small agency like the Board, and would more than likely require the Board to hire a cadre of escrow account managers. Therefore, this idea is not a practical one for the Board.

Summary

We remain open and receptive to suggestions on how to improve our third-party contracting process. But for now, the current process appears to be the most efficient and effective way for the Board to ensure a thorough, adequate, and legally sound environmental review under NEPA and related environmental laws. As discussed above, we believe sufficient safeguards exist to address the public's chief concern—assurance of the objectivity of the environmental review process. To date, most of applicants' concerns relate to experience with a few extremely controversial rail proposals, such as *Conrail,* involving extensive opposition by communities or other Federal agencies and entities and unique environmental issues that

[23] *See Conrail.*

[24] Information obtained from FERC's internet website: *www.ferc.fed.us.*

[25] FERC indicates that it uses third-party contracting only in the preparation of EISs.

[26] EPA, as a matter of practice, does not use third-party contractors in the preparation of EAs.

[27] Information obtained from a sample ''Memorandum of Understanding Between the United States Environmental Protection Agency and _____ for Third Party Environmental Impact Statement Preparation'' that EPA provides to interested parties and from informal telephone conversations with EPA staff.

[28] *Id. See* 40 CFR 6.604(g)(1), (2).

[29] Information obtained from informal telephone conversations with EPA staff.

[30] Information obtained from an FAA notice for revising its procedures for implementing NEPA, 64 FR 55526, 55594–95 (1999). *See also* 7 CFR 1789 (discussing the Rural Utilities Services (RUS) practice of using escrow accounts to fund consultants who assist in the preparation of technical documents for applications before the agency). RUS allows the use of consultants to ''provide financial, legal, engineering, environmental or other technical advice and services in connection with the review of an Application'' (7 CFR 1789.152(a)). Thus, the preparation of environmental analyses appears to be just one of several instances in which RUS uses third-party contracting.

resulted in unanticipated costs associated with the environmental review process. While we understand applicants' concerns in this regard, because the NEPA analysis at times involves the discovery of unforeseen environmental impacts that require more analysis than originally contemplated, we see no way to set monetary limits or to accurately forecast total expenditures at the outset of the NEPA process, nor any practical way to further monitor costs throughout the process beyond SEA oversight. And we see no viable alternative to the use of third-party contractors to ensure a legally sufficient environmental review that is timely, given the Board's budget.

NEPA mandates a process rather than a result. In order to respond to new developments, SEA, as well as contractors working under SEA's supervision and applicants, must remain flexible and responsive. We understand that this process may introduce some undesired uncertainty and additional cost into the environmental review process, but NEPA has certain requirements, including thorough, accurate, and ultimately, legally defensible environmental analyses, and the current third-party contractor process is needed to meet those requirements in the most timely and efficient way possible.

We do not seek public comment on this policy statement because we do not propose a new rule or policy here. Rather, we are explaining the Board's existing policy regarding third-party contractors.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 16, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–6743 Filed 3–16–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 7, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 18, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1625.

Regulation Project Number: REG–105170–97 Final.

Type of Review: Extension.

Title: Credit for Increasing Research Activities.

Description: These final regulations related to the computation of the credit under section 41(c) and the definition of *qualified research* under section 41(d). These regulations are intended to provide (1) guidance concerning the requirements necessary to qualify for the credit for increasing research activities, (2) guidance in computing the credit for increasing research activities, and (3) rules for electing and revoking the election of the alternative incremental credit.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 12,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 18,250 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–6653 Filed 3–16–01; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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 Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For An Amended Federal Firearms License.

DATES: Written comments should be received on or before May 18, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Charles Bartlett, Chief, ATF National Licensing Center, 2600 Century Parkway, Suite 400, Atlanta, Georgia 30345, (404) 679–5007.

SUPPLEMENTARY INFORMATION:

Title: Application For An Amended Federal Firearms License

OMB Number: 1512–0525.

Form Number: ATF F 5300.38.

Abstract: ATF F 5300.38 is used when a Federal firearms licensee makes application to change the location of the firearms business premises. The applicant must certify that the proposed new business premises will be in compliance with State and local law for that location, and forward a copy of the application to the chief law enforcement officer having jurisdiction over the new premises.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 18,000.

Estimated Time Per Respondent: 1 hour and 15 minutes.

Estimated Total Annual Burden Hours: 22,500.

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: March 9, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–6736 Filed 3–16–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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 Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Implementation of Public Law 103–322, The Violent Crime Control and Law Enforcement Act of 1994.

DATES: Written comments should be received on or before May 18, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Richard Van Loan, Chief, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7930.

SUPPLEMENTARY INFORMATION:

Title: Implementation of Public Law 103–322, The Violent Crime Control and Law Enforcement Act of 1994.

OMB Number: 1512–0526.

Abstract: The regulations implement the provisions of Public Law 103–322 by restricting the manufacture, transfer, and posession of certain semiautomatic assault weapons and large capacity ammunition feeding devices. The recordkeeping requirements contained in these regulations are for a period of 5 years or until business operations are discontinued.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 2,107,000.

Estimated Time Per Respondent: 2 hours and 42 minutes.

Estimated Total Annual Burden Hours: 458,942.

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: March 9, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–6737 Filed 3–16–01; 8:45 am]

BILLING CODE 4810––P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: State Auto Property and Casualty Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000, at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2000 Revision, on page 40900 to reflect this addition:

Company Name: State Auto Property and Casualty Insurance Company. *Business Address:* 518 East Broad Street, Columbus, Ohio 43215–3976. *Phone:* (803) 877–3311. *Underwriting Limitation b/:* $18,656,000. *Surety Licenses c/:* AL, AZ, AR, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, UT, VA, WV, WI, WY. *Incorporated In:* South Carolina.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 5, 2001.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 01–6760 Filed 3–16–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8332

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8332, Release of Claim to Exemption for Child of Divorce or Separated Parents.

DATES: Written comments should be received on or before May 18, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Release of Claim to Exemption for Child of Divorced or Separated Parents.

OMB Number: 1545–0915.

Form Number: Form 8332.

Abstract: This form is used by a custodial parent to release claim to the dependency exemption for a child of divorced or separated parents. The data is used to verify that the noncustodial parent is entitled to claim the exemption.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 33 minutes.

Estimated Total Annual Burden Hours: 82,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 12, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–6753 Filed 3–16–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8612

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8612, Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

DATES: Written comments should be received on or before May 18, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

OMB Number: 1545–1013.

Form Number: Form 8612.

Abstract: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981 of the Internal Revenue Code. The IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 9 hours, 45 minutes.

Estimated Total Annual Burden Hours: 195.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 12, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–6754 Filed 3–16–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1363

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1363, Export Exemption Certificate.

DATES: Written comments should be received on or before May 18, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Export Exemption Certificate.

OMB Number: 1545–0685.

Form Number: Form 1363.

Abstract: Internal Revenue Code section 4272(b)(2) exempts exported property from the excise tax on transportation of property. Regulation § 49.4271–1(d)(2) authorizes the filing of Form 1363 by the shipper to request tax exemption for a shipment or a series of shipments. The information on the form is used by the IRS to verify shipments of property made tax-free.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 4 hours, 30 minutes.

Estimated Total Annual Burden Hours: 450,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 9, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–6755 Filed 3–16–01; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 66, No. 53

Monday, March 19, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720–TO

Correction

In notice document 01–5458, appearing on page 13631, in the issue of Tuesday, March 6, 2001, make the following correction:

On page 13631, in the second column, under the heading **DATES:**, in the second line, ''May 17, 2001'' should read ''May 7, 2001''.

[FR Doc. C1–5458 Filed 3–16–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
March 19, 2001

Part II

Department of Agriculture

Commodity Credit Corporation

7 CFR Parts 1430 and 1439

Dairy Price Support, Dairy Recourse Loan, Livestock Assistance, American Indian Livestock Feed, and Pasture Recovery Programs; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1430 and 1439

RIN 0560–AG32

Dairy Price Support, Dairy Recourse Loan, Livestock Assistance, American Indian Livestock Feed, and Pasture Recovery Programs

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act) related to the Dairy Price Support, Dairy Recourse Loan, Livestock Assistance (LAP), American Indian Livestock Feed (AILFP), and Pasture Recovery (PRP) Programs. Dairy price support is extended through calendar year 2001 and dairy recourse loans are postponed until January, 2002. The LAP and PRP are being extended to cover disaster-related losses that occurred in calendar year 2000 and the AILFP was given additional funding. Other provisions of the 2001 Act will be implemented under separate rules.

DATES: Effective March 14, 2001.

FOR FURTHER INFORMATION CONTACT: For dairy: Dan Colacicco, Director, Dairy and Sweeteners Analysis Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0508, 1400 Independence Ave., SW., Washington, DC 20250–0540, telephone 202–720–6733, e-mail: *dcolacicco@wdc.fsa.usda.gov.* For LAP, AILFP: Diane Sharp, Director, Production, Emergency, and Compliance Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0517, 1400 Independence Ave., SW., Washington, DC 20250–0540, telephone (202)720–7641, e-mail: *dsharp@wdc.fsa.usda.gov*. For PRP: Robert Stephenson, Director, Conservation, and Environmental Protection Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0513, 1400 Independence Ave., SW., Washington, DC 20250–0540, telephone (202)720–5295, e-mail: *robert_stephenson@wdc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 840 of the 2001 Act (Public Law 106–387) requires that the regulations necessary to implement the provisions regarding LAP, AILFP, and PRP be issued as soon as practicable and 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 provisions are thus issued as final and are effective immediately.

Similarly, section 742 of the 2001 Act, relating to the dairy provisions, amends section 141 of the Agricultural Market Transition Act (AMTA) (7 U.S.C. 7251). The amendment made by the 2001 Act merely extends the current program for one year and delays the effectiveness of the loan provisions until 2002. These statutory amendments supercede existing regulations, such that the changes to the regulations have effectively been made by the 2001 Act, and this rule merely carries out and announces those amendments. Additionally, the 2001 Act amended provisions of AMTA for which 7 U.S.C. 7281 provides an identical exemption from public notice and comment, allowing CCC to issue the dairy provisions as a final rule, effective immediately.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and has been reviewed by the Office of Management and Budget. Cost/benefit assessments were completed and are summarized after the background section explaining the actions this rule will take.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental 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).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Unfunded Mandates Reform Act of 1995

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Further, in any case, these provisions do not impose any mandates on state, local or tribal governments, or the private sector.

Small Business Regulatory Enforcement Fairness Act of 1996 (Chapter 8 of the Administrative Procedures Act)

Section 840 of the 2001 Act requires that the regulations necessary to implement the provisions for LAP, AILFP, and PRP be issued as soon as practicable and 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. Section 840 also requires that the Secretary use the provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Fairness Act (SBREFA)), to find that good cause exists to implement the rule immediately and that public notice is impracticable, unnecessary, or contrary to the public purpose. CCC finds that because this rule affects the incomes of a large number of agricultural producers who have been hit hard by natural disasters and poor market conditions it would be contrary to the public interest to delay those provisions of this rule, as expressed in the 2001 Act. Therefore, this rule is issued as final, effective immediately.

With respect to the dairy provisions, CCC interprets theses statutory requirements as superceding existing regulations, such that the changes to the regulations have effectively been made by the 2001 Act and this rule merely carries out and announces those amendments. Additionally, the 2001 Act amends provisions of AMTA for which 7 U.S.C. 7281 provides an

identical exemption from notice and comment. Accordingly, the implementing regulations are effective immediately.

Paperwork Reduction Act

There are no information collections associated with the dairy provisions of this rule. In addition, section 840 of the 2001 Act requires that the regulations implementing the provisions regarding LAP, AILFP, and PRP be promulgated without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective. However, the 60-day public comment period and OMB approval under the provisions of 44 U.S.C. chapter 35 are still required for LAP, AILFP, and PRP after the rule is published.

Background

This rule will implement requirements of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, (the 2001 Act) (Public Law 106–387) related to the Dairy Price Support, Dairy Recourse Loan, Livestock Assistance (LAP) Pasture Recovery (PRP), and American Indian Livestock Feed (AILFP) Programs. The provisions are as follows.

1. 7 CFR Part 1430—Dairy Price Support Program and Dairy Recourse Loan Program

Section 742 of the 2001 Act postpones the termination date of the Milk Price Support Program until December 31, 2001, and continues the $9.90 per hundredweight support rate for milk that was in effect during calender years 1999 and 2000 through the year 2001. Section 742 also postpones the start of the Recourse Loan Program for Commercial Processors of Dairy Products—from January 1, 2001, to January 1, 2002. This rule modifies the provisions of 7 CFR part 1430 accordingly.

2. 7 CFR Part 1439, Subpart B—Livestock Assistance Program

Section 806 of the 2001 Act requires that the Secretary of Agriculture use $490 million of the funds of the Commodity Credit Corporation to make and administer payments for livestock losses using the criteria established to carry out the 1999 Livestock Assistance Program (1999 LAP) to producers for losses in a county that has received an emergency designation by the President or the Secretary after January 1, 2000. The funds are available through September 30, 2001. The statute further provides that of the $490 million, up to $40 million may be used for the Pasture Recovery Program (PRP), up to $12 million for the American Indian Livestock Feed Program (AILFP); and as amended by section 101(5) of the Consolidated Appropriations Act, 2001, (Pub. L. 106–554), $5 million to be transferred to the State of Alabama to be used in conjunction with the program administered by the Alabama Department of Agriculture and Industries, $2 million for losses due to Poult Enteritis Mortality Syndrome, and $300,000 to be transferred to the State of Montana for transportation needs associated with emergency haying and feeding, leaving $430.7 million for LAP–2000. This rule does not implement the program provisions of Public Law 106–554. Public Law 106–554 also mandated a Government-wide rescission of 0.22 percent of appropriated funds. Available funding for the livestock programs is thus reduced to $429.752 million for LAP, $39.912 million for PRP, and $11.974 for AILFP.

Livestock producers who suffered livestock feed losses as a result of natural disaster may apply for benefits to compensate for losses that occurred in calendar year 2000. Benefits will be provided to eligible livestock producers only in those counties where a natural disaster occurred and that were subsequently approved by FSA's Deputy Administrator for Farm Programs. A county must have suffered a 40-percent or greater grazing loss for 3 consecutive months during the 2000 calendar year as a result of damage due to a natural disaster in order to be eligible. Livestock producers in counties contiguous to an approved county are not eligible. A livestock producer in an approved county must have suffered at least a 40-percent loss of normal grazing for the producer's eligible livestock for a minimum of 3 consecutive months. Losses will only be compensable up to 80 percent of the total grazing available and the compensable loss may not exceed a county maximum set by the local FSA county committee. Payments will be made according to a formula subject to funding and other limitations, including a $40,000 per person payment limitation and a $2.5 million gross revenue limitation. In the event that the total amount of claims submitted under this subpart exceeds the funding available for LAP–2000, each payment shall be reduced by a uniform national percentage.

3. 7 CFR Part 1439, Subpart D—Pasture Recovery Program

Section 806 of the 2001 Act provides that the Secretary may use up to $40 million of CCC funds to carry out a Pasture Recovery Program (PRP), reduced $39.912 million by the 0.22 percent Government-wide rescission. These funds are to be used to compensate livestock producers in reseeding permanent pasture that was severely damaged or destroyed by natural disaster during calendar year 2000. PRP payments will be authorized only in counties that requested and were determined eligible for the Emergency Conservation Program (ECP) for losses during 2000. Requests must be received by a date determined and announced by FSA to be eligible. For the land to be eligible, it must be established pasture land on which livestock is normally grazed but that was so damaged or destroyed by natural disaster that seeding is required to reestablish a cover. Hayland and rangeland will not be eligible, nor will land operated by the Federal or a State Government or a political subdivisions of a State.

Eligible producers must agree to reestablish the forage crop and maintain the crop for three full years after the calendar year of installation. To be an eligible recipient of program benefits, the applicant must be an owner or operator of eligible land damaged or destroyed in 2000 who normally grazes livestock on such land and such applicant must be the person who will restore and maintain the property for three full calendar years after the year of installation.

All conditions must be satisfied if a person is to be eligible for a PRP payment. For example, if an owner leases pasture land to an operator for grazing the operator's livestock, then the operator is eligible for a PRP payment only if the operator reestablishes the forage crop on the leased pasture land and has a lease and the equipment necessary to maintain the forage crop for three full calendar years after the year of installation. If an owner leases pasture land to an operator who normally grazes the operator's livestock but the owner agrees to reestablish the forage crop on the pasture land, then neither the operator nor the owner are eligible for PRP benefits because neither can meet all of the eligibility requirements. The owner is ineligible because the owner does not normally graze livestock on the pasture land, and the operator is ineligible because the operator did not reestablish the forage crop on the pasture land. Other

restrictions will apply as well in the administration of the program.

This program will be subject to the general provisions for emergency livestock assistance programs found in Subpart A of part 1439. Among other provisions, that subpart provides for limitations on total benefits that a person may receive and the gross revenue of eligible persons. The gross revenue limitation will apply to the PRP. However, a different benefit limitation is provided in this rule.

Accordingly, and in order to efficiently maximize the use of program funds for those farmers most in need of relief, the PRP will not be available to a person whose annual gross revenue is in excess of $2.5 million. Further, benefits are limited to $2,500 per ''person'' determined according to the ''person'' determination regulations at 7 CFR part 1400.

In order to receive payments, applicants will be required to certify that pasture land to be enrolled in the PRP was so damaged or destroyed by natural disaster during calendar year 2000 that seeding is required to reestablish the forage crop. State Farm Service Agency (FSA) committees will establish per-acre payment rates equal to 65 percent of the eligible area's average cost of reestablishing the approved forage crop on eligible pasture land not to exceed $100 per acre. The FSA Deputy Administrator for Farm Programs may approve higher per-acre payment rates not to exceed $125 per acre. In no case will per-acre payment rates exceed $125 per acre. Seeding and related fertilizing requirements will be required to be carried out according to standards for agronomic practices and applicable environmental laws and regulations. Payments may be issued upon certification by the participant that approved practices to reestablish the forage crop have been completed. Certifications are subject to spot-check by FSA.

Signup periods for this new program will be announced by CCC, but are expected to be conducted no later than the spring 2001 planting season for affected regions. It is expected that all seeding will be required to be completed in calendar year 2001 by a date announced by CCC.

4. 7 CFR Part 1439, Subpart I—American Indian Livestock Feed Program

The American Indian Livestock Feed Program (AILFP) makes assistance available to eligible livestock owners when, as a result of natural disaster occurring on tribal-governed land, a significant loss of livestock feed has occurred and a livestock feed emergency exists, as determined by FSA's Deputy Administrator for Farm Programs. Section 806 of the 2001 Act provided that, of the $490 million of CCC funds made available for livestock assistance, up to $12 million could be used for the AILFP, which was later reduced to $11.973 million by the 0.22 percent Government-wide rescission. The regulations for the AILFP finalized on June 8, 2000 (65 FR 86578) included a statement that the program was funded for $12.5 million. This rule will amend the AILFP regulations to conform with the additional funding provided by the 2001 Act, which will be available when the original $12.5 million is exhausted.

Cost-Benefit Assessment

Summary

Outlays for the programs this rule implements are shown in the table below. Discussion of the individual programs follows.

SUMMARY OF OUTLAYS

[In millions of dollars]

Program	Outlays
2000 Livestock Assistance Program (LAP–2000)[1]	429.752
American Indian Livestock Feed Program (AILFP)[1]	11.974
Pasture Recovery Program (PRP)[1]	39.912
Total Livestock Assistance	481.638
Dairy Price Support	470
Dairy Recourse Loan	0
Total	951.638

[1] Original appropriation minus 0.22% rescission.

Dairy Price Support and Dairy Recourse Loan

The total cost to CCC for extending the milk price support program one year is estimated at $470 million. The Dairy Recourse Loan Program is not expected to have a net cost to CCC because the loans will be secured and must be repaid in full. The federal cost to administer the recourse loan program that would replace the milk price support program is similar to the cost of administering the milk price support program so there is no net change in program costs.

Extending the milk price support program will help maintain the all-milk price and dairy farm incomes because CCC's purchase price is providing a floor under the current market price for nonfat dry milk (NDM). The domestic price of NDM would be expected to fall at least 10 cents per pound if the program were not extended. The 10-cent-per-pound drop in the price of NDM would be expected to allow a drop in the all-milk price of about 10–14 cents per cwt., which would reduce dairy income by about $200–300 million.

2000 Livestock Assistance Program (LAP–2000)

It is estimated that over 31 million head of cattle, 3 million horses, and 2 million sheep are in the affected states. The potential cost of the LAP–2000 before application of a national factor is estimated to be about $450 million. Because projected claims exceed the $429.752 million expected to be available for the program, each producer's payment will be prorated based on the ratio of the maximum allowed benefits to total claims. Payments will assist producers affected by disasters in meeting their financial obligations for income lost due to poor grazing conditions. It is assumed, in part as a result of the LAP, that producers affected by the disaster will remain in business. The impact of the payments on livestock prices and feed prices is expected to be small. For those producers who actually suffered the losses, the impact on their equity and cash flow positions is significant. In the absence of this program, some producers would have been forced to liquidate their herds, increasing livestock supplies and lowering prices in the short term. The changes would likely be small and temporary. Thus, the impact on consumers would be negligible. Aggregate farm income in 2000 is expected to be about $429.7 million higher.

American Indian Livestock Feed Program (AILFP)

Natural disasters continue to cause significant loss of livestock feed production on land governed by American Indian Tribes. The states primarily affected during the 2000 crop year were Montana, Arizona, Oklahoma, Colorado, and New Mexico. A large proportion of American Indian livestock producers reside in communities where the USDA has had difficulty coordinating and implementing programs to meet the needs and financial constraints of American Indians.

Up to $11.974 million will be available to American Indian tribes to provide to producers who suffered loss of livestock feed production as a result of a natural disaster occurring on tribal-governed land during 2000 and subsequent years. For assistance to be made available, a loss of feed grain and forage used for livestock production in

the affected region must exceed 35 percent and the Deputy Administrator for Farm Programs (DAFP) must declare a livestock feed emergency. The 35 percent loss for the region is similar to the loss level required under past programs. In addition, the livestock producer must have livestock production in the geographic region that has been determined to meet the eligibility requirements for the program.

Individual producer assistance is determined based on the estimated value of livestock feed needed to maintain the producer's eligible livestock. Assistance is paid at a rate of either 30 percent of the cost of purchased feed needed to maintain the producer's eligible livestock for the approved feeding period, or 30 percent of the eligible livestock owner's calculated Animal Unit Days (AUD) for the approved feeding period, whichever is smaller. This rate is the same rate of loss coverage that FSA has used in previous livestock feed programs. If any feed has been sold by producers these receipts must be reported as feed sold and the total amount deducted from the calculated payment amount.

Program assistance will be provided on a first-come, first-serve basis. Thus, if total claims in 2000 exceed $11.974 million, the first $11.974 million in qualifying claims will receive assistance. Using this procedure eliminates the need to make partial payment and withhold some assistance until all claims are processed to determine a prorating factor for final assistance payments. A downside to first-come, first-serve is that some tribes otherwise eligible for assistance may not be paid if available funds are exhausted. Spending between November 27, 1998 and November 16, 2000, totaled $11.4 million. Current funding is expected to last into 2002 if similar claims are filed as with the past program.

AILFP provides financial assistance to eligible livestock producers who have suffered significant loss of livestock feed production for the 2000 calendar year and subsequent years. These funds will assist eligible livestock producers in meeting financial obligations against purchased feed stocks needed to maintain livestock enterprises on the farm as a result of lost livestock feed production on the farm. Further, the impact of the livestock feed program on livestock feed and livestock prices and consumer prices is not expected to be measurable. Based on program funding of $11.974 million for 2000 and subsequent years, program assistance is less than 1 percent of the national value of all livestock feed production. Assistance, therefore, will not have a measurable impact on national price levels for livestock feed ingredients or livestock. Aggregate American Indian farm income losses will be somewhat offset or reduced by AILFP payments. Federal outlays could increase by up to $11.974 million for the 2001 program year, but funds are expected to cover two years of loss claims.

Pasture Recovery Program (PRP)

Funds to reestablish pasture damaged by drought will be allocated from funds provided for livestock loss assistance under the 2001 Act. PRP payments will be authorized only in counties determined eligible for the for the ECP. Applications for payment will probably exceed the funding level of $39.912 million based on the expected number of eligible producers and re-seeding costs. To be eligible, land must be established pasture land on which livestock are normally grazed and that was so damaged by drought or other natural disaster that seeding is required to reestablish a cover crop. Neither hay land nor rangeland is eligible.

Payment rates per acre will equal 65 percent of the eligible area's average cost of reestablishing the approved forage crop. FSA State committees will establish the average cost of reestablishing the approved forage crop.

The cost to reestablish pastures is assumed to be between $100 and $250 per acre, depending on the tillage and fertilization rates required. Most are expected to fall between $100 and $150 per acre, which will allow producers a payment rate of $65–97.50 per acre. At an average payment rate of $81.25 per acre and subject to the $2,500 limitation producers could reestablish pasture on about 30 acres. Farm income is expected to increase by $39.912 million, equal to government outlays.

For further information on the cost/benefit assessments, contact Dan Colacicco, 202–720–6733.

List of Subjects

7 CFR Part 1430

Dairy products, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1439

Animal feeds, Disaster assistance, Grant programs—agriculture, Livestock, Pasture, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR parts 1430 and 1439 are amended as set forth below.

PART 1430—DAIRY PRODUCTS

1. The authority citation for part 1430 continues to read as follows:

Authority: 7 U.S.C. 7251 and 7252; and 15 U.S.C. 714b and 714c.

Subpart A—Price Support Program for Milk

2. Amend § 1430.2 by revising paragraph (a)(1) to read as follows:

§ 1430.2 Price support levels and purchase conditions.

(a)(1) The levels of price support provided to farmers marketing milk containing 3.67 percent milkfat from dairy cows are: $10.35 per hundredweight for calendar year 1996, $10.20 per hundredweight for calendar year 1997, $10.05 per hundredweight for calendar year 1998, and $9.90 per hundredweight for calendar years 1999 through 2001.

* * * * *

Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products

3. Amend § 1430.401 by revising paragraph (a) to read as follows:

§ 1430.401 Applicability.

(a) The regulations in this subpart are applicable to eligible dairy products produced after December 31, 2001. The regulations in this subpart set forth the terms and conditions under which CCC will make recourse loans to eligible processors. Additional terms and conditions shall be those set forth in the loan application and the note and security agreement which a processor must execute in order to receive such a loan.

* * * * *

4. Amend § 1430.403 by revising paragraph (a) to read as follows:

§ 1430.403 Loan rates.

(a) The Secretary will announce before January 1, 2002, and thereafter, before October 1 of each year, that a recourse loan program is available under this subpart, and loan rates for Cheddar cheese, butter, and nonfat dry milk based on a milk equivalent value of $9.90 per hundredweight of milk containing 3.67 percent butterfat.

* * * * *

5. Amend § 1430.407 by revising paragraph (a)(2) to read as follows:

§ 1430.407 Availability, disbursement, and maturity of loans.

(a) * * *

(2) A request for an initial loan must be filed no later than September 30 of

the fiscal year in which the product was produced, but no earlier than January 1, 2002.

* * * * *

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

6. The authority citation continues to read as follows:

Authority: 7 U.S.C. 1427a; 15 U.S.C. 714 *et seq.*; Sec. 1103 Pub. L. 105–277, 112.

Stat. 2681–42–44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Sec. 257 Pub. L. 106–224, 114 Stat. 358; Secs. 802, 806, & 813 Pub. L. 106–387, 114 Stat. 1549.

7. Revise Subpart B of part 1439 to read as follows:

Subpart B—Livestock Assistance Program

Sec.
1439.101 Applicability.
1439.102 Definitions.
1439.103 Application process.
1439.104 County committee determinations of general applicability.
1439.105 Loss criteria.
1439.106 Livestock producer eligibility.
1439.107 Calculation of assistance.
1439.108 Availability of funds.
1439.109 Financial considerations.

Subpart B—2000 Livestock Assistance Program

§ 1439.101 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the 2000 Livestock Assistance Program (LAP–2000) authorized by Public Law 106–387, 114 Stat. 1549. Program regulations for prior livestock assistance programs can be found at 7 CFR 1439 as it was published on January 1, 2001. Benefits will be provided to eligible livestock producers in the United States for LAP–2000 but only in counties where a natural disaster declaration was issued after January 1, 2000 by the President of the United States or the Secretary of Agriculture of the United States and that were subsequently approved for relief under this part by the Deputy Administrator for Farm Programs.

(b) During the 2000 calendar year for LAP–2000, a producer must be in a county where a natural disaster declaration was approved after January 1, 2000, and also approved and determined by the Deputy Administrator for Farm Programs (or a designee) as having suffered losses during calendar year 2000. Contiguous counties that were not designated as a disaster area in their own right will not be eligible for participation in the LAP–2000 under this part. Grazing losses must have occurred on native and improved pasture with permanent vegetative cover and other crops planted specifically for the sole purpose of providing grazing for livestock, but such losses do not include losses on, or with respect to, seeded small grain forage crops.

(c) To be eligible for assistance under this subpart, a livestock producer's pastures must have suffered at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months during the relevant calendar year. The percent of loss eligible for compensation shall not exceed the maximum percentage of grazing loss for the county as determined by the county committee. In addition, the producer will not be compensated for that part of any loss that would represent payment of a loss greater than 80 percent.

(d) Except as approved by the Deputy Administrator for Farm Programs (or designee), a livestock producer is not eligible to receive payments for the same loss under this subpart if that loss has been recovered under another Federal program of some other source.

§ 1439.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart, in which case the definitions in this section will apply. The definitions follow:

Application means the Form CCC–740, Livestock Assistance Program Application. The CCC–740 is available at county FSA offices.

Livestock means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals where such equine animals are used commercially for human food or kept for the production of food or fiber on the owner's farm.

§ 1439.103 Application process.

(a) Livestock producers must submit a completed application prior to the close of business on March 23, 2000, or such other date as established and announced by the Deputy Administrator. The application and any other supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible grazing land or to the county FSA office that maintains the farm records for the livestock producer.

(b) Livestock producers shall certify as to the accuracy of all the information contained in the application, and provide any other information to CCC that the county FSA office or committee deems necessary to determine the livestock producer's eligibility.

§ 1439.104 County committee determinations of general applicability.

(a) County committees shall determine whether due to natural disasters their county has suffered a 40-percent loss affecting pasture and normal grazing crops for at least 3 consecutive months during calendar year 2000 for LAP–2000. In making this determination, county committees, using the best information available from sources including but not limited to: the Extension Service, the Natural Resources Conservation Service; the Palmer Drought Index; and general knowledge of local rainfall data, pasture losses, grazing livestock movement out of county, abnormal supplemental feeding practices for livestock on pasture and liquidation of grazing livestock, shall determine the percentage of grazing losses for pastures on a county-wide basis. The county committee shall submit rainfall data, percentage of grazing losses for each general type of pasture, and the weighted average percentage of grazing loss for the county, with State committee concurrence, to the Deputy Administrator on form CCC–654. The maximum grazing losses the county committees shall submit on form CCC–654 is 80 percent. These determinations shall be subject to review and approval of the Deputy Administrator. For purposes of this subpart, such counties are called ''eligible counties.''

(b) In each county, the county committee shall determine a LAP crop year. The LAP crop year shall be that period of time in a calendar year that begins with the date grazing of new growth pasture normally begins and ends on the date grazing without supplemental feeding normally ends in the county.

(c) In and for each eligible county, the county committee shall determine normal carrying capacities for each type of grazing or pasture during the LAP crop year. The normal carrying capacity for the LAP crop year shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP crop year if a natural disaster had not diminished the production of these grazing crops.

(d) In each eligible county, the county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months

during 2000, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

§ 1439.105 Loss criteria.

(a) Grazing land for which a livestock producer requests benefits must be within the physical boundary of the county for which a Presidential disaster declaration or Secretarial disaster declaration was granted for disasters occurring during calendar year 2000. Livestock producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months.

(c) A producer shall certify each type of pasture and percentage of loss suffered by each type on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal.

(d) The county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal. The county committee shall request the producer to provide proof of loss of grazing production if the county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(e) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of grazing loss for the county as determined by the county committee in accordance with § 1439.104(a). Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

(f) Conservation Reserve Program acres released for haying and/or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

§ 1439.106 Livestock producer eligibility.

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners of livestock who themselves provide the pasture or grazing land, including cash leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be the livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased under a contractual agreement that has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned for at least 3 months before becoming eligible for payment.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

§ 1439.107 Calculation of assistance.

(a) The value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned or leased by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The number of pounds of corn-equivalent per day, as established by CCC, that is determined necessary to provide the energy requirements established for the weight class and type of livestock; by

(3) The 5-year national average market price for corn ($2.36 bushel or $0.0421428 per pound); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture; and multiplying the result by

(2) The 5-year national average market price for corn ($2.36 bushel or $0.0421428 per pound); by

(3) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(4) The applicable number of days in the LAP payment period; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(d) The final payment shall be the smaller of paragraph (b) of this section or paragraph (c) of this section multiplied by the national factor if required under § 1439.108. The final payment shall not exceed 50 percent of the smaller of paragraph (b) or (c) of this section determined prior to applying the national factor provided for in § 1439.108.

(e) Seeded small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(f) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or to breed horses and mules to be used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

§ 1439.108 Availability of funds.

In the event that the total amount of claims submitted under this subpart exceed $429,752,460, each payment shall be reduced by a uniform national percentage. Such payment reductions shall be made after the imposition of applicable payment limitation provisions.

§ 1439.109 Financial considerations.

(a) The provisions of §§ 1439.10 and 1439.11 apply to LAP–2000.

(b) Benefits under this part are not subject to administrative offset. See section 842 of the 2001 Act (Public Law 106–387, 114 Stat. 1549).

8. Revise Subpart D of Part 1439 to read as follows:

Subpart D—Pasture Recovery Program

Sec.
1439.301 Administration.
1439.302 Definitions.
1439.303 General description.
1439.304 Eligible persons.
1439.305 Eligible land.
1439.306 Duration of contracts.
1439.307 Gross revenue limitation.
1439.308–1439.319 [Reserved]
1439.320 Obligations of participant.
1439.321 Obligations of the Commodity Credit Corporation.
1439.322 Eligible practices.
1439.323–1439.329 [Reserved]
1439.330 Enrollment.
1439.331 Termination of PRP contracts.
1439.332 Contract modifications.
1439.333–1439.339 [Reserved]
1439.340 Payments.
1439.341 Levels and rates for payments.
1439.342–1439.349 [Reserved]
1439.350 Payments to participants.
1439.351 Violations.
1439.352 Executed PRP contract not in conformity with regulations.
1439.353 Performance based upon advice or action of representative of the Secretary of Agriculture.
1439.354 Access to land under contract.
1439.355 Appeals.
1439.356 Refunds to CCC; joint and several liability.
1439.357 Miscellaneous.

Subpart D—Pasture Recovery Program

§ 1439.301 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Deputy Administrator, for Farm Programs, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the FSA State and county committees (''State committees'' and ''county committees'', respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

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

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

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the Pasture Recovery Program (PRP) is voluntary, program benefits will not be provided unless the participant furnishes the appropriate data.

§ 1439.302 Definitions.

The following definitions shall be applicable to this subpart:

Applicant means, unless the context indicates otherwise, the owner or operator.

Contract period means the period of time the PRP contract is in effect.

Equine animals means horses, mules, and donkeys.

Federally-owned land means land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Forage crop means a perennial stand of grasses or legumes that are intended for use by livestock for grazing and are customarily used for that purpose by local producers.

FSA means the Farm Service Agency.

Hayland means land that was or has been routinely used to produce hay.

Livestock means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals used commercially for human food or kept for the production of food or fiber.

Local FSA office means the FSA office in the local USDA service center in which the FSA records are maintained for the farm or ranch that includes the pasture land that the applicant is seeking to enroll in the PRP.

Operator means a person who is in general control of the farming operation on the farm, as determined by FSA for CCC.

Owner means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly; and a person who has life-estate in the property.

Participant means an owner or operator or tenant who has entered into a PRP contract.

Pasture land means generally enclosed land devoted to a perennial forage crop used and suitable for grazing of livestock.

Payment means, unless the context indicates otherwise, the payment specified in the PRP contract that, subject to the availability of funds, is made to a participant to compensate such participant for reestablishing an approved forage crop on eligible pasture land in the PRP.

Practice means with respect to practices to be approved for relief under this subpart, an approved measure to cost-effectively reseed pasture, and, in conjunction with seeding, as necessary, fertilize to reestablish a forage crop on eligible pasture land damaged or destroyed by natural disaster, as determined by CCC.

Rangeland means land having indigenous, unimproved vegetation that may be used or suitable for open roaming and grazing of livestock.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

State committee, State office, county committee, or county office, means the respective FSA committee or office.

State Technical Committee means that committee established pursuant to 16 U.S.C. 3861.

State-owned land means land owned by a State Government or any department, bureau, or agency thereof, including political subdivisions of a State, as determined by CCC.

Technical assistance means the assistance provided in connection with the PRP to owners or operators by FSA or other authorized designee of the Secretary in determining the eligibility of land and implementing and certifying eligible practices.

United States means all fifty states of United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

§ 1439.303 General description.

Under the PRP, the CCC will enter into contracts with eligible producers to provide payments to assist producers to reestablish the damaged or destroyed pasture land to an approved forage crop upon a promise and obligation to maintain the new crop for 3 full years after the calendar year of installation.

§ 1439.304 Eligible persons.

In order to be eligible to enter into a PRP contract in accordance with this part, a person must be an owner or operator of eligible pasture land that was damaged or destroyed by natural disaster during calendar year 2000 and:

(a) Must normally graze livestock on such pasture land; and

(b) If an operator of eligible land that the operator does not own, must provide satisfactory evidence that such operator will be in control of such eligible pasture land for the full term of the PRP contract period.

§ 1439.305 Eligible land.

(a) Except as otherwise provided in this section, land in the PRP must be pastureland that:

(1) As determined by CCC, is located within a county that was approved for assistance under the Emergency Conservation Program provided for in 7 CFR part 701 because of a 2000 natural disaster, or was later approved for such participation based upon an application filed by such date as is determined and announced by the Deputy Administrator and based upon natural disaster damage suffered in 2000.

(2) Has been established pasture land on which livestock is normally grazed or on which the forage crop was so damaged or destroyed by natural disaster in calendar year 2000 that the forage crop will not return in the 2001 grazing year, and seeding is required to reestablish the forage crop, as determined by CCC.

(b) Notwithstanding paragraph (a) of this section, land, as determined by CCC, shall be ineligible for enrollment if the pasture land is:

(1) Federal-operated land;

(2) State-operated land;

(3) Hayland; or

(4) Rangeland, as determined by the CCC.

§ 1439.306 Duration of contracts.

Contracts under this subpart and their forage crop maintenance requirements shall be for three years. The installation of the practice must be completed no later than the date specified in the PRP contract.

§ 1439.307 Gross revenue limitation.

A person, as determined in accordance with part 1400 of this chapter, who has annual gross revenue in excess of $2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross revenue means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue from all sources.

§§ 1439.308–1439.319 [Reserved]

§ 1439.320 Obligations of participant.

All participants subject to a PRP contract must agree to:

(a) Carry out the terms and conditions of the PRP contract including carrying out all approved practices and meeting the schedule of dates for seeding and for maintenance measures provided for in the contract to establish and maintain the approved forage crop;

(b) Comply with all requirements of part 12 of this title;

(c) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(d) Control, subject to the contract, all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved forage crop is adequately protected, as determined by CCC;

(e) Not harvest the re-seeded cover crop at any time during the contract period; and

(f) Be jointly and severally responsible with other persons qualifying for payments under this program on the same land for compliance with such contract and the provisions of this part and for any refunds, payment adjustments, or liquidated damages that may be required for violations of any of the terms and conditions of the PRP contract.

§ 1439.321 Obligations of the Commodity Credit Corporation.

CCC shall:

(a) Upon establishment of the required forage crop, and provided all other eligibility criteria have been met, make PRP payments to participants in accordance with the provisions of this part; and

(b) Provide such technical assistance as it determines necessary to assist the participant in carrying out the PRP contract.

§ 1439.322 Eligible practices.

Eligible practices are those practices specified in the contract that meet all quantity and quality standards needed to cost-effectively reestablish the approved forage crop, as determined by CCC, on acreage subject to the contract, including reseeding.

§§ 1439.323–1439.329 [Reserved]

§ 1439.330 Enrollment.

Only applications for contracts submitted by a participant at the FSA office responsible for administering CCC programs in the county where the participant's farm is located during designated signup periods, as announced by CCC, will be approved.

§ 1439.331 Termination of PRP contracts.

(a) As determined by CCC, PRP contracts may be terminated before the expiration date when:

(1) The owner loses control of, or transfers, all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC subject to such conditions on approval as may be determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) The same acreage is later enrolled in another State, Federal, or local conservation program;

(5) The PRP practice fails and CCC determines the cost of restoring the cover outweighs the benefits received from the restoration; or

(6) The PRP contract was approved based on erroneous eligibility determinations.

(b) When a PRP contract is terminated, the participant must, except as agreed to by CCC, refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract.

§ 1439.332 Contract modifications.

By mutual agreement between CCC and the participant, a PRP contract may be modified in order to:

(a) Decrease acreage in the PRP;

(b) Facilitate the practical administration of the PRP; or

(c) Accomplish the goals and objectives of the PRP, as determined by CCC.

§§ 1439.333–1439.339 [Reserved]

§ 1439.340 Payments.

(a) Payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications. Payments will be prorated if requests for assistance exceed available funding.

(b) Except as otherwise provided for in this part, payments may be made

under the PRP only for the cost-effective establishment or installation of an eligible practice.

(c) Payments shall be made in such amount and in accordance with a schedule specified in the PRP contract.

(d) Payment shall be made on a per-acre basis.

(e) The payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(f) The maximum amount of all payments that a person may receive under the PRP shall not exceed $2,500. The regulations set forth at part 1400 of this chapter shall be applicable in making certain eligibility and ''person'' determinations as they apply to payment limitations under this part.

(g) Payments shall be limited as needed or appropriate to account for mandatory or discretionary limits on payments.

§ 1439.341 Levels and rates for payments.

(a) CCC shall pay not more than 65 percent of the average cost of reestablishing the approved forage crop, including reseeding, on eligible land.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee or on such other basis as it deemed appropriate.

(c) Notwithstanding paragraph (a) or (b) of this section, no payment shall exceed $100 per acre without approval of the Deputy Administrator. In no case shall a payment exceed $125 per acre.

§§ 1439.342–1439.349 [Reserved]

§ 1439.350 Payments to participants.

Payments shall be made to the participants responsible for the establishment of the practice.

§ 1439.351 Violations.

(a) If a participant fails to carry out the terms and conditions of a PRP contract, CCC may terminate the PRP contract.

(b) If the PRP contract is terminated by CCC:

(1) The participant shall forfeit all rights to payments under such contract and refund all payments previously received together with interest; and

(2) Pay liquidated damages to CCC in such amount as specified in the contract.

(c) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

§ 1439.352 Executed PRP contract not in conformity with regulations.

If, after a PRP contract is approved by CCC, CCC discovers that the PRP contract is not in conformity with the provisions of this part, the provisions of the regulations in this part shall prevail and the contract may be terminated.

§ 1439.353 Performance based upon advice or action of representative of the Secretary of Agriculture.

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Secretary of Agriculture shall be applicable to this part.

§ 1439.354 Access to land under contract.

(a) The applicant or participant shall, as requested, provide all representatives or designees of CCC with access to all land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining compliance with the terms and conditions of the PRP.

§ 1439.355 Appeals.

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

§ 1439.356 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be recomputed and any excess refunded with applicable interest.

§ 1439.357 Miscellaneous.

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of PRP acreage due to foreclosure, CCC may waive the demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in Subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and

maintenance of books and records. In addition, other parts of this chapter and of chapter VII of this title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(f) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(g) Any payment otherwise due under this subpart will be reduced to the extent that it is determined that such payment produces a duplicate benefit under another program operated by the Department of Agriculture and that to make such duplicate payment would be contrary to the purposes of the program.

(h) In no instance may the amount expended under this subpart exceed $39.912 million.

(i) Payments under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to PRP contract payments.

(j) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(k) In those instances in which, prior to the March 14, 2001 effective date of this subpart, a producer has signed a power of attorney on an approved FSA–211 for a person or entity indicating that such power shall extend to ''all above programs'', without limitation, such power will be considered to extend to this program unless by April 2, 2001 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

(l) Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain records that will permit verification of PRP practice completion for at least 3 years following the end of the calendar year in which payment was made, or for such additional period as CCC may request. An examination of such records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

(m) A person shall be ineligible to receive assistance under PRP and be subject to such other remedies as may be allowed by law, if, with respect to the PRP, it is determined by the State committee or the county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

Subpart I—American Indian Livestock Feed Program

9. Revise § 1439.901 to read as follows:

§ 1439.901 Applicability.

This subpart sets forth the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). Assistance will be available in those regions that CCC determines have been affected by natural disaster, and where a determination is made by the Deputy Administrator for Farm Programs that a livestock feed emergency exists on tribal land. Funds made available to CCC shall be available for any outstanding crop year 2000 payment applications and in subsequent crop years contract requests until funding is exhausted. Payments may become available as contracts with tribal governments are approved. If any other benefits are received from the Department of Agriculture for the same loss, then payments under this part will be reduced accordingly. Payments will terminate when funds have been exhausted, without respect to the date of any application, or of when any contract has been entered into by any tribal government and CCC. Applicants will receive benefits on a first-come, first-served basis.

10. Revise the last sentence of § 1439.906(a) to read as follows:

§ 1439.906 Program availability.

(a) * * * All contracts requesting region approval must be submitted by the date 30 days after the end of the disaster period specified on the contract.

* * * * *

Dated: March 12, 2001.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–6626 Filed 3–14–01; 11:53 am]

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Part III

Commodity Futures Trading Commission

17 CFR Part 160

Privacy of Customer Information; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038–AB68

Privacy of Customer Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission requests comment on proposed privacy rules published under section 5g of the Commodity Exchange Act which directs the Commission to prescribe regulations under Title V of the Gramm-Leach-Bliley Act. Title V requires certain federal agencies to adopt rules implementing notice requirements and restrictions on the ability of certain financial institutions to disclose nonpublic personal information about consumers to nonaffiliated third parties. Under section 503, a financial institution must provide its customers with a notice of its privacy policies and practices, and must not disclose nonpublic personal information about a consumer to nonaffiliated third parties unless the institution provides certain information to the consumer and the consumer has not elected to opt out of the disclosure. Section 505 further requires certain federal agencies to establish for financial institutions appropriate standards to protect customer information. The proposed rules implement these requirements of the Gramm-Leach-Bliley Act with respect to futures commission merchants, commodity trading advisors, commodity pool operators and introducing brokers that are subject to the jurisdiction of the Commission under the Commodity Exchange Act as amended.

DATES: Comments must be received by April 18, 2001.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to secretary@cftc.gov. Reference should be made to ''Privacy Rules.''

FOR FURTHER INFORMATION CONTACT: Susan W. Nathan, Assistant General Counsel, or Bella Rozenberg, Attorney, Office of General Counsel; Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis; or Ky Tran-Trong, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5000, E-mail: (SNathan@cftc.gov), (BRozenberg@cftc.gov), (NYanofsky@cftc.gov), or (KTran-Trong@cftc.gov).

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission today is proposing for public comment a new part 160, 17 CFR part 160, under Subtitle A of Title V of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338 (1999), to be codified at 15 U.S.C. 6801–6809) and the Commodity Exchange Act as amended by the Commodity Futures Modernization Act of 2000 (7 U.S.C. 1 *et seq.*, as amended by Appendix ____ of Pub. L. 106–554, 114 Stat. 2763).

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I. Background

On November 12, 1999, President Clinton signed the Gramm-Leach-Bliley Act (GLB Act)[1] into law. Subtitle A of Title V of the Act, captioned ''Disclosure of Nonpublic Personal Information'' (Title V), limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties.[2] The Commodity Futures Trading Commission (Commission) and entities subject to its jurisdiction originally were excluded from Title V's coverage. The agencies that were covered by Title V—the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision (collectively, the Banking Agencies), Secretary of the Treasury, Securities and Exchange Commission (SEC), National Credit Union Administration, and Federal Trade Commission (FTC) (collectively with the Banking Agencies, the Agencies)—have each adopted implementing regulations under Title V.[3]

On December 21, 2000, as part of the Commodity Futures Modernization Act of 2000 (CFMA), Congress amended the Commodity Exchange Act (CEA or Act) to provide that certain entities subject to the Commission's jurisdiction—specifically, futures commission merchants (FCMs), commodity trading advisors (CTAs), commodity pool operators (CPOs) and introducing brokers (IBs)—shall be treated as financial institutions for purposes of Title V. At the same time, Congress also amended the CEA to provide that the Commission shall be treated as a Federal functional regulator within the meaning of Title V and to require the Commission to prescribe regulations under Title V within six months.

The Commission has consulted with representatives from the Agencies in drafting these proposed rules to implement Title V. The rules that we are proposing today are, to the extent possible, consistent with and comparable to the rules adopted by the Agencies. Proposed part 160 contains rules of general applicability that are substantially similar to the rules adopted by the Agencies. The proposed rules also contain examples that illustrate the application of the general rules and an appendix of sample clauses that may, to the extent applicable, be used by FCMs, CTAs, CPOs and IBs to comply with the notice and opt-out requirements. These proposed examples and sample clauses differ from those used by the Agencies in order to provide more meaningful guidance to the financial institutions subject to the Commission's jurisdiction. Furthermore, in order to minimize the compliance burden for FCMs that are also registered with the SEC as broker-dealers (''dual registrants''), the Commission is proposing to permit dual registrants to

[1] Pub. L. 106–102, 113 Stat. 1338 (1999) (to be codified in scattered sections of 12 U.S.C. and 15 U.S.C.

[2] *Id.* (to be codified at 15 U.S.C. 6801–6809). As discussed in more detail below, the GLB Act distinguishes ''consumers'' from ''customers'' for purposes of its notice requirements. Generally speaking, a customer is a consumer with whom a financial institution has established a ''customer relationship.'' *See* sections 502(a), 503(a) and 509(9) and (11) of the GLB Act.

[3] *See* 65 FR 40334 (June 29, 2000) (SEC); 65 FR 35162 (June 1, 2000) (Secretary of the Treasury and the Banking Agencies); 65 FR 33646 (May 24, 2000) (FTC); 65 FR 31722 (May 18, 2000) (National Credit Union Administration). *See also* 66 FR 8616 (Feb. 1, 2001) (Secretary of the Treasury and the Banking Agencies); 66 FR 8152 (Jan. 30, 2001) (National Credit Union Administration); 65 FR 54186 (Sept. 7, 2000) (FTC—advance notice of proposed rulemaking) (Guidelines for Establishing Standards for Safeguarding Customer Information).

comply with part 160 by complying with the privacy rules of the SEC, which are found at 17 CFR part 248.

Title V also requires the Agencies to establish appropriate standards for financial institutions subject to their jurisdiction to safeguard customer information and records. The rules that we are proposing today include requirements for FCMs, CTAs, CPOs and IBs to adopt appropriate policies and procedures that address safeguards to protect this information.

We request comment on all aspects of the proposed rules as well as comment on the specific provisions and issues highlighted in the section-by-section analysis below. We specifically request comment on the proposed examples and sample clauses and any additional examples or sample clauses that would be helpful.

II. Section-by-Section Analysis

Section 160.1 Purpose and Scope

Proposed paragraph (a) of section 160.1 identifies three purposes of the rules. First, the rules require a financial institution to provide notice to consumers about the institution's privacy policies and practices. Second, the rules describe the conditions under which a financial institution may disclose nonpublic personal information about a consumer to a nonaffiliated third party. Third, the rules provide a method for a consumer to ''opt out'' of the disclosure of that information to nonaffiliated third parties, subject to certain exceptions discussed below.

Proposed paragraph (b) sets out the scope of the Commission's rules and identifies the financial institutions covered by the rules. This paragraph notes that the rules apply only to information about individuals who obtain a financial product or service primarily for personal, family, or household purposes. The financial institutions covered by the rules are FCMs, CTAs, CPOs and IBs. Consistent with section 5g of the Act, the rules as proposed apply to these categories of financial institutions whether or not they are required to register with the Commission.[4] Thus, as proposed, the rules would apply to CTAs that, pursuant to section 4m(1) of the CEA, are not required to register with the Commission because they have not advised more than 15 people in the past year and they do not hold themselves out generally to the public as CTAs. The rules also would apply to CTAs and CPOs that the Commission, by rule, has exempted from registering as a CTA or CPO.[5] The Commission solicits comment on whether it should seek to exempt some or all of these unregistered categories of CTAs and CPOs from part 160.

Proposed paragraph (b) also provides that part 160 does not apply to any foreign (or ''non-resident'') FCM, CTA, CPO or IB that is not registered with the Commission. The Commission believes that it would be impracticable to apply part 160 to those foreign unregistered entities. If a foreign financial institution conducts activities through U.S. interstate commerce in a manner that subjects it to the registration requirements of the CEA, it is subject to the part 160 requirements and any other applicable protections to customers, such as anti-fraud protections. We do not believe that subjecting unregistered foreign entities to the obligation to provide the privacy and opt out notices under part 160 would add to the protections provided to customers under the GLB Act. The Commission, however, is seeking comment on the application of this approach to firms that are subject to a rule 30.10 order. Such firms deal directly with U.S. customers and, but for relief provided in accordance with rule 30.10, would be required to register with the Commission.

We note that other federal, State, or applicable foreign laws may impose limitations on disclosures of nonpublic personal information in addition to those imposed by the GLB Act and these proposed rules. Thus, financial institutions will need to monitor and comply with relevant legislative and regulatory developments that affect the disclosure of consumer information. Proposed paragraph (b) also makes clear that nothing in the rules is intended to supersede rules relating to medical information that have been issued by the Secretary of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d—1320d–8.[6]

Section 160.2 Rule of Construction

Paragraph (a) of proposed § 160.2 sets out a rule of construction intended to clarify the effect of the examples used in the rules and the sample clauses in the appendix to the rules. Given the wide variety of transactions that Title V covers, the proposal would include rules of general applicability and provide examples that are intended to assist financial institutions in complying with the rule. The examples are not intended to be exhaustive; rather, they are intended to provide guidance on how the rules would apply in specific situations. The proposed rule also states that compliance with the examples will constitute compliance with the rule.[7] The Commission believes that, when read together, these provisions give financial institutions sufficient flexibility to comply with the regulation and sufficient guidance about the use of the examples.

Paragraph (b) of proposed § 160.2 provides that an FCM that is also registered with the SEC as a broker-dealer may comply with part 160 by complying with the privacy rules of the SEC, which are found at 17 CFR part 248. The Commission invites comment on whether it should provide for a broader form of substituted compliance, by permitting an FCM that is affiliated with a financial holding company, a bank holding company, a national bank or a broker-dealer to comply with part 160 by complying with the privacy rules of the functional regulator for the affiliated entity.

Section 160.3 Definitions

(a) *Affiliate.* The proposed rules incorporate the definition of ''affiliate'' used in section 509(6) of the GLB Act. Thus, an FCM, CTA, CPO or IB will be considered affiliated with another company if it ''controls,'' is controlled by, or is under common control with the other company.[8] The definition includes both financial institutions and entities that are not financial institutions. The proposed rules also provide that an FCM, CTA, CPO or IB will be considered an affiliate of another company for purposes of the privacy rules if (i) the other company is regulated under Title V by one of the Agencies and (ii) the privacy rules adopted by that Agency treat the FCM,

[4] The rules, however, will not apply to institutions that operate pursuant to a provision of the CEA that excludes or exempts the underlying activity from section 5g of the Act. See, *e.g.,* 7 U.S.C. 2(d), (e), (f), (g), (h) and 7a–3, as amended by the CFMA.

[5] *See, e.g.,* 17 CFR 4.13 (exemption from registration as a CPO for the operators of certain small pools) and 17 CFR 4.14(a)(9) (exemption from registration for CTAs that do not direct client accounts or provide commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients).

[6] *See* 65 FR 82462 (Dec. 28, 2000).

[7] *Compare* 65 FR at 35227 (OCC rules) *with* 65 FR at 40363 (SEC rules).

[8] We have defined ''control'' for purposes of an FCM, CPO, CTA or IB to mean the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. In addition, ownership of more than 25 percent of a company's voting securities creates a presumption of control of the company. *See infra* discussion of proposed § 160.3(k). *Compare* 65 FR at 35207 (Board of Governors of the Federal Reserve System).

CTA, CPO or IB as an affiliate of the other company.[9]

(b) *Clear and conspicuous.* Title V and the proposed rules require that various notices be ''clear and conspicuous.'' The Commission is proposing to define that term as it has been defined in the respective rules of the Agencies, with conforming changes.[10] Proposed § 160.3(b) defines the term to mean that the notice must be ''reasonably understandable and designed to call attention to the nature and significance of the information in the notice.'' This phrase is intended to provide meaning to the term ''conspicuous.'' The Commission believes that this standard will result in notices to consumers that communicate effectively the information consumers need in order to make an informed choice about the privacy of their information, including whether to open an account or enter into an advisory agreement.

Examples of ''clear and conspicuous.'' The proposed rules provide generally applicable guidance about ways in which an FCM, CTA, CPO or IB may make a disclosure clear and conspicuous. We note that the examples do not mandate how to make a disclosure clear and conspicuous. A financial institution must decide for itself how best to comply with the general rule, and may use techniques not listed in the examples.

Combination of several notices. The Commission is aware that a document may combine different types of disclosures that are subject to specific disclosure requirements under different regulations. For example, a CTA that includes a privacy notice in its disclosure document would have to make the privacy notice clear and conspicuous, and would have to prepare the disclosure document according to certain standards under the CEA.[11] The proposed rule provides an example of how a financial institution may make privacy disclosures conspicuous, including privacy disclosures that are combined in a document with other information.[12] In order to avoid the potential conflicts between two different rules requiring different sets of disclosures that are subject to different standards, the proposed rule does not mandate precise specifications for presenting various disclosures.

Disclosures on Internet web pages. The proposed rule provides guidance on how financial institutions may clearly and conspicuously disclose privacy-related information on their Internet sites. Disclosures over the Internet may present some issues that will not arise in paper-based disclosures. Consumers may view various web pages within a financial institution's web site in a different order each time they access the site, aided by hypertext links. Depending on the hardware and software used to access the Internet, some web pages may require consumers to scroll down to view the entire page. To address these issues, the proposed rule provides an example concerning Internet disclosures stating that FCMs, CTAs, CPOs and IBs may comply with the rule if they use text or visual cues to encourage scrolling down the page if necessary to view the entire notice, and ensure that other elements on the web site (such as text, graphics, hypertext links, or sound) do not distract attention from the notice.[13] The examples also note that the institution should place a notice or a conspicuous link on a screen that consumers frequently access, such as a page on which consumers conduct transactions.

There is a range of approaches an FCM, CTA, CPO or IB could use based on current technology. For example, an FCM could use a dialog box that pops up to provide the disclosure before a consumer provides information to a financial institution. Another approach would be a simple, clearly labeled graphic located near the top of the page or in close proximity to the financial institution's logo, directing the customer, through a hypertext link or hotlink, to the privacy disclosures on a separate web page.

(c) *Collect.* The GLB Act requires a financial institution to disclose in its initial and annual notices the categories of information that the institution collects. The Commission is proposing to define this term to mean obtaining information that can be organized or retrieved by the name of the individual or by another identifying number, symbol, or other identifying particular assigned to the individual,[14] irrespective of the source of the underlying information. The proposed definition is intended to provide guidance about the information that an FCM, CTA, CPO or IB must include in its notices and to clarify that the obligations arise regardless of whether the institution obtains the information from a consumer or from some other source. This definition is not intended to include information that an FCM, CTA, CPO or IB receives but then immediately passes on without retaining a copy, as such information would not be organized and retrievable.

(d) *Commission.* The term Commission means Commodity Futures Trading Commission.

(e) *Commodity pool operator.* The term commodity pool operator has the same meaning as in section 1a(5) of the Commodity Exchange Act, as amended, and includes anyone registered as such under the Act.

(f) *Commodity trading advisor.* The term commodity trading advisor has the same meaning as in section 1a(6) of the Commodity Exchange Act, as amended, and includes anyone registered as such under the Act.

(g) *Company.* The proposed rules define company to mean any corporation, limited liability company, business trust, general or limited partnership, association or similar organization.

(h) *Consumer.* The proposed rules define consumer as an individual (including his or her legal representative) who obtains a financial product or service from an FCM, CTA, CPO or IB that is to be used primarily for personal, family or household purposes. An individual also will be deemed to be a consumer for purposes of a financial institution if that institution purchases the individual's account from some other institution. The GLB Act distinguishes ''consumers'' from ''customers'' for purposes of the notice requirements imposed by that Act. As explained below in the discussion of proposed § 160.4, a financial institution must give a ''consumer'' the notices required under Title V only if the institution intends to disclose nonpublic personal information about the consumer to a nonaffiliated third party for a purpose that is not authorized by one of several exceptions set out in proposed §§ 160.14 and 160.15. By contrast, a financial institution must give all ''customers,'' not later than the time of establishing a customer relationship and annually

[9] Proposed § 160.3(a)(1)–(2). This part of the proposed definition is designed to prevent the disparate treatment of affiliates within a holding company structure. Without this provision, an FCM in a bank holding company structure might not be considered affiliated with another entity in that organization under the Commission's proposed rules, even though the two entities would be considered affiliated under the privacy rules of the Banking Agencies.

[10] *See, e.g.*, 12 CFR 40.3(b) (OCC rules) and 17 CFR 248.3(c) (SEC rules).

[11] *See* 7 U.S.C. 6m; 17 CFR Part 4.

[12] *See* proposed § 160.3(b)(2)(ii)(E). Because we believe that privacy disclosures may be clear and conspicuous when combined with other disclosures, the proposal does not mandate that privacy disclosures be provided on a separate piece of paper. The requirement is not necessary and would significantly increase the burden on financial institutions.

[13] Proposed § 160.3(b)(2)(iii).

[14] The definition uses language from the Privacy Act of 1974, 5 U.S.C. 552a.

thereafter during the continuation of the customer relationship, a notice of the institution's privacy policy.

A person is a ''consumer'' under the proposed rules if he or she obtains a financial product or service from a financial institution that is to be used primarily for personal, family or household purposes. The definition of ''financial product or service'' in proposed § 160.3(m) includes, among other things, a financial institution's evaluation of an individual's application to obtain a financial product or service. Thus, a financial institution that intends to share nonpublic personal information about a consumer with nonaffiliated third parties outside of the exceptions described in §§ 160.14 and 160.15 will have to give the requisite notices, even if the application or request is denied or withdrawn.

The examples that follow the definition of ''consumer'' explain when someone is a consumer. The examples clarify that a consumer includes someone who provides nonpublic personal information in connection with seeking to obtain commodity interest brokerage or trading or advisory services, but does not include someone who provides only name, address, and areas of investment interest in order to obtain a brochure or other information about a financial product or service.[15] An individual who has an account with an originating FCM and whose positions are carried by a clearing FCM in an omnibus account in the name of the originating FCM is not a consumer for purposes of the clearing FCM if it receives no nonpublic personal information about the consumer.

Requirements arising from consumer relationship. While the proposed rules define ''consumer'' broadly, we note that this definition will not result in any additional burden to an FCM, CTA, CPO or IB if (i) no customer relationship is established and (ii) the institution does not intend to disclose nonpublic personal information about the consumer to nonaffiliated third parties. Under the approach proposed, an FCM, CTA, CPO or IB is under no obligation to provide a consumer who is not a customer with any privacy disclosures unless it intends to disclose the consumer's nonpublic personal information to nonaffiliated third parties outside the exceptions in §§ 160.14 and 160.15. The institution may disclose a consumer's nonpublic personal information to nonaffiliated third parties if it delivers the requisite notices and the consumer does not opt out. Thus, as proposed, the rule allows a financial institution to avoid all of the rule's requirements for consumers who are not customers if the institution chooses not to share information about the consumers with nonaffiliated third parties except as provided in the exceptions. Conversely, if an FCM, CTA, CPO or IB chooses to share consumers' nonpublic personal information with nonaffiliated third parties, the financial institution is free to do so, provided it notifies consumers about the sharing and affords them a reasonable opportunity to opt out. In this way, the rule attempts to strike a balance between protecting an individual's nonpublic personal information and minimizing the burden on a financial institution.

(i) *Consumer reporting agency.* The proposed rules incorporate the definition of ''consumer reporting agency'' in section 603(f) of the Fair Credit Reporting Act (FCRA).[16] The term is used in proposed §§ 160.12 and 160.15.

(j) *Control.* The proposed rules define ''control'' for purposes of FCMs, CTAs, CPOs or IBs to mean the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. In addition, ownership of more than 25 percent of a company's voting securities creates a presumption of control of the company. This definition is used to determine when companies are affiliated, and would result in financial institutions being considered as affiliates regardless of whether the control is exercised by a company or individual.

(k) *Customer.* The proposed rules define ''customer'' as any consumer who has a ''customer relationship'' with a particular financial institution. As explained more fully in the discussion of proposed § 160.4 below, a consumer becomes a customer of a financial institution when he or she enters into a continuing relationship with the institution. For example, a consumer would become a customer when he or she completes the documents needed to open a commodity interest account or enters into an advisory agreement (whether written or oral).

The distinction between consumers and customers determines the notices that a financial institution must provide. If a consumer never becomes a customer, the institution is not required to provide any notices to the consumer unless the institution intends to disclose nonpublic personal information about that consumer to nonaffiliated third parties (outside of the exceptions as set out in §§ 160.14 and 160.15). By contrast, if a consumer becomes a customer, the institution must provide a copy of its privacy policy before it establishes the customer relationship and at least annually during the continuation of the customer relationship.

(l) *Customer relationship.* The proposed rules define ''customer relationship'' as a continuing relationship between a consumer and a financial institution in which the institution provides a financial product or service that is to be used by the consumer primarily for personal, family, or household purposes. Because the GLB Act requires annual notices of the financial institution's privacy policies to its customers, we have interpreted that Act as requiring more than isolated transactions between a financial institution and a consumer to establish a customer relationship, unless it is reasonable to expect further contact about that transaction between the institution and consumer afterwards. Thus, the proposed rules define ''customer relationship'' as one that generally is of a continuing nature. As noted in the examples that follow the definition, this would include a commodity interest account or an advisory relationship. An FCM would have a customer relationship with a consumer when the FCM regularly enters orders for the customer, even if the FCM holds none of the customer's assets.

A one-time transaction may be sufficient to establish a customer relationship, depending on the nature of the transaction. The examples that follow the definition of ''customer relationship'' clarify that an individual's purchase or sale of a futures or options contract through an FCM with whom the customer opens an account would be sufficient to establish a customer relationship because of the continuing nature of the service. By contrast, an individual who is merely referred by an IB to an FCM would not be the IB's customer if the IB does not regularly enter orders for the individual.[17] The Commission specifically invites comment on the nature and scope of the

[15] Individuals may provide this information, for example, on ''tear-out'' cards from magazines, or in telephone or Internet requests for brochures or other information.

[16] 15 U.S.C. 1681a(f).

[17] The individual would, however, be a consumer for purposes of the IB, which would require the IB to provide notices if it intends to disclose nonpublic personal information about the consumer to nonaffiliated third parties outside of the exceptions.

transactions that would be sufficient to establish a customer relationship.

(m) *Federal functional regulator.* The proposed rules define the term federal functional regulator to include the Commission and each of the Agencies. This term is used in two places. First, it is used in proposed § 160.3(a), the definition of affiliate. Second, it is used in proposed § 160.15(a)(4) for disclosures to law enforcement agencies, ''including federal functional regulators.''

(n) *Financial institution.* The proposed rules define financial institution as (i) an FCM, CTA, CPO or IB that is registered with the Commission as such or is otherwise subject to the Commission's jurisdiction, and (ii) any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (BHCA).[18] The proposed rules exempt from the definition of ''financial institution'' those entities specifically excluded by the GLB Act, except to the extent those entities were brought within the scope of Title V by section 5g of the CEA.

The GLB Act excludes ''any person or entity'' that is subject to the Commission's jurisdiction from Title V's coverage.[19] Section 5g of the CEA partially reverses that exclusion by providing that certain entities subject to the Commission's jurisdiction—specifically, FCMs, CTAs, CPOs and IBs—shall be covered by Title V with respect to their financial activity.[20] The proposed rule retains the exclusion of the GLB Act, to the extent that it has not been superseded by section 5g of the CEA, to make clear that floor brokers and various trading facilities and clearing organizations that are subject to the Commission's jurisdiction are not ''financial institutions'' for purposes of the GLB Act.

(o) *Financial product or service.* The proposed rules define ''financial product or service'' as a product or service (i) that an FCM, CTA, CPO or IB could offer that is subject to the Commission's jurisdiction, or (ii) that a financial institution could offer that is financial in nature, or incidental to such a financial activity, under section 4(k) of the BHCA. An activity that is complementary to a financial activity, as described in section 4(k), is not included in the definition of ''financial product or service'' under this part.

The Commission's proposed definition of ''financial product or service'' differs from that of the other Agencies to the extent that it includes any product or service that an FCM, CTA, CPO or IB could offer subject to the Commission's jurisdiction that is not otherwise included as a financial activity under section 4(k) of the BHCA. The other Agencies have defined financial product or service as any product or service that a financial institution could offer that is financial in nature, or incidental to such a financial activity, under section 4(k) of the BHCA. The Commission's proposed broader definition would include certain activity—such as acting as a CPO—which is not financial in nature, or incidental to such a financial activity, under section 4(k) of the BHCA.[21] The Commission's proposed definition of ''financial product or service'' is designed to implement Congress'' intent in section 5g of the CEA that customers of FCMs, CTAs, CPOs and IBs be accorded the same privacy rights as customers of other financial institutions and is solely for purposes of part 160. The Commission specifically invites comments on its proposed definition of financial product or service.

The proposed definition includes the financial institution's evaluation of information collected in connection with an application by a consumer for a financial product or service even if the application ultimately is rejected or withdrawn. It also includes the distribution of information about a consumer for the purpose of assisting the consumer to obtain a financial product or service.

(p) *Futures commission merchant.* The term futures commission merchant has the same meaning as in section 1a(20) of the Commodity Exchange Act, as amended, and includes anyone registered as such under the Act.

(q) *GLB Act.* The term GLB Act means the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338 (1999)).

(r) *Introducing broker.* The term introducing broker has the same meaning as in section 1a(23) of the Commodity Exchange Act, as amended, and includes anyone registered as such under the Act.

(s) *Nonaffiliated third party.* The proposed rule would define nonaffiliated third party to mean any person (including natural persons as well as corporate entities) except (i) an affiliate of a financial institution and (ii) a joint employee of a financial institution and a third party. Information received by a joint employee will be deemed to have been given to the financial institution that is providing the financial product or service in question. Thus, for example, if an employee of a broker-dealer is also an employee of an FCM, information that the employee received in connection with a securities transaction conducted with the broker-dealer would be considered as received by the broker-dealer.

(t) *Nonpublic personal information.* Section 509(4) of the GLB Act defines ''nonpublic personal information'' to mean ''personally identifiable financial information'' that (i) is provided by a consumer to a financial institution, (ii) results from any transaction with the consumer or any service performed for the consumer, or (iii) is otherwise obtained by the financial institution. The term also includes any ''list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any nonpublic personal information that is not publicly available information.'' The GLB Act excludes publicly available information (unless provided as part of the list, description, or other grouping described above), as well as any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using nonpublic personal information. The GLB Act does not define either ''personally identifiable financial information'' or ''publicly available information.''

The proposed rule implements the definition of ''nonpublic personal information'' under the GLB Act by restating the categories of information described above. The proposed rule provides that information will be deemed to be ''publicly available'' and therefore excluded from the definition of ''nonpublic personal information'' if an FCM, CTA, CPO or IB reasonably believes that the information is lawfully made available to the general public from one of the three categories of sources listed in the rule.[22] The

[18] 12 U.S.C. 1843(k).

[19] Section 509(3)(B) of the GLB Act provides:

Notwithstanding subparagraph (A), the term ''financial institution'' does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

[20] Section 5g of the CEA provides:

Notwithstanding section 509(3)(B) of the Gramm-Leach-Bliley Act, any futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commission under this Act with respect to any financial activity shall be treated as a financial institution for purposes of title V of such Act with respect to such financial activity.

[21] *See* 12 CFR 225.86 (66 FR 400, 418 (Jan. 3, 2001)).

[22] *See* proposed § 60.3(v)(1).

examples provided in the proposed rule clarify when an FCM, CTA, CPO or IB has a reasonable belief that information is lawfully made available to the general public. For example, an institution would have a reasonable belief if (i) the institution has confirmed, or the consumer has represented, that the information is publicly available from a public source, or (ii) the institution has taken steps to submit the information, in accordance with its internal procedures and policies and with applicable law, to a keeper of federal, State, or local government records who is required by law to make the information publicly available.[23] The examples also state that an FCM, CTA, CPO or IB would have a reasonable belief that a telephone number is publicly available if the institution located the number in a telephone book or Internet listing service or if the consumer told the institution that the number is not unlisted.[24] Moreover, the examples make clear that an institution may not assume information about a particular consumer is publicly available simply because that type of information is normally provided to a government record keeper and made available to the public by the record keeper, because the consumer may have the ability to keep that information nonpublic or to screen his or her identity.

The approach of the proposed rule is the same as that taken by the Agencies in their rules[25] and is based on the underlying principle that a consumer in many circumstances can control the public availability or identification of his or her information and that a financial institution therefore should not assume that the information about that consumer is in fact publicly available. Thus, even though a lender typically enters a mortgage in public records in order to protect its security interest, when a borrower can maintain the privacy of his or her personal information by owning the property and obtaining the loan through a separate legal entity, the customer's name would not appear in the public record. In the case of a telephone number, a person may request that his or her number be unlisted. Thus, in evaluating whether it is reasonable to believe that information is publicly available, a financial institution must determine whether the consumer has kept the information or his or her identity from being a matter of public record.

To implement the complex definition of ''nonpublic personal information'' that is provided in the statute, the proposed rule would adopt a definition that consists, generally speaking, of (i) personally identifiable financial information, plus (ii) a consumer list or description or grouping of consumers (and publicly available information pertaining to the consumers) that is derived using any personally identifiable financial information that is not publicly available information. From that body of information, the proposed rule excludes publicly available information (except as noted above or if the information is disclosed in a manner that indicates that the individual is the institution's consumer) and any consumer list that is derived without using personally identifiable financial information that is not publicly available information.[26] Examples illustrate how this definition applies in the context of consumer lists.[27]

(u) *Personally identifiable financial information.* As discussed above, the GLB Act defines ''nonpublic personal information'' to include, among other things, ''personally identifiable financial information'' but does not define the latter term. As a general matter, the proposed rules treat any personally identifiable information as financial if the financial institution obtains the information in connection with providing a financial product or service to a consumer. We believe that this approach reasonably interprets the word ''financial'' and creates a workable and clear standard for distinguishing information that is financial from other personal information. This interpretation would cover a broad range of personal information provided to a financial institution, including, for example, information about the consumer's health.

The proposed rules define ''personally identifiable financial information'' to include three categories of information. The first category includes any information that a consumer provides a financial institution in order to obtain a financial product or service from the institution. As noted in the examples that follow the definition, this would include information provided on an application to obtain a loan, credit card, or other financial product or service. If, for example, a consumer provides medical information on an application to obtain a financial product or service, that information would be considered ''personally identifiable financial information'' for purposes of the proposed rules. Similarly, information that may be required for financial planning purposes, including details about retirement and family obligations, such as the care of a disabled child, would be covered by the definition.

The second category includes any information about a consumer resulting from any transaction between the consumer and the financial institution involving a financial product or service. This would include, as noted in the examples following the definition, information about account balance, payment or overdraft history, credit or debit card purchases or financial products purchased or sold.

The third category includes any financial information about a consumer otherwise obtained by the financial institution in connection with providing a financial product or service. This would include information obtained through an information-collecting device from a web server, often referred to as a ''cookie.'' It would also include information from a consumer report or from an outside source to verify information a consumer provides on an application to obtain a financial product or service. It would not, however, include information that is publicly available (unless, as previously noted, the information is part of a list of consumers that is derived using personally identifiable financial information).

The examples clarify that the definition of ''personally identifiable financial information'' does not include a list of names and addresses of people who are customers of an entity that is not a financial institution. Thus, the names and addresses of people who subscribe, for instance, to a particular magazine would fall outside the definition. The examples also clarify that aggregate information (or ''blind data'') lacking personal identifiers is not covered by the definition of ''personally identifiable financial information.''

(v) *Publicly available information.* The proposed rules define ''publicly available information'' as information the financial institution reasonably believes is lawfully made available to members of the general public from three broad types of sources.[28] First, it

[23] *See* proposed § 160.3(v)(2)(i)(B).

[24] *See* proposed § 160.3(v)(2)(i)(C).

[25] *See, e.g.*, 65 FR at 35208 (Board of Governors of the Federal Reserve System); 65 FR at 35218 (Federal Deposit Insurance Corporation); 65 FR at 40364–65 (SEC).

[26] *See* proposed § 160.3(t)(2).

[27] *See* proposed § 160.3(t)(3).

[28] We recognize that some information that is available to the general public may have been published illegally. In some cases, such as a list of customer account numbers posted on a web site, the publication will be obviously unlawful. In other cases, the legality of the publication may be unclear

Continued

includes information from official public records, such as real estate recordations or security interest filings. Second, it includes information from widely distributed media, such as a telephone book, radio program, or newspaper. Third, it includes information from disclosures required to be made to the general public by federal, State, or local law, such as securities disclosure documents. The proposed rules state that information obtained over the Internet will be considered publicly available information if the information is obtainable from a site available to the general public on an unrestricted basis.[29]

As discussed in greater detail above, the proposed rules treat information as publicly available if it could be obtained from one of the public sources listed in the rules. If an institution reasonably believes the information is lawfully made available to the general public from one of the listed public sources, then the information will be considered publicly available and excluded from the scope of ''nonpublic personal information,'' whether or not the institution obtains it from a publicly available source (unless, as previously noted, it is part of a list of consumers that is derived using personally identifiable financial information). Under this approach, the fact that a consumer has given information to a financial institution would not automatically extend to that information the protections afforded to nonpublic personal information.

The proposal incorporates the concept of information being lawfully obtained. Thus, under the proposal, information unlawfully obtained will not be deemed to be publicly available notwithstanding that it may be available to the general public through widely distributed media.

(w) *You.* The proposed rules define you as any FCM, CTA, CPO or IB subject to the jurisdiction of the Commission. The term ''you'' is used in order to make the rules easier to understand and use.

Subpart A—Privacy and Opt Out Notices

Section 160.4 Initial Privacy Notice to Consumers Required

Initial notice required. The GLB Act requires that a financial institution provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For consumers who do not, or have not yet, become customers, the notice must be provided before disclosing nonpublic personal information about the consumer to a nonaffiliated third party.

Paragraph (a) of proposed § 160.4 states the general rule regarding these notices. A financial institution must provide a clear and conspicuous notice, as defined in proposed § 160.3(b), that accurately reflects the institution's privacy policies and practices. Accordingly, a financial institution must maintain the protections that its notice represents it will provide. The Commission expects that FCMs, CTAs, CPOs and IBs will take appropriate measures to adhere to their stated privacy policies and practices.

The proposed rules do not prohibit two or more institutions from providing a joint initial, annual or opt out notice, as long as the notice is delivered in accordance with the rules and is accurate with respect to all institutions. For example, institutions that could provide joint notices include: (i) An IB and its FCM; (ii) a CTA and the FCM carrying the customer's account; and (iii) a clearing FCM and an executing FCM. Similarly, the rules do not preclude an institution from establishing different privacy policies and practices for different categories of consumers, customers or products so long as each particular consumer or customer receives a notice that is accurate with respect to that individual.

Notice to customers. The proposed rules require that a financial institution provide an individual a privacy notice not later than the time that it establishes a customer relationship subject to the limited circumstances set forth in paragraph (e), as discussed below. Thus, the initial notice may be provided at the same time an FCM, CTA, CPO or IB is required to give other notices, such as the rule 1.55 risk disclosure statement that an FCM or IB is required to provide before opening an account for a customer and the part 4 disclosure document that a CPO or CTA is required to provide before soliciting or accepting funds from pool participants (in the case of a CPO) or soliciting or entering into an agreement to direct a client's account (in the case of a CTA).[30] This approach is intended to strike a balance between (i) ensuring that consumers will receive privacy notices at a meaningful point during the process of ''establishing a customer relationship'' and (ii) minimizing unnecessary burdens on FCMs, CTAs, CTOs and IBs that may otherwise result if the rule were to require financial institutions to provide consumers with a series of notices at various times in a transaction.

Paragraph (c) of proposed § 160.4 identifies the time a customer relationship is established as the point at which a financial institution and a consumer enter into a continuing relationship. The examples in paragraph (c) clarify that, for customer relationships that are contractual in nature including, for example, a commodity interest advisory relationship, a customer relationship is established when the customer enters into the contract (whether written or oral) that is necessary to engage in the activity in question. Thus, for example, a customer relationship is established with an FCM when the customer executes a commodity interest trade through the FCM or opens an account with the FCM under its procedures. We request comment on whether there are other times at which customer relationships with FCMs, CTAs, CPOs and IBs may be established.

Notice to consumers. For consumers who do not establish a customer relationship, the initial privacy notice may be provided at any point before the financial institution discloses nonpublic personal information to nonaffiliated third parties. As provided in paragraph (b) of proposed § 160.4, if the institution does not intend to disclose the information in question or intends to make only those disclosures that are authorized by one of the exceptions or as required by law, the institution is not required to provide the initial notice.[31]

How to provide notice. When you are required by this proposed section to deliver an initial privacy notice, the notice must be delivered according to the provisions of proposed § 160.9. The general rule requires that the initial notice be provided so that each

or unresolved. The proposed rule would provide that information is ''publicly available'' if the institution reasonably believes that information is lawfully available to the public.

[29] The examples further explain that an Internet site is not restricted merely because an Internet service provider or a site operator requires a fee or password as long as access is otherwise available to the general public. This recognizes that the ''widely distributed'' requirement focuses on whether the information is lawfully available to the general public, rather than on the type of medium from which information is obtained.

[30] The Commission recognizes that the disclosure requirements of part 4 apply as early as the solicitation stage, which often occurs before a customer relationship has been established. *See* 17 CFR 4.21 (CPO disclosure document) and 17 CFR 4.31 (CTA disclosure document). In these circumstances, a CPO or CTA would not be required to provide the initial privacy notice until such time as the customer relationship has been established, although it could elect to provide the notice earlier at the time of the solicitation.

[31] *See* proposed §§ 160.13, 160.14, 160.15.

recipient can reasonably be expected to receive actual notice.

Existing customers. Proposed paragraph (d) provides that a financial institution is not required to provide new notices for new products or services if it has previously provided the same customer with an initial, revised, or annual notice (as appropriate) that is accurate with respect to the new product or service.

Exceptions to allow subsequent delivery of notice. Proposed paragraph (e) permits a financial institution to provide subsequent delivery of the initial notice required by proposed paragraph (a)(1) within a reasonable time after the customer relationship is established in three instances. First, the institution may provide notice after the fact if the customer has not elected to establish the customer relationship. This might occur, for example, when a commodity interest account is transferred from one FCM to another by a trustee in a commodity broker liquidation proceeding under chapter 11 of the Bankruptcy Code.[32] Second, a financial institution may send a notice after establishing a customer relationship when to do otherwise would substantially delay the consumer's transaction and the consumer agrees to receive the notice at a later time. An example of this is when a customer requests over the telephone that an FCM execute a trade. The final example states that delayed delivery is permissible when a nonaffiliated financial institution establishes a customer relationship on behalf of the customer.

We note that in most situations, a financial institution should give the initial notice at a point when the consumer still has a meaningful choice about whether to enter into the customer relationship. The exceptions listed in the examples, while not exhaustive, are intended to illustrate the less frequent situations when delivery either would pose a significant impediment to the conduct of a routine business practice or the consumer agrees to receive the notice later in order to obtain a financial product or service immediately.

Section 160.5 Annual Privacy Notice to Customers Required

Section 503 of the GLB Act requires a financial institution to provide notices of its privacy policies and practices to its customers at least annually. Proposed § 160.5 implements this requirement by providing that a clear and conspicuous notice that accurately reflects the institution's current privacy policies and practices be provided at least once during any period of twelve consecutive months during which the customer relationship exists. The rules governing how to provide an initial notice also apply to annual notices.

Section 503(a) of the GLB Act requires that the annual notice be provided ''during the continuation'' of a customer relationship. Accordingly, the proposed rules state that a financial institution is not required to provide an annual notice to a customer with whom it no longer has a continuing relationship. For example, a customer becomes a former customer when the individual's account is closed.

The Commission invites comment generally on whether there are other situations in which an individual may have an account with a financial institution but the customer relationship has ended. We also invite comment on the regulatory burden of providing annual notices and on the methods financial institutions anticipate using to provide the notices.

Section 160.6 Information To Be Included in Privacy Notices

Section 503 of the GLB Act identifies the categories of information that must be included in a financial institution's initial and annual privacy notices and establishes the general requirement that a financial institution must provide customers with a notice describing the institution's policies and practices with respect to, among other things, disclosing nonpublic personal information to both affiliates and nonaffiliated third parties. Section 503(b) of the GLB Act identifies certain elements that the notice must address. The required content is the same for initial and annual notices of privacy policies and practices. While the information contained in the notices must be accurate as of the time the notices are provided, a financial institution may prepare its notices based on current and anticipated policies and practices.

Paragraph (a) of proposed § 160.6 prescribes the information to be included; proposed paragraph (c) provides examples of how to comply with this requirement.

(1) *Categories of nonpublic personal information that a financial institution may collect.* Section 503(b)(2) of the GLB Act requires a financial institution to inform its customers about the categories of nonpublic personal information that the institution collects. Proposed § 160.6(a)(1) implements this requirement and provides an example of compliance that focuses on the source of the information collected. As described in the example, a financial institution will satisfy this requirement if it categorizes the information according to the sources, such as application information, transaction information, and consumer report information. While financial institutions may provide more detail about the categories and information collected, they are not required to do so.

(2) *Categories of nonpublic personal information that a financial institution may disclose.* Section 503(a)(1) of the GLB Act requires the financial institution's initial and annual notice to provide information about the categories of nonpublic personal information that may be disclosed either to affiliates or nonaffiliated third parties. Proposed rule 160.6(a)(2) implements this requirement. The examples of how to comply with this rule focus on the content of the information to be disclosed. A financial institution may satisfy this requirement by categorizing information according to source and providing examples of the content of this information. These categories might include application information (such as assets, income, and investment goals), identifying information (such as name, address and social security number), transaction information (such as information about account activity and balances), and information from consumer reports (such as credit history).

Financial institutions may choose to provide more detailed information in the initial and annual notices. If a financial institution does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of information disclosed.

3. *Categories of affiliates and nonaffiliated third parties to whom a financial institution discloses nonpublic personal information.* Section 503(a) of the GLB Act includes a general requirement that a financial institution provide notice to its customers of the institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) provides that the notice required by section 503(a) must include certain specified items, including the requirement that a financial institution inform its customers about its policies and practices with respect to disclosing nonpublic personal information to nonaffiliated third parties. We believe that sections 503(a) and 503(b) of the

[32] *See* 11 U.S.C. 761–766.

GLB Act, when read together, require a financial institution's notice to address disclosures of nonpublic personal information to both affiliates and nonaffiliated third parties.

Proposed rule 160.6(a)(3) implements the notice requirement of section 503. The example explains that a financial institution will adequately categorize the affiliates and nonaffiliated third parties to whom it discloses nonpublic information about consumers if it identifies the types of businesses in which they engage. Types of business may be described in general terms, such as financial products or services, if the financial institution provides examples of the significant types of businesses engaged in by the recipient.

Section 502(e) of the GLB Act creates exceptions to the requirements that apply to the disclosure of nonpublic personal information to nonaffiliated third parties. The Act does not require a financial institution to list the categories of persons to whom information may be disclosed under any of the enumerated exceptions. Accordingly, proposed rule 160.6(a)(4) requires only that a financial institution inform customers that it makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the notice. The Commission invites comment on whether such notice would be adequate.

If a financial institution does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may state this fact without further elaboration about categories of third parties.

4. *Information about former customers.* Section 503(a)(2) of the GLB Act requires that the financial institution's initial and annual privacy notices include the institution's policies and practices with respect to disclosing nonpublic personal information about persons who have ceased to be customers of the financial institution. Section 503(b)(1)(B) requires that this information be provided with respect to information disclosed to nonaffiliated third parties. We believe that, read together, sections 503(a)(2) and (b)(1)(B) require a financial institution to include in its initial and annual notices the institution's policies and practices with respect to sharing information about former customers with all affiliates and nonaffiliated third parties. Proposed rule 160.6(a)(4) sets forth this requirement. This rule does not require a financial institution to provide notice to a former customer before sharing nonpublic personal information about the former customer with an affiliate.

5. *Information disclosed to service providers.* Section 502(b)(2) of the GLB Act permits a financial institution to disclose nonpublic personal information about a consumer to a nonaffiliated third party that performs services for the institution, including marketing financial products or services under a joint agreement between the financial institution and at least one other financial institution. In such cases, a consumer has no right to opt out, but the financial institution must inform the consumer that it will be disclosing the information in question unless the service falls within one of the exceptions enumerated in section 502(e) of the GLB Act.

Proposed rule 160.6(a)(5) implements these provisions by requiring that, if a financial institution discloses nonpublic personal information to a nonaffiliated third party under the GLB Act exception for service providers and joint marketing, it must include in its initial and annual privacy notices a separate description of the categories of information that are disclosed and the categories of third parties providing the services. A financial institution may comply with these requirements by providing the same level of detail in the notice as is required to satisfy proposed §§ 160.6(a)(2) and (3).

6. *Right to opt out.* Sections 503(a)(1) and (b)(2) of the GLB Act require a financial institution to provide customers with a notice of its privacy policies and practices concerning, among other things, disclosure of nonpublic personal information consistent with section 502 of the GLB Act. Proposed rule 160.6(a)(6) implements this section of the GLB Act by requiring the initial and annual privacy notices to explain the right to opt out of disclosures of nonpublic personal information to nonaffiliated third parties, and the methods available to exercise that right.

7. *Disclosures made under the Fair Credit Reporting Act.* Pursuant to section 503(b)(4) of the GLB Act, a financial institution's initial and annual notice must include the disclosures, if any, required under section 603(d)(2)(A)(iii) of the FCRA.[33] That section excludes from the definition of ''consumer report'' (and, accordingly, the protections provided under the FCRA for information contained in consumer reports) the communication of certain consumer information among affiliated entities if the consumer is notified about the disclosure of the information and given an opportunity to opt out of the information sharing. Information that can be shared among affiliates under this provision generally is personal information provided directly by the consumer to the financial institution, such as income and social security number, in addition to information contained in credit bureau reports.

Proposed rule 160.6(a)(7) implements section 503(b)(4) of the GLB Act by requiring that a financial institution's initial and annual privacy notices include any disclosures the institution makes under section 603(d)(2)(A)(iii) of the FCRA.

8. *Confidentiality, security and integrity.* Pursuant to section 503(b)(3) of the GLB Act, a financial institution's initial and annual privacy notices must provide information about the institution's policies and practices with respect to protecting the nonpublic personal information of consumers. Section 503(b)(3) requires that the notices include the policies that the financial institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 501, which requires the federal functional regulators to establish standards governing the administrative, technical and physical safeguards of customer information.[34]

Proposed rule 160.6(a)(8) implements these provisions by requiring a financial institution to include in its initial and annual privacy notices the institution's policies and practices with respect to protecting the confidentiality, security and integrity of nonpublic personal information. The example in the proposed rules states that a financial institution may comply with the requirement for confidentiality and security if the institution explains such matters as who has access to the information and the circumstances under which the information may be accessed. The information about integrity should focus on the measures the financial institution takes to protect against reasonably anticipated threats or hazards. The proposed rule does not require a financial institution to disclose technical or proprietary information about how it safeguards consumer information.

Section 160.7 Form of Opt Out Notice to Consumers; Opt Out Methods

Proposed § 160.7 provides that any opt out notice required by § 160.10(a) must provide a clear and conspicuous notice to each consumer that accurately

[33] 15 U.S.C. 1681a(d)(2)(A)(iii).

[34] *See infra* proposed rule 160.30.

explains the right to opt out. The notice must inform the consumer that the institution may disclose nonpublic personal information to nonaffiliated third parties, state that the consumer has the right to opt out, and provide the consumer with a reasonable means by which to opt out.

The examples outlined in paragraph (a)(2) of proposed § 160.7 state that a financial institution will provide adequate notice of the right to opt out if it identifies the categories of nonaffiliated third parties to whom the information may be disclosed and explains that the consumer may opt out of those disclosures. A financial institution that plans to disclose only limited types of information or to make disclosures only to a specific type of nonaffiliated third party may provide a correspondingly narrow notice to consumers. To minimize the number of opt out notices a financial institution must provide, however, the institution may wish to base its notices on current and anticipated information sharing plans. A new opt out notice is not required for disclosures to different types of nonaffiliated third parties or of different types of information so long as the most recent opt out notice is sufficiently broad to cover the entities or information in question. A financial institution also need not provide subsequent opt out notices when a consumer establishes a new type of customer relationship with that financial institution, unless the institution's opt out policies vary based on the type of customer relationship.

The examples suggest several methods of providing reasonable means to opt out, including check-off boxes, reply forms, electronic mail addresses, and toll-free telephone numbers. A financial institution does not provide a reasonable means of opting out if the only means provided is for the consumer to write his or her own letter requesting to opt out. The Commission invites comment on whether a financial institution that provides its notice electronically should be required to provide an electronic means to opt out.

Paragraph (b) of proposed § 160.7 applies to delivery of the opt out notice the same rules that apply to delivery of the initial and annual privacy notices and clarifies that the opt out notice may be provided together with, or on the same form as, the initial and annual notices. Paragraph (c) provides that if the opt out notice is provided after the initial notice, a financial institution must provide a copy of the initial notice along with the opt out notice.

Paragraph (d) of proposed § 160.7 states that if two or more consumers jointly obtain a financial product or service from a financial institution, the institution may provide a single opt out notice. The opt out notice must, however, explain how the financial institution will treat an opt out direction by a joint customer. The Commission invites comment on how the right to opt out should apply in the case of joint accounts. For example, should a financial institution require all parties to an account to opt out before the opt out becomes effective? If not, and only one of the parties opts out, should the opt out apply only to that party or should it apply to information about all parties to the account?

Paragraph (e) provides that a financial institution must comply with the customer's opt out as soon as reasonably practicable after receiving it. Paragraph (f) clarifies that a consumer has the right to opt out at any time. The Commission invites comment on whether the rules should specify a time within which an opt out must be honored.

Paragraph (g) states that an opt out will continue until it is revoked by the consumer in writing or, if the consumer agrees, electronically. When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information collected by the financial institution during or related to the relationship. If that individual subsequently establishes a new customer relationship with the financial institution, the opt out direction that applied to the former relationship does not apply to the new relationship and the institution must provide a new opt out notice to the customer in connection with the new relationship. The Commission invites comment on the likely burden of complying with the requirement to provide opt out notices, the methods financial institutions anticipate using to deliver the opt out notices, and the approximate number of opt out notices they anticipate delivering and processing.

Section 160.8 Revised Privacy Notices

This section sets forth the rules governing a financial institution's obligations in the event the institution changes its disclosure policies. As stated in this section, a financial institution may not directly or through an affiliate disclose nonpublic personal information to a nonaffiliated third party unless the institution first provides a revised notice and a new opportunity to opt out. The institution must wait a reasonable period of time before disclosing information according to the terms of the revised notice in order to afford the consumer a reasonable opportunity to opt out. A financial institution must provide a consumer the revised notice of its policies and practices and an opt out notice in a manner such that each consumer can reasonably be expected to receive actual notice, as provided in § 160.9.

Section 160.9 Delivering Privacy and Opt Out Notices

Paragraph (a) of proposed § 160.9 requires that any privacy and opt out notices provided by a financial institution be provided in a manner such that each consumer can reasonably be expected to receive actual notice in writing or, if the customer agrees, electronically. Paragraph (b) sets forth examples of reasonable expectation of actual notice, including, for example, hand-delivery to the consumer of a printed copy of the notice, mailing a printed copy of the notice to the last known address of the consumer, and, for a consumer who conducts transactions electronically, posting the notice on the electronic site and requiring the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

Paragraph (c) describes additional examples of reasonable expectation of actual notice which apply only in the context of the annual privacy notice. A financial institution may reasonably expect that a customer who uses the institution's web site to obtain financial products and services will receive actual notice of the annual privacy notice if the customer has agreed to accept notices at the institution's web site and if the institution continuously posts a current notice of its privacy policies and practices in a clear and conspicuous manner on the web site. This paragraph also makes clear that a financial institution need not send the annual privacy notice to a customer who affirmatively requests no communication from the institution, provided that the notice is available upon request. Paragraph (d) prohibits financial institutions from providing privacy notices orally. Paragraph (e) clarifies that the requirement that a privacy policy be provided in a manner that permits a customer to retain or reaccess the policy may be satisfied if the financial institution makes available on its web site the privacy policy currently in effect.

Proposed § 160.9(f) expressly permits the provision of joint notice from two or more financial institutions as long as the notice is accurate with respect to all financial institutions and identifies each institution by name. The Commission

believes that FCMs, CTAs, CPOs and IBs should be able to combine initial, annual, or revised disclosures in one document and to give, on a collective basis, a consumer only one copy of the notice. For example, a clearing FCM could provide a joint notice with an executing FCM for which it clears transactions on a fully disclosed basis, or an IB could provide a joint notice with the FCM to which it introduces trades. The Commission emphasizes that this notice must be accurate for each institution that uses the notice and must identify each institution by name.

Where two or more consumers jointly obtain a financial product or service from a financial institution, paragraph (g) of proposed § 160.9 permits the financial institution to satisfy the initial, annual and revised notice requirements of this section by providing one notice to those customers jointly. The Commission invites comment with respect to whether this provision is likely to provide a reasonable expectation of actual notice in all situations.

Subpart B—Limits on Disclosures

Section 160.10 Limits on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties

Section 502(a) of the GLB Act generally prohibits a financial institution from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with notice of the institution's privacy policies and practices. Section 502(b) further requires that the financial institution provide the consumer with a clear and conspicuous notice that the consumer's nonpublic personal information may be disclosed to nonaffiliated third parties, that the consumer be given an opportunity to opt out of that disclosure, and that the consumer be informed as to how to opt out.

Proposed § 160.10 implements these provisions by setting forth the criteria that a financial institution must satisfy before disclosing nonpublic personal information to nonaffiliated third parties and by defining ''opt out'' in a way that incorporates the exceptions to the right to opt out enunciated in proposed §§ 160.13, 160.14 and 160.15.

The proposed rule requires that the opportunity to opt out be ''reasonable,'' which recognizes that the appropriate waiting time before disclosure will vary depending on many factors including, for example, the method of delivery of the opt out notice. The examples that follow the general rule are intended to provide guidance in situations involving notices by mail and by electronic means and notices that are to be provided in the case of isolated transactions with a consumer. In the case of mail and electronic notices, the consumer will be considered to have had a reasonable opportunity to opt out if the financial institution provides 30 days in which to opt out. In the case of an isolated transaction, the opportunity will be reasonable if the consumer must decide as part of the transaction whether to opt out before completing the transaction. The Commission invites comment on whether 30 days is a reasonable opportunity to opt out in the case of notices sent by mail and by electronic means.

The requirement that a consumer have a reasonable opportunity to opt out does not mean that the consumer forfeits that right once the opportunity passes. As provided in proposed § 160.7(f), a consumer always has the right to opt out. If, however, a consumer does not exercise the opt out right when first presented with the opportunity, the financial institution would be permitted to disclose nonpublic personal information to nonaffiliated third parties during the period of time before it implements the consumer's subsequent opt out direction.

All customers are consumers under the proposed rules. Accordingly, paragraph (b) of proposed § 160.10 clarifies that the right to opt out applies regardless of whether a consumer has established a customer relationship with the financial institution. The fact that a consumer establishes a customer relationship with a financial institution does not change the institution's obligations to comply with the requirements of proposed § 160.10 before sharing nonpublic personal information about the consumer with nonaffiliated third parties. Importantly, the proposed rule applies as well in the context of a consumer who had a customer relationship with a financial institution and subsequently terminated the relationship. Paragraph (b) establishes that the consumer protections afforded by paragraph (a) apply to all nonpublic personal information collected by a financial institution, regardless of when collected. Thus, if a consumer elects to opt out of information sharing with nonaffiliated third parties, the election applies to all nonpublic information about the consumer in the financial institution's possession, regardless of when the information is obtained.

Paragraph (c) of proposed § 160.10 provides that a financial institution may—but is not required to—provide consumers with the option of a partial opt out in addition to the opt out required by this section. This option could enable a consumer to limit, for instance, the types of information disclosed to nonaffiliated third parties or the types of recipients of the nonpublic personal information about the consumer. If the financial institution elects to provide the partial opt out, it must state this option in a way that clearly informs the consumer about the choices available and the resulting consequences.

Section 160.11 Limits on Redisclosure and Reuse of Information

Section 502(c) of the GLB Act provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or through an affiliate, disclose the information to any person that is not affiliated with either the financial institution or the third party, unless the disclosure would be lawful if it were made directly by the financial institution. Proposed § 160.11 implements the GLB Act's restrictions on redisclosure and reuse of nonpublic personal information about consumers.

The GLB Act places the institution that receives the nonpublic personal information in the shoes of the institution that discloses the information for the purpose of determining whether redisclosures by the receiving institution are lawful. Thus, the GLB Act permits the receiving institution to redisclose the information to an entity to whom the original transferring institution could disclose the information pursuant to one of the exceptions in proposed § 160.14 or § 160.15, or to an entity to whom the original transferring institution could have disclosed the information as described under its notice of privacy policies and practices, unless the consumer has exercised the right to opt out of that disclosure. Because a consumer can exercise the right to opt out of a disclosure at any time, the GLB Act may effectively preclude third parties that receive information to which the opt out right applies from redisclosing the information other than under one of the exceptions in proposed §§ 160.13, 160.14 or § 160.15.

Sections 502(b)(2) and 502(e) of the GLB Act describe the circumstances under which a financial institution may disclose nonpublic personal information without providing the consumer with the initial privacy notice and an opportunity to opt out. Those exceptions apply only when the information is used for the specific purposes set forth in those sections

which include, for example, disclosure as necessary to effect, administer, or enforce a transaction authorized by the consumer. Paragraph (a)(2) of proposed § 160.11 clarifies this limitation on reuse as it applies to financial institutions by providing that a financial institution may use nonpublic personal information about a consumer that it receives from a nonaffiliated financial institution in accordance with an exception under § 160.14 or § 160.15 only for the purpose of that exception. Paragraph (b)(2) applies the same restrictions on reuse to any nonaffiliated third party that received nonpublic personal information from a financial institution.

Section 160.12 Limits on Sharing Account Number Information for Marketing Purposes

Section 502(d) of the GLB Act prohibits a financial institution from disclosing, other than to a consumer reporting agency, account numbers or similar forms of access numbers or access codes for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or marketing through electronic mail to the consumer. Proposed § 160.12 applies this prohibition to disclosures made directly or indirectly as it has been applied by the Agencies, and incorporates the exceptions that have been established by the Agencies.[35] Thus, the proposed rule provides for two exceptions. First, it permits an FCM, CTA, CPO or IB to disclose account numbers to an agent for the purposes of marketing the institution's financial products or services so long as the agent has no authority to initiate charges to the account. Second, it permits disclosure in a private-label credit card or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program. As a matter of clarification, the proposed rule also contains an example that provides that an account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

[35] *See, e.g.,* 17 CFR 248.12 (SEC privacy rules).

Subpart C—Exceptions

Section 160.13 Exception to Opt Out Requirements for Service Providers and Joint Marketing

Section 502(b)(2) of the GLB Act creates an exception to the opt out rules for the disclosure of information to a nonaffiliated third party for its use to perform services for or functions on behalf of the financial institution, including the marketing of the financial institution's own products or services or financial products or services offered under a joint agreement between two or more financial institutions. A consumer will not have the right to opt out of disclosing nonpublic personal information about the consumer to nonaffiliated third parties under these circumstances if the financial institution satisfies certain requirements.

Before the information may be shared, section 502(b)(2) of the GLB Act requires the institution to (i) ''fully disclose'' to the consumer that it will provide this information to the nonaffiliated third party and (ii) enter into a contractual agreement with the third party that requires the third party to maintain the confidentiality of the information. Paragraph (a) of proposed § 160.13 would implement these provisions of the GLB Act by requiring the FCM, CTA, CPO or IB to (i) provide the initial notice required by proposed section 160.4 and (ii) enter into a contract that prohibits the third party from disclosing or reusing the information other than to carry out the purposes for which the information was disclosed, including use under an exception in proposed rules 160.14 and 160.15 in the ordinary course of business to carry out those purposes. The contract should be designed to ensure that the third party will maintain the confidentiality of the information at least to the same extent as is required for the financial institution that discloses it, and will use the information solely for the purposes for which the information is disclosed or as otherwise permitted under the proposed rules.[36]

The Commission invites comment on any other requirements that would be appropriate to protect a consumer's financial privacy and on whether the rules should provide examples of the types of joint agreements that are covered.

[36] Consistent with the approach taken by the Agencies, the Commission is proposing to grandfather existing service agreements. Thus, paragraph (c) of proposed rule 160.18 provides that contracts entered into before the date of issuance of the final regulations must be brought into compliance with § 160.13 by December 31, 2002.

Section 160.14 Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions

Section 502(e) of the GLB Act creates exceptions to the requirements that apply to the disclosure of nonpublic personal information to nonaffiliated third parties. Paragraph (1) of that section provides certain exceptions for disclosures made in connection with the administration, processing, servicing and sale of a consumer's account. Proposed § 160.14 sets forth those exceptions and also the definition of ''necessary to effect, administer, or enforce'' contained in section 509(7) of the GLB Act.

These exceptions and the exceptions discussed in proposed § 160.15, below, do not affect a financial institution's obligation to provide initial notices of its privacy policies and practices at or prior to the time it establishes a customer relationship and annual notices thereafter. These notices must be provided to all customers, even if the financial institution intends to disclose the nonpublic personal information only under the exceptions in proposed § 160.14.

Section 160.15 Other Exceptions to Notice and Opt Out Requirements

As discussed above, the GLB Act contains several exceptions to the requirements that otherwise would apply to the disclosures of nonpublic personal information to nonaffiliated third parties. Proposed § 160.15 sets forth the exceptions that are not made in connection with the administration, processing, servicing or sale of a consumer's account.

Section 160.16 Protection of Fair Credit Reporting Act

Section 506(c) of the GLB Act states that, except for the amendments regarding rulemaking authority, nothing in Title V is to be construed to modify, limit or supersede the operation of the FCRA, and no inference is to be drawn on the basis of the provisions of Title V whether information is transaction or experience information under section 603 of the FCRA. Proposed § 160.16 implements section 506(c) of the GLB Act by restating the GLB Act with clarifying changes.

Section 160.17 Relation to State Laws

Section 507 of the GLB Act provides that Title V does not preempt any state law that provides greater protections than are provided by Title V. Determinations whether a state law or Title V provide greater protections are to be made by the FTC after consultation with the agency that regulates either the

party filing a complaint or the financial institution about which the complaint was filed. Determinations of whether state or federal law affords greater protection may be initiated by any interested party or on the FTC's own motion.

Proposed § 160.17 is substantively identical to section 507, noting that the proposed rules (like the GLB Act) do not preempt state laws that provide greater protection for consumers than do the rules.

Section 160.18 Effective Date; Transition Rule

Proposed § 160.18 establishes an effective date for part 160 of June 21, 2001, which is the date by which the Commission is required to prescribe final rules implementing Title V.[37] Consistent with the approach taken by the other Agencies, the Commission is proposing a compliance date of December 31, 2001, in order to provide financial institutions sufficient time to bring their policies and procedures into compliance with the requirements of the final rules. The Commission is also proposing a provision that phases in compliance with respect to existing service agreements.

Under the proposed rule, full compliance with the rules' restrictions on disclosures would be required by December 31, 2001. To be in full compliance, FCMs, CTAs, CPOs and IBs would be required to provide their existing customers with a privacy notice, an opt out notice, and a reasonable amount of time to opt out before that date. If these have not been provided, the disclosure restrictions would apply. This means that an FCM, CTA, CPO or IB would have to cease sharing customers' nonpublic personal information with nonaffiliated third parties on that date, unless it may share the information under an exception under § 160.14 or § 160.15. FCMs, CTAs, CPOs and IBs that both provide the required notices and allow a reasonable period of time to opt out before December 31, 2001, would be able to share nonpublic personal information after that date for customers who do not opt out.

Under the proposed rule, FCMs, CTAs, CPOs and IBs would not be required to give initial notices to customers whose relationships had terminated before the date by which institutions must be in compliance with the rules. Thus, if under a financial institution's policies an account is inactive before December 31, 2001, then no initial notice would be required in connection with that account. However, because these former customers would remain consumers, an FCM, CTA, CPO or IB would have to provide a privacy and opt out notice to them if the institution intended to disclose their nonpublic personal information to nonaffiliated third parties beyond the exceptions in §§ 160.14 and 160.15.

Section 160.30 Procedures to Safeguard Customer Information and Records

Section 501 of the GLB Act directs the Agencies to establish appropriate safeguards for financial institutions relating to administrative, technical and physical safeguards to protect customer records and information. Proposed § 160.30 implements this directive by requiring every FCM, CTA, CPO or IB that is subject to the jurisdiction of the Commission to adopt policies and procedures to address the safeguards described above. Consistent with the GLB Act, the proposed rule further requires that the policies and procedures be reasonably designed to: (i) Insure the security and confidentiality of customer records and information; (ii) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (iii) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

The Commission believes it is appropriate for each financial institution to tailor its policies and procedures to its own systems of information gathering and transfer and to the needs of its customers and has not prescribed specific policies or procedures that financial institutions must adopt. The Commission requests comment on whether the proposed standards should be more specific and, if so, what specifications would be appropriate to particular financial institutions.

III. General Request for Comments

The Commission requests comment on the proposed rules and suggestions for additional examples that may be appropriate to include in the rules. In light of the need to promulgate regulations by June 21, 2001—six months after the enactment of the CFMA—the Commission does not anticipate extending the comment period, and encourages commenters to submit their comments as early as possible during the comment period.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[38] the Commission also requests information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IV. Cost-Benefit Analysis

Section 15 of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. The Commission understands that, by its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed piecemeal or in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

Proposed part 160 constitutes a package of related rule provisions. The Commission has considered their costs and benefits as a totality. The rules impose disclosure and procedural requirements that are either mandated by or fully consistent with the privacy provisions of the GLB Act and section 5g of the CEA, and thus impose no costs in addition to those already imposed. The Commission has considered the costs and benefits of this rule package in light of the specific areas of concern identified in section 15:

1. Protection of market participants and the public. The requirements to provide opt out notices and to protect customer information will benefit market participants and the public by protecting the privacy of their nonpublic personal information.

2. Efficiency and competition. The requirements to provide initial and

[37] *See* section 5g of the CEA, as amended by section 124 the CFMA.

[38] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

annual privacy notices will benefit efficiency and competition by allowing customers to compare the privacy policies of financial institutions. The Commission's proposed rules also benefit efficiency and competition by allowing FCMs, CTAs, CPOs and IBs flexibility to distribute notices and to adopt policies and procedures to protect customer information that are best suited to the institution's business and needs.

3. Financial integrity of futures markets, price discovery and sound risk management practices. The proposed rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets or on the risk management practices of FCMs, CTAs, CPOs or IBs.

4. Other public interest considerations. The proposed rules are designed to minimize the costs of compliance by providing maximum flexibility, consistent with legal requirements, for firms to design their own compliance systems. The Commission is proposing to allow FCMs that are affiliated with broker-dealers to comply with the Commission's rules by complying with the privacy rules of the SEC. This proposal should significantly reduce the compliance costs for those firms. Moreover, the proposed rules provide greater certainty to the private sector on how to comply with the GLB Act because they are consistent with and comparable to the rules adopted by the Agencies. The examples in the rules and the sample clauses in the appendix also should provide guidance on how the rules will be enforced with respect to FCMs, CTAs, CPOs and IBs.

After considering these factors, the Commission has determined to propose part 160 as discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposed rules with their comment letters.

V. Related Matters

A. Paperwork Reduction Act of 1995

This proposed rulemaking contains information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (PR'') (44 U.S.C. 3501 *et seq.*). The Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Collection of Information: Rules Relating to Part 160, Privacy of Consumer Financial Information, OMB Control Number 3038–AB68.

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number. The Commission is currently requesting a control number for this information collection from OMB.

The proposed regulation contains several disclosure requirements. The financial institutions covered by this regulation must prepare and provide the initial notice to all current customers and all new customers at the time of establishing a customer relationship (proposed § 160.4(a)). Subsequently, an annual notice must be provided to all customers at least once during a twelve-month period during the continuation of the customer relationship (proposed § 160.5(a)). The initial notice and opt out notice must be provided to a consumer prior to disclosing nonpublic personal information to certain nonaffiliated third parties. If a financial institution wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer, the institution must provide consumers with revised notices (proposed § 160.8(c)).

The proposed regulation also contains consumer reporting requirements. In order for consumers to opt out, they must respond to the opt out notice (proposed §§ 160.10(a)(2), (a)(3)(i), and (c)). At any time during their continued relationship with the institution, consumers have the right to change or update their opt out status with the institution (proposed §§ 160.7(f) and (g)). The Commission believes that most, if not all, financial institutions will not share nonpublic personal information about consumers with nonaffiliated third parties and will not have to provide opt out notices to consumers or customers. Thus, the Commission estimates that the annual burden of responding to an opt out notice will be nominal. The Commission requests public comment on all aspects of the collections of information contained in this proposed regulation, including consumer responses to the opt out notice and consumer changes to their opt out status with a financial institution.

The initial and annual privacy notices are mandatory. The opt out notice is not mandatory for institutions that do not share nonpublic personal information with nonaffiliated third parties. The likely respondents are FCMs, CTAs, CPOs and IBs. The required notices are not submitted to the Commission, and there is no assurance of confidentiality of the collections of information. The Commission estimates that approximately 200 FCMs, 920 CTAs, 1400 CPOs and 1400 IBs will respond to the proposed regulation.

The estimated burden was calculated as follows:

Estimated number of respondents: 3,920
Reports annually by each respondent: 77[39]
Total annual responses: 301,420
Estimated average number of hours per response: 0.27
Estimated number of hours of annual burden in fiscal year: 81,375
Frequency of response: Annually

Organizations and individuals wishing to submit comments on the information collection requirements that would be required by this proposed regulation should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of 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.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the

[39] This number includes one initial report for reviewing (or revising) an institution's privacy policies, and 76 annual reports to individual account holders and pool participants.

deadline for the public to comment to the Commission on the proposed regulation.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that federal agencies, in proposing rules, consider the impact of those rules on small businesses. The rules proposed herein would affect all FCMs, CTAs, CPOs and IBs, including CPOs and CTAs that are exempt from registration requirements. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[40] The Commission has previously determined that registered FCMs and registered CPOs are not small entities for the purpose of the RFA.[41] With respect to IBs and CTAs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule. The Commission has decided to publish the following initial regulatory flexibility analysis and invites the public's comments on the proposed regulations' impact on small entities.

1. Reasons for the Proposed Regulation; Legal Basis for Rule

Section 5g of the Act, as added by section 124 of the CFMA, makes the Commission a Federal functional regulator[42] for purposes of applying the provisions of Title V, Subtitle A of the GLB Act addressing consumer privacy to any FCM, CTA, CPO or IB that is subject to the Commission's jurisdiction with respect to any financial activity. In general, Title V requires financial institutions to provide notice to consumers about the institution's privacy policies and practices, restricts the ability of a financial institution to share nonpublic personal information about consumers to nonaffiliated third parties, and permits consumers to prevent the institution from disclosing nonpublic personal information about them to certain non-affiliated third parties by ''opting out'' of that disclosure. Title V also requires the Commission to establish appropriate standards for financial institutions subject to their jurisdiction to safeguard customer information and records.

Section 5g of the Act directs the Commission to prescribe regulations necessary to implement Title V's provisions within 6 months from the date the CFMA was signed into law (December 21, 2000). The Commission believes that a regulatory promulgation will give the private sector greater certainty on how to comply with the GLB Act and clearer guidance regarding how the privacy provisions will apply with respect to FCMs, CTAs, CPOs and IBs that are subject to the Commission's jurisdiction with respect to any financial activity.

2. Requirements of the Proposed Rules; Description of Small Entities to Whom Rules Would Apply

Because neither Title V of the GLB Act nor section 124 of the CFMA provide a general exception for small businesses, the proposed rules would apply to all FCMs, CTAs, CPOs and IBs, including those that are considered ''small entities.''

Subject to certain exceptions explained below, the proposed rule generally requires that a financial institution that is subject to the Commission's jurisdiction with respect to any financial activity (*i.e.,* an FCM, CTA, CPO or IB) provide all of its customers the following notices: (1) An initial privacy notice (at or prior to the time the customer relationship is established or, for existing customers, within 30 days of the rules' effective date); (2) an opt out notice (prior to the disclosing of the individual's nonpublic personal information to nonaffiliated third parties); and (3) an annual privacy notice for the duration of the customer relationship. A financial institution's ''customer'' is a consumer with whom the institution has a ''continuing relationship.'' A continuing relationship exists, for example, when a consumer (i) has an account with an FCM; (ii) has an advisory contract with a CTA; or (iii) is a participant in a commodity pool.[43]

The proposed rules also require a financial institution to provide its consumers an initial privacy notice and an opt out notice prior to disclosing the individual's nonpublic personal information to nonaffiliated third parties. If a financial institution does not intend to share such information about its consumers, then the institution need not provide either notice. An institution's ''consumer'' includes a customer as well as an individual who has not established an ongoing relationship with a financial institution, such as an individual who applies for a financial product or service but does not obtain it, or an individual who has an FCM execute a trade without opening an account for the individual (*e.g.,* in a give-up trade).

There are many exceptions to the general rule stated above. An institution may share a consumer's nonpublic personal information with nonaffiliated third parties without having to give a privacy and opt out notice if, for example, such sharing is necessary: (1) To effect, administer, or enforce a transaction requested or authorized by the consumer; (2) to protect the security of records pertaining to the consumer, service, product, or transaction; (3) to protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability; or (4) to provide information to rating agencies or the institution's attorneys, auditors, and accountants. In addition, in cases where a financial institution enters into a contract with a nonaffiliated third party to undertake joint marketing or to have the third party perform certain functions on behalf of the institution, the institution need not give an opt out notice. In such case, the institution must disclose to the consumer that it is providing the information and enter into a contract with the third party that restricts the third party's use of the information and requires the third party to maintain confidentiality of the information.

Compliance requirements will vary depending, for example, upon an institution's information sharing practices, whether the institution already has or discloses a privacy policy, and whether the institution already has established an opt-out mechanism. A financial institution would have to summarize its practices regarding its collection, sharing, and safeguarding of certain nonpublic personal information in its initial and annual notices. However, the institution may streamline its privacy notice, if it does not share that information (or shares only to the extent permitted under the exceptions). The Commission

[40] 47 FR 18618–21 (Apr. 30, 1982).

[41] *Id.* at 18619–20.

[42] The other federal functional regulators authorized to adopt rules implementing Title V are: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Secretary of the Treasury, the Securities and Exchange Commission, and the National Credit Union Administration. *See* GLB Act section 504. Each of these agencies, along with the FTC, has previously adopted final regulations implementing Title V, Subtitle A of the GLB Act. *See* note 3, *supra.*

[43] The terms ''consumer,'' ''customer,'' and ''customer relationship'' are defined in proposed §§ 160.3(h), (k), (l).

believes that a majority of financial institutions already have privacy policies in place either as part of usual and customary business practices, or as a result of initiatives undertaken to comply with the privacy provisions issued by the other Federal functional regulators. Thus, for these institutions, the costs for translating that policy into a notice format should be minimal.

Further, to minimize the burden and costs of distributing privacy policies, the proposed rules do not specify the method for distributing required notices. For example, an FCM or CTA may include an annual privacy notice with periodic account statements that the FCM or CTA already sends to the customer. Customers of an IB may be provided a joint notice by the FCM carrying the customer accounts that would be applicable for both the FCM and the IB. The initial privacy notice also may be provided with other required disclosure statements, such as the risk disclosure document required under Commission Rule 1.55. The Commission estimates that the costs of distributing the notices will be minimal because institutions would include them in account statements or disclosures that the institution already sends to consumers and customers. In addition, the institution may deliver the required notices electronically with customer consent.

The Commission understands that most, if not all, FCMs, CTAs, CPOs and IBs currently do not share nonpublic personal information about consumers with nonaffiliated third parties except as would be consistent with one of the many exceptions in the proposed rules. The Commission also understands that those institutions that do share information under one of the permitted exceptions generally have contract provisions that prohibit the third party's use of the information for purposes other than the purpose for which the information was shared. Thus, the Commission believes that as a result of the proposed rules, most if not all financial institutions will not have to provide opt out notices to consumers or customers, and will not need to revise their contracts with nonaffiliated third parties to restrict those parties' use of information.

Section 501 of the GLB Act directs the Commission, and the other Federal functional regulators, to establish appropriate standards for administrative, technical and physical safeguards to protect customer records and information. The proposed rules implement this section by requiring every FCM, IB, CPO and CTA to adopt policies and procedures to address these safeguards. Consistent with the GLB Act, the proposed rules further require that the policies and procedures be reasonably designed to: (i) Insure the security and confidentiality of customer records and information; (ii) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (iii) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

The Commission believes that most, if not all, financial institutions already have policies and procedures to address the safety and confidentiality of consumer records and information. Nevertheless, financial institutions may review and revise their policies after the rules are adopted. The amount of time an institution will spend reviewing and revising its policies will depend, among other things, on the institution's current policies and its sharing practices. The rules do not specify the means by which institutions must ensure the safety of customer information and records in order to allow each institution to tailor its policies and procedures to its own systems of information gathering and transfer, and the needs of its customers. The Commission has estimated that a financial institution would spend 15 hours on average to revise its procedures.

Professional skills needed to comply with the proposed rules may include clerical, computer systems, personnel training, as well as legal drafting and advice. The information collection requirements imposed by the GLB Act, the CFMA, and the proposed rules are further addressed in the section titled, ''Paperwork Reduction Act.''

3. Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

While the scope of the proposed regulation (pursuant to the GLB Act and the CFMA) is unique, there may be some overlap in certain circumstances with the following laws: As noted above, the Fair Credit Reporting Act requires a financial institution that (i) does not want to be treated as a consumer reporting agency and (ii) desires to share certain consumer information (*i.e.,* application or credit report information) with its affiliates, to provide the consumer with a clear and conspicuous notice and an opportunity to opt out of the information sharing. In addition, when a consumer contracts for an electronic fund transfer service, the Electronic Funds Transfer Act requires the financial institution to disclose the terms and conditions of the transfer, including under what circumstances the institution will share information concerning the consumer's account with third persons. The recently adopted Department of Health and Human Services regulations [44] that implement the Health Insurance Portability and Accountability Act of 1996 limit the circumstances under which medical information may be disclosed. Finally, the Children's Online Privacy Protection Act generally requires online service operators collecting personal information from a child to obtain parental consent and post a privacy notice on the web site. The Commission seeks comment on additional Federal rules that may duplicate, overlap, or conflict with the proposal.

4. Significant Alternatives to the Proposed Rules That Minimize the Impact on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. As previously noted, the proposed rules' requirements are expressly mandated by the GLB Act and the CFMA. The proposed rules attempt to clarify, consolidate, and simplify the statutory requirements for all financial institutions, including small entities. The proposed rules also provide substantial flexibility so that any financial institution, regardless of size, may tailor its practices to its individual needs. While the Commission may grant exceptions to the provisions of Title V of the GLB Act pursuant to its broad exemptive authority under section 4(c) of the Act, the Commission must first determine that the exemption would be consistent with the public interest. As stated in section 501(a) of the GLB Act, ''It is the policy of the Congress that *each* financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.'' (Emphasis added.) Accordingly, the Commission believes that an exception that would create different levels of protections for consumers based on the size of the institution with whom they conduct business would not be consistent with the public interest or the purposes of Subtitle A. The Commission welcomes comment on any significant alternatives, consistent with the GLB Act, that would minimize the impact on small entities.

[44] *See* 65 FR 82462.

List of Subjects in 17 CFR Part 160

Brokers, Consumer protection, Privacy, Reporting and recordkeeping requirements.

Text of Proposed Rules

For the reasons articulated in the preamble, the Commission proposes to amend Title 17 of the Code of Federal Regulations by adding a new part 160 to read as follows:

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.
160.1 Purpose and scope.
160.2 Rule of construction.
160.3 Definitions.

Subpart A—Privacy and Opt Out Notices

160.4 Initial privacy notice to consumers required.
160.5 Annual privacy notice to customers required.
160.6 Information to be included in privacy notices.
160.7 Form of opt out notice to consumers; opt out methods.
160.8 Revised privacy notices.
160.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

160.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.
160.11 Limits on redisclosure and re-use of information.
160.12 Limits on sharing account number information for marketing purposes.

Subpart C—Exceptions

160.13 Exception to opt out requirements for service providers and joint marketing.
160.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
160.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws; Effective Date

160.16 Protection of Fair Credit Reporting Act.
160.17 Relation to state laws.
160.18 Effective date; compliance date; transition rule.
160.19–160.29 [Reserved]
160.30 Procedures to safeguard customer records and information.
Appendix to Part 160—Sample Clauses

Authority: 7 U.S.C. 7g and 8a(5); 15 U.S.C. 6801 *et seq.*

§ 160.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing nonpublic personal information to most nonaffiliated third parties by ''opting out'' of that disclosure, subject to the exceptions in §§ 160.13, 160.14, and 160.15.

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed in this paragraph. This part does not apply to information about companies or about individuals who obtain financial products or services primarily for business, commercial, or agricultural purposes. This part applies to all futures commission merchants, commodity trading advisors, commodity pool operators and introducing brokers that are subject to the jurisdiction of the Commission, regardless whether they are required to register with the Commission. These entities are hereinafter referred to in this part as ''you.'' This part does not apply to foreign (non-resident) futures commission merchants, commodity trading advisors, commodity pool operators and introducing brokers that are not registered with the Commission. Nothing in this part modifies, limits or supercedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d—1320d–8.

§ 160.2 Rule of construction.

(a) *Safe harbor.* The examples in this part and the sample clauses in the Appendix to this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part.

(b) *Notice registrants;* Substituted compliance with Regulation S–P. Any person or entity otherwise subject to this Part that is subject to and in compliance with Securities and Exchange Commission Regulation S–P, 17 CFR part 248, will be deemed to be in compliance with this part.

§ 160.3 Definitions.

For purposes of this part, unless the context requires otherwise:

(a) *Affiliate* of a futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker means any company that controls, is controlled by, or is under common control with a futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker that is subject to the jurisdiction of the Commission. In addition, a futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker subject to the jurisdiction of the Commission will be deemed an affiliate of a company for purposes of this part if:

(1) That company is regulated under Title V of the GLB Act by the Federal Trade Commission or by a federal functional regulator other than the Commission; and

(2) Rules adopted by the Federal Trade Commission or another federal functional regulator under Title V of the GLB Act treat the futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker as an affiliate of that company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples.*—(i) *Reasonably understandable.* Your notice will be reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* Your notice is designed to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) Use distinctive type size, style and graphic devices, such as shading or sidebars when you combine your notice with other information.

(iii) *Notices on web sites.* If you provide notice on a web page, you

design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page, if necessary to view the entire notice, and ensure that other elements on the web site, such as text, graphics, hyperlinks or sound, do not distract from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Commission* means the Commodity Futures Trading Commission.

(e) *Commodity pool operator* has the same meaning as in section 1a(5) of the Commodity Exchange Act, as amended, and includes anyone registered as such under the Act.

(f) *Commodity trading advisor* has the same meaning as in section 1a(6) of the Commodity Exchange Act, as amended, and includes anyone registered as such under the Act.

(g) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association or similar organization.

(h) (1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family or household purposes, or that individual's legal representative.

(2) *Examples.* (i) An individual is your consumer if he or she provides nonpublic personal information to you in connection with obtaining or seeking to obtain brokerage or advisory services, whether or not you provide services to the individual or establish a continuing relationship with the individual.

(ii) An individual is not your consumer if he or she provides you only with his or her name, address and general areas of investment interest in connection with a request for a brochure or other information about financial products or services.

(iii) An individual is not your consumer if he or she has an account with another futures commission merchant (originating futures commission merchant) for which you provide clearing services for an account in the name of the originating futures commission merchant.

(iv) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(v) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vi) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(vii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(i) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(j) *Control* of a company means the power to exercise a controlling influence over the management and policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of a company will be presumed not to control the company.

(k) *Customer* means a consumer who has a customer relationship with you.

(l) (1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family or household purposes.

(2) *Examples.*— (i) *Continuing relationship.* A consumer has a continuing relationship with you if:

(A) You are a futures commission merchant through whom a consumer has opened an account, or that carries the consumer's account on a fully-disclosed basis, or that effects or engages in commodity interest transactions with or for a consumer, even if you do not hold any assets of the consumer.

(B) You are an introducing broker that regularly solicits or accepts specific orders for trades;

(C) You are a commodity trading advisor with whom a consumer has a contract or subscription, either written or oral, regardless of whether the advice is standardized, or is based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of the particular consumer;

(D) You are a commodity pool operator, and you accept or receive from the consumer, funds, securities, or property for the purpose of purchasing an interest in a commodity pool;

(E) You hold securities or other assets as collateral for a loan made to the consumer, even if you did not make the loan or do not effect any transactions on behalf of the consumer; or

(F) You regularly effect or engage in commodity interest transactions with or for a consumer even if you do not hold any assets of the consumer.

(ii) *No continuing relationship.* A consumer does not have a continuing relationship with you if:

(A) You have acted solely as a ''finder'' for a futures commission merchant, and you do not solicit or accept specific orders for trades; or

(B) You have solicited the consumer to participate in a pool or to direct his or her account and he or she has not provided you with funds to participate in a pool or entered into any agreement for you to direct his or her account.

(m) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board;

(6) The Securities and Exchange Commission; and

(7) The Commodity Futures Trading Commission.

(n) (1) *Financial institution* means:

(i) any futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker that is registered with the Commission as such or is otherwise subject to the Commission's jurisdiction; and

(ii) any other institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k).

(2) *Financial institution* does not include:

(i) Any person or entity, other than a futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker, with respect to any financial activity, that is subject to the jurisdiction of the Commission under the Act;

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and

operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(o) (1) *Financial product or service* means:

(i) Any product or service that a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker could offer that is subject to the Commission's jurisdiction; and

(ii) Any product or service that any other financial institution could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k).

(p) *Futures commission merchant* has the same meaning as in section 1a(20) of the Commodity Exchange Act, as amended, and includes any person registered as such under the Act.

(q) *GLB* Act means the Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999)).

(r) *Introducing broker* has the same meaning as in section 1a(23) of the Commodity Exchange Act, as amended, and includes any person registered as such under the Act.

(s) (1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate, but nonaffiliated third party includes the other company that jointly employs the person.

(2) *Nonaffiliated third party* includes any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k)(4) (H) and (I).

(t) (1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available information.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (t)(1)(ii) of this section or when the publicly available information is disclosed in a manner that indicates the individual is or has been your consumer; or

(ii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available information.

(3) *Examples of lists.* (i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available information, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available information, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(u) (1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples.*—(i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information you collect through an Internet ''cookie'' (an information-collecting device from a web server); and

(F) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; or

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(v)(1) *Publicly available information* means any information that you reasonably believe is lawfully made available to the general public from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

(2) *Examples.*—(i) *Reasonable belief.*

(A) You have a reasonable belief that information about your consumer is made available to the general public if you have confirmed, or your consumer has represented to you, that the information is publicly available from a source described in paragraphs (v)(1)(i)–(iii) of this section.

(B) You have a reasonable belief that information about your consumer is made available to the general public if you have taken steps to submit the information, in accordance with your internal procedures and policies and with applicable law, to a keeper of federal, state or local government records that is required by law to make the information publicly available.

(C) You have a reasonable belief that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or on an internet listing service, or the consumer has informed you that the telephone number is not unlisted.

(D) You do not have a reasonable belief that information about a consumer is publicly available solely because that information would normally be recorded with a keeper of federal, state or local government records that is required by law to make the information publicly available, if the consumer has the ability in accordance with applicable law to keep that information nonpublic, such as where a consumer may record a deed in the name of a blind trust.

(ii) *Government records*. Publicly available information in government records includes information in government real estate records and security interest filings.

(iii) *Widely distributed media*. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or password, so long as access is available to the general public.

(w) *You* means any of the following persons or entities that are subject to the jurisdiction of the Commission:

(1) Any futures commission merchant;

(2) Any commodity trading advisor;

(3) Any commodity pool operator; and

(4) Any introducing broker.

Subpart A—Privacy and Opt Out Notices

§ 160.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement*. You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer*. An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer*. A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 160.14 and § 160.15.

(b) *When initial notice to a consumer is not required*. You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party other than as authorized by §§ 160.13, 160.14 or 160.15.

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship*.

(1) *General rule*. You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Examples of establishing customer relationship*. You establish a customer relationship when the consumer:

(i) Instructs you to execute a commodity interest transaction for the consumer;

(ii) Opens a commodity interest account through an introducing broker or with a futures commission merchant that clears transactions for its customers through you on a fully-disclosed basis;

(iii) Transmits specific orders for commodity interest transactions to you that you pass on to a futures commission merchant for execution, if you are an introducing broker;

(iv) Enters into an advisory contract or subscription with you, whether in writing or orally, and whether you provide standardized, or individually tailored commodity trading advice based on the customer's commodity interest or cash market positions or other circumstances or characteristics.

(v) Provides to you funds, securities, or property for an interest in a commodity pool, if you are a commodity pool operator.

(d) *Existing customers*. When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice under § 160.8 that covers the customer's new financial product or service; or

(2) If the initial, revised or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice*. (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election;

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time; or

(iii) A nonaffiliated financial institution establishes a customer relationship between you and a consumer without your prior knowledge.

(2) *Examples of exceptions*. (i) *Not at customer's election*. Establishing a customer relationship is not at the customer's election if you acquire the customer's commodity interest account from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction*. Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when you and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service.

(iii) *No substantial delay of customer's transaction*. Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery of notice*. When you are required by this section to deliver an initial privacy notice, you must deliver it according to the provisions of § 160.9. If you use a short-form initial notice for non-customers according to § 160.6(d), you may deliver your privacy notice as provided in § 160.6(d)(3).

§ 160.5 Annual privacy notice to customers required.

(a)(1) *General rule*. You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the life of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example*. You provide notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship*. You are not required to provide an annual notice to a former customer.

(2) *Examples*. Your customer becomes a former customer when:

(i) The individual's commodity interest account is closed;

(ii) The individual's advisory contract or subscription is terminated or expires;

(iii) The individual has redeemed all of his or her units in your pool.

(c) *Delivery of notice*. When you are required by this section to deliver an annual privacy notice, you must deliver it in the manner provided by § 160.9.

§ 160.6 Information to be included in privacy notices.

(a) *General Rule*. The initial, annual, and revised privacy notices that you provide under §§ 160.4, 160.5 and 160.8 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 160.14 and 160.15.

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 160.14 and 160.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 160.13 (and no other exception applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties which you have contracted;

(6) An explanation of the consumer's rights under § 160.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions*. If you disclose nonpublic personal information to third parties as authorized under §§ 160.14 and 160.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 160.4 and 160.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated parties as permitted by law.

(c) *Examples*.—(1) *Categories of nonpublic personal information that you collect*. You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose*.

(i) You satisfy the requirement to categorize the nonpublic personal information you disclose if you list the categories described in paragraph (e)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose*. You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category:

(i) Financial service providers;

(ii) Non-financial companies; and

(iii) Others.

(4) *Disclosures under exception for service providers and joint marketers*. If you disclose nonpublic personal information under the exception in § 160.13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with which you have a joint marketing agreement.

(5) *Simplified notices*. If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information to affiliates or nonaffiliated third parties except as authorized under §§ 160.14 and 160.15, you may simply state that fact, in addition to information you must provide under paragraphs (a)(1), (a)(8), (a)(9) and (b) of this section.

(6) *Confidentiality and security*. You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers*.

(1) You may satisfy the initial notice requirements in §§ 160.4(a)(2), 160.7(b) and § 160.7(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 160.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain your privacy notice.

(3) You must deliver your short-form initial notice according to § 160.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 160.9.

(4) *Examples of obtaining privacy notice*. You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures*. Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to

disclose in the future, but do not currently disclose; and

(2) Categories of affiliates and nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in the Appendix to this part.

§ 160.7 Form of opt out notice to consumers; opt out methods.

(a)(1) *Form of opt out notice.* If you are required to provide an opt out notice under § 160.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.*

(i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in § 160.6(a)(2) and (3), and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable means to opt out.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for the consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 160.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice after the initial notice in accordance with § 160.4, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships.*

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer.

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint trading account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary;

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction; or

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other.

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call).

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John, and not about John and Mary jointly.

(e) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction.*

(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 160.9.

§ 160.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 160.4, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by §§ 160.13, 160.14, and 160.15, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to

a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 160.9.

§ 160.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b)(1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer; or

(iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial service or product.

(2) *Examples of unreasonable expectation of actual notice.* You may not, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a consumer will receive actual notice of your annual privacy notice if:

(1) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.*

(1) For customers only, you must provide the initial notice required by § 160.4(a)(1), the annual notice required by § 160.5(a), and the revised notice required by § 160.8, so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships.* If two or more customers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of paragraph (a) of this section by providing one notice to those customers jointly.

Subpart B—Limits on Disclosures

§ 160.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 160.4;

(ii) You have provided to the consumer an opt out notice as required in § 160.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 160.13, 160.14 and 160.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days after the day that the customer acknowledges receipt of the notices in conjunction with opening the account.

(ii) *By electronic means.* A customer opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction with a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you have collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 160.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in §§ 160.14 or 160.15,

your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliate of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 160.14 or 160.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account-processing services under the exception in §§ 160.14(a), you may disclose that information under any exception in §§ 160.14 or 160.15 in the ordinary course of business in order to provide those services. You could also disclose that information in response to a properly authorized subpoena or in the ordinary course of business to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in §§ 160.14 or 160.15, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in §§ 160.14 and 160.15:

(i) You may use that list for your own purposes;

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed that list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in §§ 160.14 and 160.15, such as in the ordinary course of business to your attorneys, accountants, or auditors.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in §§ 160.14 or 160.15, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in §§ 160.14 or 160.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in §§ 160.14 or 160.15, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 160.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own services or products, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private-label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Example-Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

Subpart C—Exceptions

§ 160.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 160.7 and 160.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf if you:

(i) Provide the initial notice in accordance with § 160.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in §§ 160.14 or 160.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in §§ 160.14 or 160.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

§ 160.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing and servicing transactions at consumer's request.* The requirements for initial notice in § 160.4(a)(2), for the opt out in §§ 160.7 and 160.10, and for initial notice in § 160.13 in connection with service providers and joint marketing, do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a customer requests or authorizes, or in connection with:

(1) Processing or servicing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of an extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

§ 160.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to notice and opt out requirements.* The requirements for initial notice in § 160.4(a)(2), for the opt out in §§ 160.7 and 160.10, and for initial notice in § 160.13 in connection with service providers and joint marketing do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*; or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated mortgage lender of the value of the assets in the customer's account so that the lender can evaluate the consumer's application for a mortgage loan.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 160.7.

Subpart D—Relation to Other Laws; Effective Date

§ 160.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit or supersede the operation of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 160.17 Relation to state laws.

(a) *In general.* This part shall not be construed as superseding, altering or affecting any statute, regulation, order or interpretation in effect in any state, except to the extent that such state statute, regulation, order or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under state law.* For purposes of this section, a state statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the Commission, on the Federal Trade Commission's own motion, or upon the petition of any interested party.

§ 160.18 Effective date; compliance date; transition rule.

(a) *Effective date.* This part is proposed to be effective on June 21, 2001. In order to provide sufficient time for you to establish policies and systems to comply with the requirements for this part, the compliance date for this part is December 31, 2001.

(b)(1) *Notice requirement for consumers who are your customers on the effective date.* By December 31, 2001, you must have provided an initial notice, as required by § 160.4, to consumers who are your customers on June 21, 2001.

(2) *Example.* You provide an initial notice to consumers who are your customers on December 31, 2001 if, by that date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *One-year grandfathering of service agreements.* Until December 31, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 160.13(a)(2) even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the agreement on or before the effective date of this Part.

§§ 160.19–160.29 [Reserved]

§ 160.30 Procedures to safeguard customer records and information.

Every futures commission merchant, commodity pool operator, commodity trading advisor and introducing broker subject to the jurisdiction of the Commission must adopt policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

(a) Insure the security and confidentiality of customer records and information;

(b) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and

(c) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

Appendix to Part 160—Sample Clauses

Financial institutions, including those that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

A–1—Categories of Information You Collect (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 160.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A–1

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A–2—Categories of Information You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use one of these clauses, as applicable, to meet the requirement of § 160.6(a)(2) to describe the categories of nonpublic personal information you disclose. You may use these clauses if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 160.13, 160.14 and 160.15.

Sample Clause A–2, Alternative 1

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as ''your name, address, social security number, assets and income''*];
- Information about your transactions with us, our affiliates or others, such as [*provide illustrative examples, such as ''your account balance, payment history, parties to transactions and credit card usage''*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as ''your creditworthiness and credit history''*].

Sample Clause A–2, Alternative 2

We may disclose all of the information that we collect, as described [*describe location in the notice, such as ''above'' or ''below''*].

A–3—Categories of Information You Disclose and Parties to Whom You Disclose (Institutions That Do Not Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirements of §§ 160.6(a)(2), (3) and (4) to describe the categories of nonpublic personal information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal information to any party, other than as is permitted by the exceptions in §§ 160.14 and 160.15.

Sample Clause A–3

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A–4—Categories of Parties to Whom You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 160.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 160.13, 160.14 and 160.15, as well as when permitted by the exceptions in §§ 160.14 and 160.15.

Sample Clause A–4

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as ''mortgage bankers''*];
- Non-financial companies, such as [*provide illustrative examples, such as ''retailers, direct marketers, airlines and publishers''*]; and
- Others, such as [*provide illustrative examples, such as ''non-profit organizations''*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service Provider/Joint Marketing Exception

You may use one of these clauses, as applicable, to meet the requirements of § 160.6(a)(5) related to the exception for service providers and joint marketers in § 160.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as ''your name, address, social security number, assets and income''*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as ''your account balance, payment history, parties to transactions and credit card usage''*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as ''your creditworthiness and credit history''*].

Sample Clause A–5, Alternative 2

We may disclose all of the information we collect, as described [*describe location in the notice, such as ''above'' or ''below''*] to companies that perform marketing services on our behalf or to other financial

institutions with which we have joint marketing agreements.

A–6—Explanation of Opt Out Right (Institutions That Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 160.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 160.13, 160.14 and 160.15.

Sample Clause A–6

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties you may opt out of those disclosures; that is, you may direct us not to make those disclosures (other than disclosures permitted or required by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as ''call the following toll-free number: (insert number)''*].

A–7—Confidentiality and Security (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 160.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as ''those employees who need to know that information to provide products or services to you''*]. We maintain physical, electronic and procedural safeguards that comply with federal standards to safeguard your nonpublic personal information.

Dated: March 12, 2001.

By the Commission.

Catherine D. Dixon,

Assistant Secretary.

FR Doc. 01–6601 Filed 3–16–01; 8:45 am]

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Federal Register

Monday,
March 19, 2001

Part IV

Environmental Protection Agency

40 CFR Part 81

Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois; Final Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MO 061–0161a; IL 187–2; FRL–6955–4]

Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing its finding that the St. Louis ozone nonattainment area (hereinafter referred to as the St. Louis area) failed to attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1996, the attainment date for moderate nonattainment areas set forth in the Clean Air Act (CAA or Act). By operation of law, the St. Louis area is to be reclassified from a moderate to a serious nonattainment area on the effective date of this rule. In addition, EPA is requiring Missouri and Illinois to submit State Implementation Plan (SIP) revisions addressing the CAA's pollution control requirements for serious ozone nonattainment areas within 12 months of the effective date of this rule and establishing November 15, 2004, as the date by which the St. Louis area must attain the ozone NAAQS. In a separate document entitled ''Proposed Effective Date Modification for Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois,'' published elsewhere in today's **Federal Register**, EPA is proposing to delay the effective date of this rule until June 29, 2001. In that document, EPA also sets forth its intent to propose to withdraw this final determination and reclassification, if EPA grants the states an attainment date extension before the effective date of this reclassification rule.

Missouri and Illinois are in the concluding stage of a process that could culminate in EPA final action on an attainment date extension. This extension, if granted, would allow the area to remain classified as a moderate nonattainment area. EPA is continuing to work to complete action on the extension request by June 29, 2001. If EPA takes final action to extend the attainment date during the pre-effective period of this rule, EPA intends to withdraw this final determination and reclassification prior to the time that they become effective.

In an Order issued January 29, 2001, and amended on February 14, 2001, the United States District Court for the District of Columbia directed EPA to determine, by March 12, 2001, whether the St. Louis area had attained the applicable ozone standard under the CAA, and ordered EPA to publish the required notice, if any, that results from its determination by March 20, 2001. *Sierra Club* v. *Whitman,* No. 98–2733. The rulemaking issued today is intended to comply with the Court's Order. EPA informed the Court, in a Motion filed on March 8, 2001, of its proposed course of action to comply with the Order, including EPA's proposal to postpone the effective date of the determination until June 29, 2001, and EPA's intent to withdraw the determination if it approves an attainment date extension within the pre-effective period. The Court, in a limited review to determine whether EPA's planned course of action would contravene the Court's Order, indicated that EPA, by signing its determination by March 12, and publishing notice by March 20, would comply with the Court's Order. The Court observed that it was without jurisdiction to assess the propriety of the remainder of EPA's planned course of action.

DATES: This rule is effective on May 18, 2001.

ADDRESSES: Copies of the St. Louis area monitored air quality data analyses and other relevant materials are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (please telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office); United States Environmental Protection Agency, Region 7, Air, RCRA, and Toxics Division, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, EPA Region 7, (913) 551–7609; or Edward Doty, EPA Region 5, (312) 886–6057.

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

What are the national ambient air quality standards?
What is the NAAQS for ozone?
What is a SIP?
What is the St. Louis ozone nonattainment area?
What does this action do?
What does the CAA say about determinations of nonattainment and reclassifications, and how does it apply to the St. Louis area?
Why did EPA defer making a determination regarding the St. Louis area's attainment status beyond the time frame prescribed by the CAA?
Why is this action necessary?
What progress have Missouri and Illinois made toward meeting the requirements of the attainment date extension policy?
What other actions have Illinois and Missouri taken to improve air quality in the St. Louis area?
What is the area's new classification?
What is the new attainment date for the St. Louis area?
When must Missouri and Illinois submit SIP revisions fulfilling the requirements for serious ozone nonattainment areas?
What comments were received on the proposed determination of nonattainment and reclassification, and how has EPA responded?

Background

What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common air pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

What Is the NAAQS For Ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the 1-hour and 8-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard	Value	Type [a]	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area
8-hour	0.08	Primary and secondary	The average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period

[a] Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to St. Louis and it is the classification of the St. Louis area with respect to the 1-hour ozone standard that is addressed in this document.

What Is a SIP?

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

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

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

What Is the St. Louis Ozone Nonattainment Area?

The St. Louis ozone nonattainment area is an interstate area which includes Madison, Monroe, and St. Clair Counties in Illinois; and Franklin, Jefferson, St. Charles, St. Louis Counties and the City of St. Louis in Missouri.

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone standard prior to enactment of the 1990 CAA Amendments, such as the St. Louis area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. In addition, under section 181(a) of the Act, each area designated nonattainment under section 107(d) was classified as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. The design value for an area, i.e., the highest of the fourth highest 1-hour daily maximums in a given three-year period, characterizes the severity of the air quality problem. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.138 and 0.160 ppm, such as the St. Louis area (which had a design value of 0.156 ppm in 1989), were classified as moderate. These nonattainment designations and classifications were initially codified in 40 CFR Part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area class	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

In addition, under section 182(b)(1)(A) of the CAA, states containing areas that were classified as moderate nonattainment were required to submit SIPs to provide for certain air pollution controls, to show progress toward attainment of the ozone standard through incremental emissions reductions, and to provide for attainment of the ozone standard as expeditiously as practicable, *but no later than November 15, 1996*. SIP requirements for moderate areas are listed primarily in section 182(b) of the CAA.

What Does This Action Do?

On March 18, 1999, EPA proposed (64 FR 13384) its finding that the St. Louis area did not attain the 1-hour ozone NAAQS by November 15, 1996, as required by the CAA. The proposed finding was based on 1994–1996 air quality data which indicated the area's air quality violated the standard and the area did not qualify for an attainment date extension under the provisions of section 181(a)(5).[1]

Although the area was not eligible for an attainment date extension under section 181(a)(5), our March 18, 1999, proposal included a notice of the St. Louis area's potential eligibility for an attainment date extension, pursuant to EPA's July 16, 1998, ''Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas'' (hereinafter referred to as the extension policy), signed by Richard D. Wilson, Acting Assistant Administrator for Air and Radiation. The extension policy, published in a March 25, 1999, **Federal Register** notice (64 FR 14441), applies where pollution from upwind areas interferes with the ability of a downwind area to attain the 1-hour ozone standard by its attainment date. EPA proposed to finalize its action on the determination of nonattainment and

[1] Section 181(a)(5) specifies that a state may request, and EPA may grant, up to two one-year attainment date extensions. EPA may grant an extension if: (1) the state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required.

reclassification of the St. Louis area only after the area had received an opportunity to qualify for an attainment date extension under the extension policy. On January 29, 2001, the U.S. District Court for the District of Columbia ordered EPA to make a determination, no later than March 12, 2001, whether the St. Louis nonattainment area attained the requisite ozone standards. (*Sierra Club* v. *Whitman,* No. 98–2733 (CKK)). Given the Court's Order and the current status of certain submissions from the states, EPA is unable to grant an attainment date extension under this policy at this time.

This action finalizes our finding that the St. Louis area failed to attain the 1-hour ozone NAAQS by November 15, 1996, as prescribed in section 181 of the CAA, and fulfills EPA's nondiscretionary duty pursuant to section 182(b)(2)(A) of the Act. In addition, this action sets the dates by which Missouri and Illinois must submit SIP revisions addressing the CAA's pollution control requirements for serious ozone nonattainment areas and attain the 1-hour NAAQS for ozone. EPA's rulemaking actions are to be effective 60 days from publication of this rule, unless the effective date is delayed as set forth below.

In a separate document entitled ''Proposed Effective Date Modification for the Determination of Nonattainment and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois,'' published elsewhere in today's **Federal Register**, EPA is proposing to delay the effective date of this rule until June 29, 2001. EPA believes that, if St. Louis is reclassified, the proposed additional extension is necessary to allow regulated entities in St. Louis time to prepare for the new requirements that would become applicable in the area upon the effective date of the nonattainment determination and reclassification. During the period prior to the delayed effective date, EPA and the states would also continue to work towards completing a separate rulemaking on the issue of whether St. Louis should be granted an extension of its attainment date pursuant to EPA's Guidance on ''Extension of Air Quality Attainment Dates for Downwind Transport Areas,'' published March 25, 1999 (64 FR 14441). In its proposed action to modify the effective date of the determination and reclassification, EPA also states its intent to withdraw this final determination and reclassification, if EPA grants the states an attainment date extension before the effective date of the determination of nonattainment and reclassification. On March 8, 2001, EPA informed the District Court in *Sierra Club,* supra., of the actions that EPA intends to take, in response to the Court's Order, which included reaching a final determination on whether the area had attained by November 15, 1996, as required by the Court's Order, but proposing to postpone the date on which the determination (and consequent reclassification) would take effect until June 29, 2001. EPA also advised the Court that, if it approved an attainment date extension within the pre-effective period, it would withdraw today's determination and reclassification.

In an Order dated March 9, 2001, the Court, indicating that its review was limited to whether EPA's planned course of action would contravene the Court's January 29 Order, as amended, noted that ''EPA is required to reach a final determination by March 12, 2001, and to publish notice, if necessary under the CAA, by March 20, 2001. Under its alternative proposal, EPA will comply with these two elements.''

Thus, EPA is today fully complying with the Court's Order while continuing to work with Missouri and Illinois to make progress towards final rulemaking action on an attainment date extension request for the St. Louis area. The states and EPA are in the final stages of completing the actions necessary for a final rule, and EPA believes that it is in the public interest to move forward to complete that rulemaking. Completion of the rulemaking prior to the effective date of today's action would allow EPA to assess and take into consideration the role of transported pollution in St. Louis' nonattainment problems, and to provide for an equitable distribution of responsibility for achieving attainment of the ozone standard in the area. In addition, concluding a rulemaking on the attainment date extension would allow EPA to make available to the St. Louis area the attainment date extension policy that EPA has applied in other areas affected by transport. Recently EPA issued three final rulemakings granting requests for attainment date extensions based on its policy in three ozone nonattainment areas: Washington, D.C., Greater Connecticut, and Springfield, Massachusetts. 66 FR 586 (January 3, 2001); 66 FR 634 (January 3 2001); 66 FR 666 (January 3, 2001). In addition, EPA has proposed granting attainment date extensions to Louisville, Kentucky, and Beaumont, Texas. 64 FR 27734 (May 21, 1999); 64 FR 12,854 (April 16, 1999); 65 FR 81,786 (December 27, 2000). Thus, EPA's rulemaking actions today should be viewed in the context of complying with the Court's Order in *Sierra Club* v. *Whitman* while continuing to conduct rulemaking on its nationwide program to address the role of transported air pollutants in ozone nonattainment areas.

What Does the CAA Say About Determinations of Nonattainment and Reclassifications, and How Does it Apply to the St. Louis Area?

Section 181(b)(2)(A) of the Act specifies that:

> Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—
>
> (i) the next higher classification for the area, or
>
> (ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).
>
> No area shall be reclassified as Extreme under clause (ii).

Pursuant to section 181(a)(5) of the CAA, a state may request, and EPA may grant, up to two one-year attainment date extensions if: (1) The state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area; and (2) the area has measured no more than one exceedance of the ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required.

On October 2, 1996, Missouri submitted a request for a one-year extension of the attainment date. However, eight exceedances of the 1-hour ozone standard occurred in the St. Louis area in 1996 (refer to Table 4). Two of these exceedances occurred at the Alton monitoring site in Illinois. Although this was the only monitoring site recording more than one exceedance in 1996, under section 181(a)(5) of the Act, the St. Louis area failed to qualify for an attainment date extension based on 1996 air quality data.

TABLE 3.—OZONE EXCEEDANCES IN THE ST. LOUIS AREA—1996

Site ID [a]	Site Type [b]	Date	PPM
Missouri Sites:			
Arnold—29–099–0012	SPM	June 20, 1996	0.133
West Alton—29–183–1002	NAMS	June 13, 1996	0.135
Orchard Farms—29–183–1004	SLAMS	June 28, 1996	0.147
S. Lindbergh—29–189–0001	SLAMS	June 20, 1996	0.130
S. Broadway—29–510–0007	SLAMS	June 20, 1996	0.131
Illinois Sites:			
North Walcott—17–119–3007	SLAMS	June 13, 1996	0.135
Alton—17–119–0008	SLAMS	June 13, 1996	0.128
Alton—17–119–0008	SLAMS	June 14, 1996	0.127

[a] The sequence of numbers in this column denote the monitoring sites' identification numbers within the Aerometric Information Retrieval System (AIRS).
[b] SPM stands for Special Purpose Monitor. NAMS stands for National Air Monitoring Station. SLAMS stands for State and Local Air Monitoring Station.

Once EPA determines an area has failed to attain the NAAQS and is not eligible for an attainment date extension under the provisions of section 181(a)(5), section 181(b)(2)(B) of the Act stipulates:

> The Administrator shall publish a notice in the **Federal Register**, no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

Table 4 lists the average number of days when ambient ozone concentrations exceeded the 1-hour ozone standard at each monitoring site in the St. Louis area for the period 1994–1996. The ozone design value for each monitor is also listed for the same period. A complete listing of the ozone exceedances for each monitoring site, as well as EPA's calculations of the design values, can be found in the docket file. The data in Table 3 show that for 1994–1996, seven monitoring sites in the St. Louis area averaged more than one exceedance day per year. Therefore, pursuant to section 181(b)(2)(A) of the CAA, EPA is here making a final determination that the St. Louis area did not attain the 1-hour standard by the November 15, 1996, deadline. Note the air quality data in Table 4 were available for comment in our March 18, 1999, proposed finding of the area's failure to attain the ozone NAAQS. We received no comments pertaining to the accuracy of these data.

TABLE 4.—AIR QUALITY MONITORING DATA FOR THE ST. LOUIS AREA (1994–1996)

Site	Number of expected days over standard (1994–1996)	Average number of expected exceedance days per year	Site design value (ppm)
Missouri Sites:			
Arnold—29–099–0012	5.0	[a]1.7	0.126
West Alton—29–183–1002	9.9	[a]3.3	[b]0.136
Orchard Farms—29–183–1004	3.6	[a]1.2	0.133
South Lindbergh—29–189–0001	3.0	1.0	0.124
Queeny Park—29–189–0006	6.1	[a]2.0	0.129
55 Hunter—29–189–3001	3.0	1.0	0.123
3400 Pershall—29–189–5001	3.0	1.0	0.118
Rock Road—29–189–7002	5.0	[a]1.7	0.125
South Broadway—29–510–0007	1.0	0.3	0.108
River DesPeres [c]—29–510–0062	1.0	1.0	0.101
1122 Clark—29–510–0072	0.0	0.0	0.089
Newstead—29–510–0080	1.0	0.3	0.108
Illinois Sites:			
Alton—17–119–0008	4.0	[a]1.3	0.127
West Division—17–119–1009	2.0	0.7	0.110
Poag Road—17–119–2007	3.1	1.0	0.124
North Walcott—17–119–3007	4.0	[a]1.3	0.125
East St. Louis—17–163–0010	1.0	0.3	0.108

[a] In accordance with 40 CFR part 50, appendix H, a violation occurs when the average number of expected exceedances is greater than 1.05.
[b] Represents the 1996 design value for the St. Louis area.
[c] Site discontinued at end of 1995 ozone season.

Why Did EPA Defer Making a Determination Regarding the St. Louis Area's Attainment Status Beyond the Timeframe Prescribed by the CAA?

For some time, EPA has recognized that pollutant transport can impair an area's ability to meet air quality standards. In March 1995 a collaborative, Federal-state process to assess the ozone transport problem began. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address

transport of ozone and ozone-forming pollutants across state boundaries.

On November 7, 1997, EPA acted on OTAG's recommendations and issued a proposal (the proposed oxides of nitrogen (NO_X) SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state plans addressing the regional transport of ozone. These state plans, or SIPs, will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of nitrogen oxides (a precursor to ozone formation known as NO_X). EPA took final action on the NO_X SIP call on October 27, 1998 (63 FR 57356). EPA expects the final NO_X SIP call will assist many areas in attaining the 1-hour ozone standard.

On July 16, 1998, in consideration of these factors and the realization that many areas are unable to meet the CAA-mandated attainment dates due to transport, EPA issued an attainment date extension policy. Under this policy, the attainment date for an area may be extended provided that the following criteria are met: (1) The area is identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date, or an upwind area in another state that significantly contributes to downwind nonattainment (by ''affected by transport,'' EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain); (2) an approvable attainment demonstration is submitted along with any necessary, adopted local measures and with an attainment date that shows that the area will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind reductions; (3) the area has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) the area provides it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved (64 FR 14441, March 25, 1999).

EPA contemplated that when it acted to approve such an area's attainment demonstration, it would, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. As a result, the area would no longer be subject to reclassification or ''bump-up'' for failure to attain by its original attainment date under section 181(b)(2).

EPA's final NO_X SIP call specifically noted that St. Louis' ability to meet the 1-hour ozone standard is impaired by pollutants transported from upwind areas. Therefore, EPA believes that the first of the transport criteria has been satisfied. However, before the St. Louis area could qualify for an attainment date extension under the extension policy, the remainder of the criteria specified in the extension policy would have to be met.

In October 1998, EPA notified the Governors of Missouri and Illinois of the availability of the extension policy. EPA also requested that, if they wished to demonstrate their eligibility for the extension policy, the Governors respond to EPA with letters committing their respective states to meet the requirements necessary to qualify for an attainment date extension under the policy by November 15, 1999.

On November 23, 1998, Missouri submitted a letter to EPA providing a commitment to meet the requirements of the extension policy. Similarly, on December 15, 1998, Illinois submitted a letter to EPA providing a commitment to meet the requirements of the extension policy. (EPA's letters notifying the Missouri and Illinois Governors of the extension policy, and the respective responses are included in the docket for this rulemaking.)

As previously noted, on March 18, 1999, EPA proposed (64 FR 13384) its finding that the St. Louis area failed to attain the 1-hour ozone NAAQS by its attainment date and announced the area's potential eligibility for an attainment date extension under the extension policy. The area's eligibility was dependent in part, on EPA's approval of an attainment demonstration.

On April 17, 2000, EPA proposed two alternative actions (65 FR 20404) with respect to the Illinois and Missouri 1-hour ozone attainment demonstration SIPs for the St. Louis area. Our proposed actions described the conditions that EPA anticipated would lead to final action on both alternatives.

EPA proposed to approve the plans, with final approval contingent upon the states making certain additional submissions in accordance with a specified schedule. If these additional submissions were approved after further notice and comment, EPA would extend the St. Louis area's attainment date to a date consistent with the approved attainment demonstration. Under these circumstances, the area would retain its moderate nonattainment status. In other words, EPA proposed to defer the attainment determination required under section 181(b)(2)(B) of the Act until such time as the new, extended attainment date had passed.

Alternatively, EPA proposed to disapprove the attainment demonstration SIPs if Illinois and Missouri did not make certain additional submissions in accordance with the specified schedule or such submissions were deemed unapprovable after notice and comment.

Why Is This Action Necessary?

In November 1998, the Sierra Club and the Missouri Coalition for the Environment filed a complaint in the United States District Court for the District of Columbia against EPA (*Sierra Club* v. *Browner* (now *Sierra Club* v. *Whitman,* No. 98–2733 (CKK)) alleging that EPA failed to publish notice of the reclassification of the St. Louis area to ''serious'' nonattainment, and alleging failure of EPA to act on a number of SIP revisions submitted by Missouri to control ozone precursors. The states of Missouri and Illinois and a group of Missouri industry associations intervened in the litigation.

With respect to the reclassification issue, EPA acknowledged that it had a duty to make a determination on the attainment status of the area by May 15, 1997, and that it had not made a determination. EPA asked the Court for a schedule for a final resolution of the reclassification which would allow the states to make the necessary submissions, and for EPA to determine whether the area could qualify for an attainment date extension.

The Court dismissed all of the claims relating to failure of EPA to act on the Missouri SIP revisions. On the reclassification issue, the Court in an opinion and Order filed January 29, 2001, rejected the Sierra Club request that the Court order EPA to publish a particular determination (that the area failed to attain the standard) and rejected Sierra Club's request to make the determination retroactive to May 1997. However, the Court noted that the Act required that EPA make an attainment determination and that the determination was to have been made by May 15, 1997. The Court also noted that a ''determination of nonattainment'' would result in a higher classification by operation of law.

The Court stated that it would require EPA to ''reach its statutorily required determination promptly,'' and ordered EPA to make its determination, no later

than March 12, 2001, ''whether the St. Louis NAA attained the requisite ozone standards.'' It also ordered EPA to publish notice of the determination, as required by the Act, by March 12, 2001. EPA subsequently requested and the Court granted an extension to March 20, 2001, for publishing notice. Our final determination and this notice are in direct response to the Court's Order.

What Progress Have Missouri and Illinois Made Towards Meeting the Requirements of the Attainment Date Extension Policy?

Missouri and Illinois have met most of the requirements of the extension policy. Both states submitted and EPA has approved regulations or negative declarations fully addressing volatile organic compound (VOC) reasonably available control technology (RACT) controls for major VOC sources. Missouri submitted and EPA approved a regulation addressing NO_X RACT within the Missouri portion of the nonattainment area (65 FR 31482) and utility NO_X emissions across the state (65 FR 82285). Illinois has submitted a draft statewide NO_X regulation addressing utility emissions and is on schedule to submit it in final form in April of this year.[2] Finally, Missouri and Illinois submitted a joint attainment demonstration as required. However, an August 31, 2000, decision rendered by the United States Court of Appeals for the D.C. Circuit, discussed later in this notice, necessitated further revisions to the attainment demonstration. Missouri has submitted its final attainment demonstration and Illinois is expected to submit a final attainment demonstration by April 2001.

What Other Actions Have Illinois and Missouri Taken To Improve Air Quality in the St. Louis Area?

EPA has approved, and Illinois has implemented, VOC emission reductions as part of the state's 15 percent Rate-of-Progress Plan (ROPP or 15 percent plan) (see 62 FR 66279). Illinois has implemented VOC controls including: (1) Requiring the lowering of Reid Vapor Pressure of gasoline to 7.2 pounds per square inch (decreased volatility); (2) transportation control measures; (3) automobile refinishing emission control regulations; (4) marine vessel loading emission control regulations; (5) tightened RACT standards and emission cutoffs for various industrial source categories; (6) underground gasoline storage tank breathing emission controls; (7) organic chemical batch process RACT regulations; and (8) expansion of basic vehicle inspection and maintenance (I/M) area coverage. Illinois has implemented an enhanced vehicle I/M program and cold-cleaner degreasing regulations, which should further reduce VOC emissions in the Illinois portion of the St. Louis area. Illinois has adopted and implemented a contingency plan resulting in additional VOC control measures.

The state of Missouri has also taken a number of actions to improve air quality in the St. Louis area. As part of its approved 15 percent ROPP (65 FR 31485),[3] the state adopted many of the same VOC RACT regulations as Illinois. Missouri has also adopted and implemented a contingency plan which included additional VOC control measures. In July 1998, the Governor of Missouri chose to participate in the Federal reformulated gasoline (RFG) program. EPA established an implementation date for RFG based on the Governor's request in a **Federal Register** notice published on March 3, 1999 (64 FR 10366). In addition, the state of Missouri has implemented an upgraded I/M program for motor vehicles which EPA approved on May 18, 2000 (65 FR 31480). This program is a major part of the 15 percent ROPP and will result in a significant reduction in emissions when fully implemented in the coming years. EPA also notes that Missouri implemented a Stage II vapor recovery program in the 1980s to reduce emissions which occur during the refueling of gasoline-powered vehicles.

What Is the Area's New Classification?

Section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. The design value for the St. Louis area for 1994–1996, i.e., the period on which the Act prescribes the area's attainment status must be judged, was 0.136 ppm. The design value of the St. Louis area at the time of the proposed finding of failure to attain was based on air quality monitoring data from 1996 through 1998. The design value for the most recent compliance period, 1998–2000, is 0.127 ppm. This design value of 0.127 ppm falls within the range linked to classification of ''marginal'' nonattainment. By contrast, the next higher classification for the St. Louis area is ''serious'' nonattainment. Since ''serious'' is a higher nonattainment classification than ''marginal,'' under the statutory scheme prescribed by the Act, the area is reclassified to serious nonattainment on the effective date of this rule. Refer to Tables 5 and 6 below.

TABLE 5.—AIR QUALITY MONITORING DATA FOR THE ST. LOUIS AREA (1996–1998)

Site	Number of expected days over standard (1996–1998)	Average number of expected exceedance days per year	Site design value (ppm)
Missouri Sites:			
Arnold 29–099–0012	3.0	1.0	0.118
West Alton 29–183–1002	4.0	[a] 1.3	[b] 0.131
Orchard Farms 29–183–1004	2.1	0.7	0.118
Bonne Terre [c] 29–186–0005	1.0	0.3	0.106
South Lindberg 29–189–0001	3.2	[a] 1.1	0.119
Queeny Park 29–189–0006	1.0	0.3	0.110
55 Hunter 29–189–3001	1.0	0.3	0.109
3400 Pershall 29–189–5001	2.0	0.7	0.117
Rock Road 29–189–7002	1.0	0.3	0.116

[2] In addition, Illinois is required to comply with the NO_X SIP call. Missouri is not currently subject to the SIP call. The D.C. Circuit remanded to EPA the issue of the extent to which Missouri should be covered, and EPA has not yet responded to that remand.

[3] A petition for review of EPA's approval of the 15 percent ROPP is currently pending in the 8th Circuit Court of Appeals (Sierra Club, et al. v. USEPA, No. 00–2744).

TABLE 5.—AIR QUALITY MONITORING DATA FOR THE ST. LOUIS AREA (1996–1998)—Continued

Site	Number of expected days over standard (1996–1998)	Average number of expected exceedance days per year	Site design value (ppm)
South Broadway 29–510–0007	2.0	0.7	0.107
1122 Clark 29–510–0072	1.0	0.3	0.094
Newstead 29–510–0080	0.0	0.0	0.107
Illinois Sites:			
Alton 17–119–0008	2.0	0.7	0.116
West Division 17–119–1009	0.0	0.0	0.110
Poag Road 17–119–2007	1.0	0.3	0.118
North Walcott 17–119–3007	2.0	0.7	0.117
East St. Louis 17–163–0010	1.0	0.3	0.101

a A violation occurs when the average number of expected exceedances is greater than 1.05.
b Represents the 1996–1998 design value for the St. Louis Area.
c Site initiated sampling at the beginning of ozone season (April 1) 1996.

TABLE 6.—AIR QUALITY MONITORING DATA FOR THE ST. LOUIS AREA (1998–2000)

Site	Number of expected days over standard (1998–2000)	Average number of expected exceedance days per year	Site design value (ppm)
Missouri Sites:			
Arnold 29–099–0012	2.0	0.7	0.122
West Alton 29–183–1002	6.2	[a] 2.1	[b] 0.127
Orchard Farms 29–183–1004	3.1	1.0	0.124
Bonne Terre 29–186–0005	0.0	0.0	0.114
South Lindberg 29–189–0001	1.2	0.4	0.116
Queeny Park 29–189–0006	2.0	0.7	0.116
55 Hunter 29–189–3001	2.0	0.7	0.110
3400 Pershall 29–189–5001	2.0	0.7	0.118
Rock Road 29–189–7002	2.0	0.7	0.122
South Broadway 29–510–0007	1.0	0.3	0.107
1122 Clark 29–510–0072	2.0	0.7	0.105
Newstead [c] 29–510–0080	0.0	0.0	0.112
Margaretta [d] 29–510–0086	0.0	0.0	0.107
Illinois Sites:			
Alton 17–119–0008	1.0	0.3	0.112
West Division 17–119–1009	0.0	0.0	0.113
Poag Road 17–119–2007	0.0	0.0	0.114
North Walcott 17–119–3007	1.0	0.3	0.112
East St. Louis 17–163–0010	1.0	0.3	0.110

[a] A violation occurs when the average number of expected exceedances is greater than 1.05.
[b] Represents the 1998–2000 design value for the St. Louis Area.
[c] Site discontinued at end of 1999 ozone season.
[d] Site initiated sampling at the beginning of ozone season (April 1) 2000.

What Is the New Attainment Date for the St. Louis Area?

Under section 181(a)(1) of the Act, the new attainment deadline for moderate ozone nonattainment areas reclassified to serious under section 181(b)(2) would generally be as expeditious as practicable but no later than the date applicable to the new classification, i.e., November 15, 1999. However, for the reasons given above, EPA did not finalize the determination and reclassification prior to November 15, 1999. As the Court acknowledged in its opinion, it is too late for the area to demonstrate attainment by that date. In our March 18, 1999, proposal, we recognized that November 1999, would not be a realistic attainment date and expressed our belief that we need to establish an appropriate attainment date (later than November 1999) for the area in the event of a reclassification. Thus, we discussed and invited comment regarding options for establishing a new attainment date. These options were based on our belief that the new attainment date should be as expeditious as practicable, taking into account any pertinent factors.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to ensure consistency for submission of the new requirements [4] applicable to an area which has been reclassified. Where an attainment date has already passed and is therefore impossible to meet, EPA reasoned that the Administrator may establish an attainment date later than the date that has passed since it is impossible to achieve attainment by that date. EPA also noted another provision of the Act, section 110(k)(5), pertaining to findings of SIP inadequacy, which allows the Administrator to adjust attainment dates when such dates have passed. Although this latter provision is

[4] An area reclassified to serious is required to submit SIP revisions addressing the serious area requirements for the 1-hour ozone standard listed in section 182(c) of the CAA.

not directly applicable to a reclassification, EPA believes that the provision illustrates a recognition by Congress of limited instances in which it becomes necessary to adjust attainment dates, particularly where it is otherwise impossible to meet the statutory date. When making such adjustments, EPA believes that it must establish a new date in accordance with the principle that attainment must be achieved as expeditiously as practicable.

One option, as discussed in the proposal, is to construct a schedule consistent with recent reclassifications of other areas. EPA reclassified other moderate ozone nonattainment areas, including Phoenix, Arizona; Santa Barbara, California; and Dallas-Fort Worth, Texas; on November 6, 1997, December 10, 1997, and February 18, 1998, respectively (62 FR 60001, 62 FR 65025, and 63 FR 8128). In these cases, the new attainment date was November 15, 1999. The most recent reclassification was for the Dallas-Fort Worth area. EPA published the notice reclassifying this area on February 18, 1998, thereby providing approximately 21 months for the area to attain the standard. EPA thus proposed that an approach consistent with that of the Dallas-Fort Worth area might constitute an adequate period for a moderate nonattainment area to attain the standard where the new attainment date had not yet lapsed but where there was less time remaining than the Act had contemplated. EPA thus suggested, as one option, an attainment date in keeping with the time frame allowed for the Dallas-Fort Worth area, i.e., 21 months from publication of the final reclassification notice.

Another option discussed in the proposal allowed for the consideration of the impacts of pollutant transport. In other words, the new attainment date would coincide with the date set for upwind area reductions under the NO_X SIP call, which at the time was 2003.[5] In proposing this option, EPA reasoned that Congress did not intend to impose on a nonattainment area the entire responsibility for the transported pollution the nonattainment area receives. This solution imposes more stringent controls on local sources, but allows upwind controls to come into place prior to attainment. In the NO_X SIP call rulemaking, EPA found that, overall, 17 percent of the ozone nonattainment in St. Louis comes from emissions in upwind states (Air Quality Modeling Technical Support Document (TSD) for the NO_X SIP Call, Docket Item VI–B–11, electronically available at www.epa.gov/ttn/oarpg/otag/aqtsd). In terms of individual upwind states, EPA found that emissions from Kentucky make a significant contribution to 1-hour ozone nonattainment in the St. Louis nonattainment area. The magnitude, frequency, and relative amount of contributions from Kentucky to St. Louis are described in the TSD for each of the two modeling techniques relied on for the NO_X SIP call rulemaking. As an example, based on source apportionment modeling, Kentucky contributes 5 parts per billion (ppb), to 14 percent of the 1-hour exceedances predicted in St. Louis. Also, the highest daily average 1-hour contribution from Kentucky to St. Louis is 5 ppb which is 4 percent of the average 1-hour ozone concentration >=125 ppb in St. Louis on that day. Based on independent technique, Kentucky contributes at least 2 ppb to 36 percent of the 1-hour exceedances in St. Louis with a maximum contribution of 4 ppb. EPA received comments on the appropriate attainment date for the area. The comments and EPA's responses can be found in a separate section of this document.

Upon consideration of the comments, EPA has decided that an attainment date which is as expeditiously as practicable and accounts for the upwind reductions associated with the NO_X SIP call is the most appropriate. Therefore, we are establishing November 15, 2004, as the next applicable attainment date for the St. Louis area. Doing so ensures that the next determination with respect to the area's attainment status will be based on air quality data that reflect improvements that result both from local control measures and implementation of the NO_X SIP call, which now has a compliance date of May 31, 2004.

When Must Missouri and Illinois Submit SIP Revisions Fulfilling the Requirements for Serious Ozone Nonattainment Areas?

In addition to establishing a new attainment date, EPA must also address the schedule by which Illinois and Missouri are required to submit SIP revisions meeting the CAA's pollution control requirements for serious areas. An option on which EPA invited comments (64 FR 13384), is to require that the states submit SIP revisions fulfilling all of the serious area requirements, no later than one year after final action on the reclassification. The measures required by section 182(c) of the CAA include, but are not limited to, the following: (1) Attainment and reasonable further progress demonstrations; (2) enhanced vehicle I/M programs; (3) clean-fuel vehicle programs; (4) the major source threshold being defined as 50 tons per year; (5) more stringent new source review requirements; (6) an enhanced air monitoring program; and (7) contingency provisions.

Illinois submitted a comment supporting a deadline of 12 months for submittal of the SIP revisions meeting the CAA's pollution control requirements for serious areas and EPA received no adverse comments on the 12-month option. EPA believes that a submittal deadline of 12 months after the effective date of the determination and reclassification will give the states adequate time to adopt and submit the additional serious area requirements. EPA also notes that the 12-month deadline is consistent with the time given to other areas (such as Dallas-Fort Worth, Phoenix, and Santa Barbara) which were reclassified from moderate to serious. Therefore, EPA is requiring Missouri and Illinois to submit SIP revisions addressing the Act's pollution control requirements for serious ozone nonattainment areas within 12 months of the effective date of this rule.

What Comments Were Received on the Proposed Determination of Nonattainment and Reclassification, and How Has EPA Responded?

EPA received comments on the proposed Clean Air Reclassification and Notice of Potential Eligibility for Attainment Date Extension, Missouri and Illinois, dated March 18, 1999 (64 FR 13384). Comments were submitted by Lewis C. Green and Douglas R. Williams on behalf of the Sierra Club and the Missouri Coalition for the Environment, by the Illinois Environmental Protection Agency, and by the Missouri Department of Natural Resources. EPA also received comments on the proposed approval of the Illinois and Missouri attainment demonstration and request for attainment date extension dated April 17, 2000 (65 FR 20404). Comments on the latter notice were submitted by Lewis C. Green on behalf of the Sierra Club and the Missouri Coalition for the Environment (which also incorporated comments dated March 20, 2000, submitted in response to EPA's proposed rulemaking

[5] On August 30, 2000, the United States Court of Appeals for the D.C. Circuit issued an Order (*Michigan* v. *EPA,* No. 98–1497, August 30, 2000) extending the compliance date for the NO_X SIP call from May 1, 2003, to May 31, 2004. (The merits of the NO_X SIP call rule were addressed, and the rule generally upheld, in *Michigan* v. *EPA,* 213F.3d663 (D.C. Cir. 2000), cert. Den., 532 U.S. __ (2001)). The effect of this ruling is that the regional NO_X emission reductions relied on in the attainment demonstration cannot be assumed to occur before the Court-ordered compliance date.

on Missouri's ROPP, 65 FR 8083, February 17, 2000), by the St. Louis Regional Chamber and Growth Association, and by the Illinois Environmental Protection Agency. Although the April 17, 2000, proposal includes some issues beyond the scope of the March 18, 1999, proposed reclassification (and EPA is not acting on that proposal in this action), some of the comments are relevant to the March 18, 1999, proposal. Therefore, in this action EPA is addressing the relevant comments on the March 18, 1999, proposal and the relevant comments on the April 17, 2000, proposal. A summary of the comments, and EPA's responses to the comments, is provided below.

Comments Relating to Necessity and Scope of a Reclassification

Comment 1: In a multistate area, EPA should consider severing the area for reclassification purposes if one state is attaining the standard. In addition, where one state has ''complied with all statutory requirements,'' EPA should use the provisions of the Act ''to address recalcitrance prior to imposing a reclassification that affects compliant states as well as recalcitrant states.''

Response 1: As required by section 181(b)(2)(A) and consistent with the Court's Order (Memorandum Opinion, p. 20, discussing EPA's duty to determine whether the St. Louis nonattainment area failed to attain by November 15, 1996), EPA must determine the attainment status of the St. Louis nonattainment area as of the statutory attainment date, based on the air quality data for the area. The provisions of the Act relating to failure to attain refer to the ''ozone nonattainment area'' (section 181(b)(2)(A)) which, for St. Louis, includes geographic areas in Missouri and Illinois (see 40 CFR 81.326 and 81.314). The reclassification provision is silent with respect to treatment of multistate ozone nonattainment areas. As explained in the proposal (p. 13,386, Table 3), the 1994–1996 data (on which the attainment determination for 1996 is based) show violations at area monitors in both Missouri and Illinois. Therefore, the data do not support dividing the nonattainment area for reclassification, even if there were a policy and legal basis for doing so. At this time, EPA does not believe there is either a policy or legal basis which justifies dividing a nonattainment area for reclassification purposes.

The commenter did not specify any particular instance of ''recalcitrance'' or indicate how that factor could be considered in making a determination under section 181(b)(2)(A) of the Act. The Act does contain a mechanism, in section 182(j)(2), by which one state in a multistate area can be relieved of liability for sanctions under section 179 of the Act for failure to demonstrate attainment, if it can show that its failure is based on a failure of another state to adopt all controls required of the area under section 182. However, the Act does not contain any express link between section 182(j)(2) and section 181(b)(2)(A). Even if there were an implicit link, EPA does not believe that allegations of ''recalcitrance'' should influence its attainment determination for the St. Louis area, and has not considered that factor in its final decision.

Comment 2: The ''serious'' area controls are unnecessary for attainment, unduly burdensome on business and economic growth in the area, and will not result in attainment any sooner in the St. Louis area.

Response 2: Under section 181(b)(2)(A), the attainment determination is made solely on the basis of air quality data, and any reclassification is by operation of law. If an area is reclassified to ''serious,'' the requirements of 182(c) apply regardless of whether some of the requirements are not ''necessary'' for attainment. EPA notes that Illinois and Missouri are in the process of developing and finalizing their attainment demonstrations, and Illinois is finalizing regulations for the attainment demonstration control strategy for the area (see 65 FR 8083, April 17, 2000, for a description of the specific revisions to the attainment demonstration and control strategy which EPA has identified as necessary for a final decision on the attainment demonstration). No final determinations have been made by EPA concerning whether the currently planned and adopted control measures are adequate. Therefore, even if the Act allowed EPA to assess the need, or lack thereof, for additional local measures (which it does not), it is premature to conclude that the additional ''serious area'' control measures are unnecessary for attainment.

With respect to the perceived burden imposed on industry by the serious area requirements, EPA notes that the serious area planning requirements are imposed by section 182(c) of the CAA and the economic impact of a reclassification is not a consideration in making the attainment determination under section 181(b)(2) of the Act. It is, however, appropriate for the states to consider specific economic impacts in meeting the planning requirements of section 182(c) and in developing specific regulatory requirements for specific sources.

Comment 3: EPA should grant an attainment date extension to the St. Louis area, based on EPA's transport-based attainment date extension guidance.

Response 3: EPA was in the process of working with the states of Missouri and Illinois to undertake the actions necessary for the area to qualify for the attainment date extension when the United States District Court for the District of Columbia issued its Order in *Sierra Club* v. *Whitman,* requiring EPA to make a determination of attainment or nonattainment by March 12, 2001. EPA's request to the Court for additional time to allow the area an opportunity to qualify for the attainment date extension was pending when the Court ruled that EPA must make its determination of attainment.

EPA cannot finalize the attainment date extension by the time the Court has ordered EPA to act. Despite the efforts of the states and the substantial progress made to date, some submissions necessary for approval of the attainment date extension, including an approvable attainment demonstration, will not be submitted for final EPA approval prior to the time that EPA must act pursuant to the Court's Order. Because EPA is unable to authorize an attainment date extension that meets the criteria set forth in its guidance prior to the deadline set by the Court to make a determination of attainment or nonattainment, EPA must abide by the existing deadline for attainment in making the Court-ordered determination. EPA, in its Court filings, repeatedly sought to obtain additional time for the states to qualify for the attainment date extension, and regrets that this avenue is not open to the states and the Agency prior to the time that EPA must make its determination. However, as explained above, in a separate **Federal Register** document EPA is proposing to delay the effective date of today's determination of nonattainment and reclassification to June 29, 2001. EPA today announces its intent to propose to withdraw today's determination of nonattainment and reclassification if EPA approves an attainment date extension before the effective date of today's action.

Comment 4: A commenter argued that EPA had previously determined that St. Louis failed to attain the 1-hour ozone standard by its attainment date of 1996, and that the area has already been reclassified ''by operation of law'' to a serious ozone nonattainment area pursuant to section 181(b)(2)(a). The commenter also contended that EPA

''has no authority to 'propose' findings conditional upon the happening of other events.''

Response 4: Commenters presented these arguments in *Sierra Club* v. *Whitman,* where EPA addressed them in detail in memoranda filed with that Court. The Court in its Opinion of January 29, 2001, rejected these arguments. The Court ruled, contrary to commenters' contentions, that EPA had not previously made a determination of nonattainment, cognizable under the statutory provisions regarding reclassification, that the area had not previously been reclassified, and that any determination made by EPA in the future should not apply retroactively. See Slip Opinion at 13–31. The Court further upheld EPA's view that the reclassification provisions of the CAA call for public notice and comment rulemaking. EPA believes that EPA's public filings and the ruling of the Court in *Sierra Club* v. *Whitman* address these comments and show that the arguments advanced by the commenters do not undermine EPA's actions in this rulemaking.

Comment 5: Sierra Club and the Missouri Coalition for the Environment submitted comments on EPA's transport-based attainment date extension policy, published March 25, 1999. Many of them were critical of the policy and its legal bases.

Response 5: Because EPA is not applying the attainment date extension policy here, EPA need not address those comments. However, responses to comments received on the policy can be found in the rulemakings approving attainment date extensions for Washington, DC, Greater Connecticut, and Springfield, Massachusetts, published January 3, 2001 (66 FR 586, 66 FR 634, 66 FR 666, respectively).

Comments Relating to the Attainment Date Upon Reclassification

Summary of Proposal

In the March 18, 1999, proposed reclassification, EPA took comment on what the attainment date should be if the area is reclassified. EPA noted that the statutory attainment date for serious areas was November 15, 1999, but explained that, since it would be impossible for the states to meet that date, EPA was proposing options for later dates (see 64 FR 13390 for a more detailed explanation of this issue). One option was to set an attainment date which was 21 months after the effective date of the reclassification, based on the amount of time provided for attainment in EPA's most recent reclassification of a moderate ozone nonattainment area. Another option was to set a date based on the recognition that the St. Louis area is affected by transport, and establish the attainment date consistent with the compliance date for EPA's NO_X SIP call rule (which, at the time of the March 18, 1999, proposal was 2003). No comments were submitted on the impossibility of attaining by 1999 or on the need to set an attainment date after 1999 for the reclassified area. Comments were received regarding what date after 1999 would be appropriate.

Comment: Both states submitted comments supporting an attainment date which considers transport, stating that the attainment date for the reclassified area should be no sooner than the compliance date for the NO_X SIP call. Both states also commented that the alternative attainment date of 21 months was insufficient to allow adequate time to adopt and implement the required local measures, and also did not allow time for implementation of the controls needed to resolve the transport problem. Illinois also recommended an attainment date at least three years after implementation of all controls (including transport controls) needed for attainment, consistent with the three-year averaging period through the attainment year for determining attainment of the ozone standard.

Response: In response to the Illinois recommendation that the attainment date should be 2005, or three years after implementation of all controls needed for attainment, EPA has decided not to accept the recommendation. An attainment date three years after implementation of all control measures would not be consistent with past practice of EPA in setting attainment dates. Most recently, in establishing attainment dates for the Washington D.C., Greater Connecticut, and Springfield, Massachusetts, areas (in the January 3, 2001, rules cited above), EPA set attainment dates based on when the NO_X controls would be in place, rather than a later date along the lines recommended by Illinois. In addition, section 181(a)(5) provides a mechanism to obtain no more than two one-year extensions of the attainment date under certain conditions if the area does not have the requisite three years of air quality data showing attainment in the attainment year. An extension would be available under this provision upon a showing that all local SIP controls have been implemented and no more than one exceedance of the ozone standard has been recorded in the attainment year.

After considering the comments, EPA has determined that it is appropriate to establish an attainment date which takes into account the impact of transport on the area. As proposed, this date will coincide with the date by which sources will be required to comply with the NO_X SIP call. In the proposal, EPA indicated that this date is in 2003, consistent with the NO_X SIP call compliance date at the time of the March 1999 proposal. However, subsequent to the proposal, the SIP call compliance date was extended by the Court of Appeals for the D.C. Circuit (*Michigan* v. *EPA,* No. 98–1497, D.C. Cir. August 30, 2000) to May 31, 2004. Consistent with the rationale in the proposal, EPA has determined that the attainment date for the St. Louis area should be as expeditious as practicable but no later than November 15, 2004.[6] This is also consistent with the District Court's Opinion in the *Sierra Club* case. In its Opinion, the Court noted that a retroactive reclassification, ''* * * would carry with it a battery of new requirements, * * * including a new inflexible, and expired attainment date of November 15, 1999 [citation omitted].'' By possibly imposing a new classification that carries with it a deadline that has already expired, the Court could potentially expose the state of Missouri to a variety of sanctions for failing to comply promptly and adequately [citation omitted].'' (Opinion at page 29.)

Therefore, EPA is establishing an attainment date which must be as expeditious as practicable, but no later than November 15, 2004. If the submissions by Missouri and Illinois required as a result of the reclassification indicate that the area can practicably attain sooner than November 2004, EPA would adjust the date to reflect the earlier date, consistent with section 181(a)(1) of the Act.

Comments Relating to the SIP Submission Date

Comment: One state commenter supported EPA's proposal to set a submission date 12 months after the effective date of the reclassification. No other comments were submitted regarding this issue.

Response: As previously explained, EPA is establishing a 12-month deadline for submission of the serious area requirements because it provides a reasonable amount of time for the

[6] The latest date could extend to November 2004 to allow time for the NO_X emissions reductions mandated by the NO_X SIP call to produce their ozone-reducing effect during the 2004 summer ozone season before assessing whether attainment-level reductions have occurred. Those reductions are required to begin no later than May 31, 2004.

submissions and is consistent with previous reclassifications.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.''

The Agency has determined that the determination of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

B. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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 action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

C. Executive Order 13175

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's finding of failure to attain does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this finding of failure to attain.

D. 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.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. See 62 FR 60001, 60007–8, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's final action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 annual costs to state, local, or tribal governments in the aggregate, or to the 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 believes, as discussed above, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

F. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of

power and responsibilities among the various levels of government.'' 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 determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law 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 (64 FR 43255, August 10, 1999), because this action does not, in and of itself, impose any new requirements on any sectors of the economy, 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 these actions.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Submission to Congress and 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 United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 2001. 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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 12, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Accordingly, 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

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

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

2. Section 81.314 is amended by revising the ozone table entry for the St. Louis Area to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type [2]	Date [1]	Type
* * *	*	*	*	*
St. Louis Area:				
Madison County	May 18, 2001	Nonattainment	May 18, 2001	Serious
Monroe County	May 18, 2001	Nonattainment	May 18 2001	Serious
St. Clair County	May 18, 2001	Nonattainment	May 18, 2001	Serious
* * *	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

* * * * * * *

3. Section 81.326 is amended by revising the ozone table entry for the St. Louis area to read as follows:

§ 81.326 Missouri.

* * * * * * *

MISSOURI—OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type [2]	Date [1]	Type
* * *	*	*	*	*
St. Louis Area:				
Franklin County	May 18, 2001	Nonattainment	May 18, 2001	Serious
Jefferson County	May 18, 2001	Nonattainment	May 18, 2001	Serious
St. Charles County	May 18, 2001	Nonattainment	May 18, 2001	Serious
St. Louis	May 18, 2001	Nonattainment	May 18, 2001	Serious
St. Louis County	May 18, 2001	Nonattainment	May 18, 2001	Serious
* * *	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

[FR Doc. 01–6621 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MO 061–0161b; IL 187–3; FRL–6955–5]

Proposed Effective Date Modification for the Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed delay of effective date.

SUMMARY: EPA is proposing to delay the effective date of its final rule entitled ''Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois,'' published elsewhere in today's **Federal Register**, until June 29, 2001. As promulgated, the rule states that it is effective 60 days after publication in the **Federal Register**. EPA believes that the proposed additional delay of the effective date until June 29, 2001, is necessary, in part, to allow regulated entities in the St. Louis area to prepare for compliance with the new requirements that would become applicable in the area upon the effective date of the nonattainment determination and reclassification.

During the pre-effective date period, EPA would also continue to work on completing a separate rulemaking on the issue of whether St. Louis should be granted an extension of its attainment date pursuant to EPA's Guidance on ''Extension of Air Quality Attainment Dates for Downwind Transport Areas,'' published March 25, 1999, and continue to retain a moderate classification. In this action, EPA is also stating its intent to propose to withdraw its final March 12 determination of nonattainment and notice of reclassification, if EPA approves an attainment date extension before the effective date of that final action.

In an order issued January 29, 2001, and amended on February 14, 2001, the United States District Court for the District of Columbia directed EPA to determine, by March 12, 2001, whether the St. Louis area had attained the applicable ozone standard under the Clean Air Act (CAA), and ordered EPA to publish any required notice resulting from its determination by March 20, 2001. *Sierra Club* v. *Whitman,* No. 98–2733. On March 8, 2001, in its Motion Re: Alternative Planned Response to Comply with the Court's Order of January 29, 2001, EPA informed the Court of its planned course of action to comply with the Court's Order, should the Court deny a request for a stay filed by Intervenors. EPA's plans included issuing today's ''Determination of Nonattainment as of November 15, 1996, and Reclassification.'' EPA also advised the Court that it intended to propose to postpone the effective date of that determination and reclassification until June 29, 2001, and of EPA's intent to withdraw the determination and reclassification if EPA approves an attainment date extension for the St. Louis area before the determination becomes effective.

The Court, in a limited review to determine whether EPA's planned course of action would contravene the Court's order, indicated that EPA, by signing a determination by March 12 and publishing Notice by March 20, would comply with the Court's Order. The Court noted that it lacked jurisdiction to assess the propriety of the remainder of EPA's planned course of action.

DATES: Comments must be received on or before April 18, 2001.

ADDRESSES: Written comments should be mailed to Royan W. Teter, Air Planning and Development Branch, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101; and Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, EPA Region 7, (913) 551–7609; or Edward Doty, EPA Region 5, (312) 886–6057.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we, us, or our'' is used, we mean EPA.

In November 1998, the Sierra Club and the Missouri Coalition for the Environment filed a complaint in the United States District Court for the District of Columbia against EPA (*Sierra Club* v. *Browner* (now *Sierra Club* v. *Whitman*), No 98–2733 (CKK)), alleging, in part, that EPA failed to publish a determination of nonattainment and notice of the reclassification of the St. Louis area to ''serious'' nonattainment, and alleging failure of EPA to act on a number of State Implementation Plan (SIP) revisions submitted by Missouri to control ozone precursors. The states of Missouri and Illinois and a group of Missouri industry associations were intervenors in the litigation.

With respect to the reclassification issue, EPA acknowledged that it had a duty to make a determination on the attainment status of the area by May 15, 1997, and that it had not made a determination. EPA asked the Court for a schedule for a final resolution that would allow the states to make the necessary submissions, so that EPA could determine whether the area could qualify for an attainment date extension.

The Court dismissed all of the claims relating to failure of EPA to act on the Missouri SIP revisions. On the reclassification issue, the Court in an opinion and Order dated January 29, 2001, rejected the Sierra Club request that the Court order EPA to publish a particular determination (that the area failed to attain the standard) and rejected Sierra Club's request to make the determination retroactive to May 1997. However, the Court noted that the Act required that EPA make an attainment determination. The Court also noted that a ''determination of nonattainment'' would result in a higher classification by operation of law.

The Court stated that it would require EPA to ''reach its statutorily required determination promptly,'' and ordered EPA to make its determination, no later than March 12, 2001, ''whether the St. Louis NAA attained the requisite ozone standards.'' It also ordered EPA to publish a notice of the determination, as required by the Act, by March 12, 2001. EPA subsequently requested and the Court granted an extension to March 20, 2001, for publishing notice. Court Order of February 14, 2001. Our rule entitled ''Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois,'' is published elsewhere in today's **Federal Register** in response to the Court's Order.

EPA believes that the proposed additional delay of the effective date is necessary to allow regulated entities in St. Louis a period of time to prepare for the new requirements that are applicable to serious nonattainment areas. For example, on the effective date of the reclassification to serious, under the Illinois SIP, the cutoff for ''major sources'' will be reduced from 100 tons of emissions on an annual basis to 50 tons. Thus, a number of facilities with volatile organic compound or nitrogen oxide emission levels between 50 and 100 tons per year may become subject to major source requirements for the first time.[1] EPA believes that sources possibly subject to these new requirements should have additional

[1] See section 182(c) in conjunction with section 182(f) of the Act for the serious area major source thresholds for these pollutants.

time to prepare for the impact of these requirements.

EPA will continue to work on completing a separate rulemaking on the issue of whether St. Louis should be granted an extension of its attainment date pursuant to EPA's ''Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas,'' 64 FR 14441 (March 25, 1999), and remain classified as a moderate nonattainment area. If EPA takes final action to delay the effective date for the nonattainment determination, EPA could be in a position to take final action to approve the extended attainment date for St. Louis before the nonattainment determination becomes effective. Section 181(b)(2)(A) of the Act requires that EPA determine attainment within six months of the attainment date. If the attainment date were extended, there would be a new deadline for the determination that would arise only in the future. *See* Guidance. Thus, if the attainment date were extended, EPA's obligation to determine attainment would not yet have occurred. If EPA were to extend the attainment date for St. Louis, EPA would withdraw the published nonattainment determination and the consequent reclassification, which would not yet have gone into effect.

EPA is seeking public comment on whether it would be appropriate to delay the effective date of its final rulemaking until June 29, 2001, in order to allow sources to prepare to meet new requirements and also allow EPA and the states to complete rulemaking actions regarding the transport-based attainment date extension. In light of the fact that Missouri has submitted its final SIP submissions and Illinois has made draft submissions and is expected to submit its final SIP submissions by the end of April, EPA believes that it will be able to complete rulemaking on the attainment date extension request by June 29, 2001. The public comment period on delaying the effective date will run for 30 days after publication of this document.

As noted above, in an order issued January 29, 2001, and amended on February 14, 2001, the United States District Court for the District of Columbia directed EPA to determine, by March 12, 2001, whether the St. Louis area had attained the applicable ozone standard under the CAA, and ordered EPA to publish any required notice resulting from its determination by March 20, 2001. *Sierra Club* v. *Whitman,* No. 98–2733. On March 8, 2001, in its Motion Re: Alternative Planned Response to Comply with the Court's Order of January 29, 2001, EPA informed the Court of its planned course of action to comply with the Court's Order, should the Court deny a request for a stay filed by Intervenors. This course of action included issuing today's rule of the ''Determination of Nonattainment as of November 15, 1996, and Reclassification.'' EPA also advised the Court that it intended to propose to postpone the effective date of that Determination and Reclassification until June 29, 2001, and of EPA's intent to withdraw the determination and reclassification if EPA approves an attainment date extension for the St. Louis area before the determination becomes effective.

The Court, in a limited review to determine whether EPA's planned course of action would contravene the Court's order, indicated that EPA, by signing a determination by March 12 and publishing the required Notice by March 20, would comply with the Court's Order. The Court noted that it lacked jurisdiction to assess the propriety of the remainder of EPA's planned course of action.

EPA has now received Missouri's final SIP submittal which would allow it to be considered for an attainment date extension, and has also received submissions from Illinois for parallel processing. EPA expects shortly to sign a proposal with respect to these submissions, and to take final action on these submissions and an attainment date extension by June 29, 2001, the delayed effective date proposed herein. Such a course would harmonize the need to allow the Agency to fulfill its duty to take into account upwind transport, while adhering to a fixed and very near-term schedule. It would also allow EPA to apply to the St. Louis area the attainment date extension policy which EPA has applied in other areas affected by transport. Recently EPA issued three final rulemakings granting requests for attainment date extensions based on its policy in three ozone nonattainment areas: Washington, DC, Greater Connecticut, and Springfield, Massachusetts. 66 FR 586 (January 3, 2001), 66 FR 634 (January 3, 2001), 66 FR 666 (January 3, 2001). In addition, EPA has proposed granting attainment date extensions to Louisville, Kentucky, and Beaumont, Texas. 64 FR 27734 (May 21, 1999), 64 FR 12854 (April 16, 1999), 65 FR 81786 (December 27, 2000).

Proposed Action

For the reasons stated above, EPA proposes to delay to June 29, 2001, the effective date of the final rule entitled ''Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois,'' published elsewhere in today's **Federal Register**.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.''

The Agency has determined that this proposed effective date modification would result in none of the effects identified in section 3(f) of the Executive Order. This proposal would merely delay the effective date of EPA's determination of nonattainment and would not impose any new requirements on any sectors of the economy, or on state, local, or tribal governments or communities.

B. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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 proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

C. Executive Order 13175

On November 6, 2000, the President issued Executive Order 13175 (65 FR

67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. This proposal does not affect the communities of Indian tribal governments. Accordingly, the requirements of Executive Order 13175 do not apply.

D. 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 proposal to delay the effective date of EPA's nonattainment determination does not create any new requirements. Instead, this rulemaking would only delay the effective date of a factual determination, and would not regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's proposal would not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 annual costs to state, local, or tribal governments in the aggregate, or to the 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 believes, as discussed above, that the delay of the effective date of a determination of nonattainment would not constitute a Federal mandate, as defined in section 101 of the UMRA, because it would not impose an enforceable duty on any entity.

F. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' 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 delay of the effective date of a nonattainment determination would 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), because this action does not impose any new requirements on any sectors of the economy, 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 action.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Dated: March 12, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–6622 Filed 3–16–01; 8:45 am]

BILLING CODE 6560–50–U

Federal Register

Monday,
March 19, 2001

Part V

Department of Labor

Employment and Training Administration

Senior Community Service Employment Program; Request for Comments on the 2000 Amendments to the Older American Act; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Senior Community Service Employment Program; Request for Comments on the 2000 Amendments to the Older Americans Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to encourage comments on the Department of Labor's approach to the implementation of changes to the Senior Community Service Employment Program (SCSEP) occasioned by the revisions to Title V of the Older Americans Act (OAA) by the Older Americans Act Amendments 2000 (Pub. L. 106–501) (dated November 13, 2000). Comments are welcome on a variety of subjects, including: (1) Issues and concerns that should be addressed in regulations; (2) issues and concerns that should be addressed in policy guidance; (3) suggestions and comments on the overall implementation plan, such as consultation strategies; (4) specific suggestions on the approach that should be taken in implementing any or all of the new title V provisions; and (5) suggestions on revisions that should be made to the existing title V regulations which were published in the **Federal Register** on Wednesday, May 17, 1995 (20 CFR part 641). This notice is not a proposed rule. The Department will consider comments on regulations through the rulemaking process.

DATES: The Department invites written comments on title V of OAA in response to this notice. Comments received on or before May 18, 2001 will be considered in the development of regulations and policy guidance, as well as in the overall implementation strategy. The Department has already begun consultation with various individuals within the older worker employment system and will continue these consultations throughout the implementation process.

ADDRESSES: Submit written comments to the Employment and Training Administration, Division of Older Worker Programs, 200 Constitution Avenue, NW., Room N4644, Washington, DC 20210, Attention: Mr. Erich W. (''Ric'') Larisch.

All comments will be available for public inspection and copying during normal business hours at the address listed above. Copies of title V of the OAA are available at the address above, as well as on the SCSEP website at *http://www.wdsc.org/owprog.* Comments may be submitted electronically to that website address. Commenters wishing acknowledgment of receipt of their comments must submit them by certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Mr. Erich W. (''Ric'') Larisch, Division of Older Worker Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N4644, Washington, D.C. 20210, Telephone: (202) 693–3742 (voice), TTY (202) 693–2871 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Overview of the Older Americans Act Amendments of 2000 (OAA Amendments)

This paper provides an overview of changes to the Senior Community Service Employment Program (SCSEP) due to the reauthorization of the Older Americans Act (OAA), signed into law on November 13, 2000. The Older Americans Act is the major vehicle for the organization and delivery of supportive and nutrition services to older persons, authorizing funding for programs including SCSEP, Meals on Wheels, elder abuse prevention activities, and a new National Family Caregiver Support Program.

SCSEP, administered by the U.S. Department of Labor under Title V of the OAA, is the only Federally sponsored job creation program targeted to low-income older Americans. The program subsidizes part-time community service jobs for low-income persons age 55 years and older who have poor employment prospects. Approximately 100,000 program enrollees annually work in a wide variety of community service jobs, including nurse's aides, teacher aides, librarians, clerical workers and day care assistants. Clearly, SCSEP benefits not only its program participants, but also the communities in which they serve. The Department of Labor allocates funds to operate the program to State agencies on aging and 10 national organizations. SCSEP grantees are represented on State and local business-led boards (Workforce Investment Boards) that provide strategic planning and oversight of workforce development activities, established under the bipartisan Workforce Investment Act of 1998 (WIA).

As the baby boom generation ages, the demand for employment and training services and income support for low-income older persons will substantially increase. The Urban Institute projects that there will be 1.4 million more disadvantaged adults over the age of 55 in the year 2005 than in 1995. Low-income seniors generally must continue working, which will put added strain on workforce investment resources and the One-Stop system, which provides a single point of contact for job seekers and employers seeking information about local workforce development activities. The OAA Amendments require improved integration with WIA, which will not only support SCSEP reforms, but will also help the workforce investment system prepare for the greater number of older workers it will serve outside of SCSEP. One-Stops can benefit from the experience SCSEP has gained in serving this population.

SCSEP provisions of the OAA Amendments are designed to:

- Enhance employment and training opportunities for seniors by reinforcing connections with the broader workforce investment system;
- Establish an enhanced performance accountability system to hold each grantee accountable for attaining quality levels of performance with respect to core measures, such as customer satisfaction and placement in unsubsidized employment;
- Improve the ability of States to coordinate services, by providing for the broad participation of stakeholders in the development of an annual plan to ensure an equitable distribution of projects within the State;
- Strengthen administrative procedures by incorporating fiscal accountability provisions similar to the Workforce Investment Act, including definitions of administrative and programmatic costs and the application of uniform cost principles; and
- Revise the distribution of funding.

Enhancing Employment and Training Opportunities for Seniors

The OAA Amendments strengthen connections between SCSEP and WIA in order to provide older individuals with easier access to appropriate services while minimizing duplication of services. In 1998, WIA included SCSEP as a required partner in the One-Stop delivery system to ensure that older workers have access to information about the range of employment-related services available to them. The OAA Amendments build on that partnership by requiring that all SCSEP grantees in an area coordinate their activities through the One-Stop delivery system. The legislation also clarifies that service strategies or participant assessments of skills, interests, and circumstances provided under WIA should be accepted by SCSEP programs (and vice versa).

Additionally, all projects to promote unsubsidized employment in the private sector must coordinate with WIA programs.

WIA provides for three levels of services—core, intensive, and training—with service at one level a prerequisite for moving to the next level. Localities establish gateway activities that lead from participation in core to intensive and training services. The OAA Amendments allow Local Workforce Investment Boards (Local Boards) to deem SCSEP participants eligible for WIA-funded intensive and training services without first accessing core services.

Other OAA provisions parallel requirements in WIA that link SCSEP to the new workforce investment system, such as the requirement that SCSEP programs participate as a One-Stop partner. As a One-Stop partner, SCSEP programs must: (1) provide core services through the One-Stop system; (2) use a portion of funds to create and maintain the One-Stop system; (3) enter into a memorandum of understanding with the Local Board relating to the operation of the One-Stop system; and (4) participate in the operation of the One-Stop system. A representative of Title V grantees must also be a member of the Local Board.

The OAA Amendments formally recognize unsubsidized employment as a program goal, while maintaining the community service nature of the program. By moving able participants into unsubsidized employment, SCSEP can increase the number of eligible individuals who have access to the program's broad array of employment services and opportunities.

Establishing an Enhanced Performance Accountability System

The OAA Amendments create an accountability system for all SCSEP projects to promote continuous improvement in performance with respect to required measures and consequences for grantee inability to meet performance expectations. The Department will establish performance measures for grantees in order to assess their performance. Required measures include:

- The placement and retention of participants in unsubsidized employment;
- Customer satisfaction of enrollees, employers, and host agencies;
- The number of persons served, particularly those with the greatest economic or social need, poor employment history or prospects, and those more than 60 years old; and
- Community services provided.

Should grantees prove unable to meet performance expectations, their funding may be subject to competition. The Department of Labor will evaluate each grantee within 120 days after the end of the Program Year that ends June 30. It will provide technical assistance and require a corrective action plan for those grantees that are unable to meet their performance levels. Grantees that do not reach their performance levels after a second consecutive program year will have 25 percent of their funds awarded to another entity through competition. After a third consecutive year of underperformance the Department will oversee a competition for the grantee's entire grant award.

Governors are responsible for overseeing all aspects of performance in their State programs. In addition, Governors may request the Department of Labor to review the performance of any national grantee in the State.

Improving Coordination

The Governor of each State plays an important role in the planning and development of SCSEP services in the State. The Governor must submit an annual Senior Employment Services Coordination Plan (the ''State Plan'') to ensure greater coordination of SCSEP activities within a State among State and national grantees, and to provide for an equitable allocation of program resources. In its State Plan each State must identify the number and distribution of eligible persons in the State (including those with greatest economic and social need, and minorities), their employment situations and skills, and the localities and populations where community service projects are most needed. States must also describe their plans to coordinate SCSEP with WIA activities.

In developing the State Plan, Governors must select and work with representatives from aging and other organizations, including:

- State and Area Agencies on Aging;
- State and Local Workforce Investment Boards, formed under the Workforce Investment Act;
- Public and private nonprofit providers of employment services, including all SCSEP grantees in the State; and
- Social service organizations.

Strengthening Administrative Procedures

The OAA Amendments contain provisions to strengthen the administration of SCSEP. Under the legislation, the Department will determine the initial eligibility of grantees through 14 responsibility tests. The OAA Amendments also establish uniform definitions of program and administrative costs and strengthen current Departmental regulations that stipulate that not less than 75 percent of Federal funds go directly to program participants in the form of wages and fringe benefits.

Through the OAA Amendments, Congress sought to ensure that grantees and subgrantees received sufficient administrative resources to cover their costs. Therefore, the legislation requires grantees to pass through a sufficient amount of their administrative cost allocation to the subgrantee. The OAA Amendments also specify that grantees must comply with OMB Circulars on cost allocation, cost principles, and administrative requirements, and that they must maintain records and submit reports about their SCSEP activities to the Department of Labor.

Funding

The legislation continues to authorize at least 70,000 part-time employment positions. The overwhelming majority of funds will be distributed so that grantees receive at least the amount necessary to maintain their fiscal year 2000 level of activities. Any remaining funds will be distributed to each State on the basis of its relative population aged 55 and over, and by the State's relative per capita income. Currently, national grantees receive 78 percent of the SCSEP appropriation and States receive 22 percent.

The legislation specifies that the first $35 million in funding appropriated above the amount that is necessary to maintain the current level of activities must be allocated such that 75 percent of the funding is reserved for State agency grantees, and the remaining 25 percent is allotted to national grantees. Any funds appropriated above this $35 million increase are to be allotted on an equal basis, with 50 percent reserved to State agency grantees and 50 percent reserved to private or public nonprofit agencies and organizations.

Implementation

The OAA Amendments became effective upon enactment. Nevertheless, the implementation of some provisions will be required once regulations have been finalized, and the Department will issue further guidance and regulations on these requirements in the early summer of 2001. States must submit their first State Plans early in 2001, however. The Department will provide additional information on the required State Plan submission in the near future.

Attachment

Attached is a table that compares current law with revisions effected by the Older Americans Act Amendments of 2000 (Pub. L. 106–501).

Signed at Washington DC, this 27th day of February, 2001.

Raymond J. Uhalde,

Deputy Assistant Secretary of Labor.

BILLING CODE 4510–30–P

Older Americans Act (OAA) Title V—Community Service Employment for Older Americans	
Current Law–Prior to the OAA Amendments of 2000	**Major changes due to the OAA Amendments of 2000**
Program Purpose	
The Senior Community Service Employment Program (SCSEP) seeks to foster and promote useful part-time opportunities in community service for unemployed low-income persons who are 55 years or older and who have poor employment prospects.	Revised purpose statement added the following: to foster individual economic self-sufficiency and to increase the number of participants placed in unsubsidized employment in the public and private sectors, while maintaining the community service focus of the program. [SEC. 502]
Planning and Coordination	
Requires the Secretary of Labor to consult with State and area agencies on aging to identify: • Where community service projects are most needed; • The employment skills of eligible individuals; and • The potential projects and the number and percentage of eligible individuals in the local population.	Establishes a new planning process for SCSEP programs to be carried out in each State. Governors must submit an annual State Senior Employment Services Coordination Plan to the Secretary for approval, created with the participation of aging organizations, area agencies on aging, workforce boards, SCSEP grantees, and other providers of employment services. Plans must identify: • The proportion of eligible individuals in each area; • The relative distribution of individuals residing in rural and urban areas within the State; • The number and distribution of eligible persons in the State (including those with the greatest economic and social need, and minorities); • Their employment situations and skills; • The localities and populations where community service projects are most needed; and • Plans for facilitating the coordination of SCSEP and WIA activities. Governors may comment on SCSEP grant proposals prior to their submission by the applicant, and may make recommendations to the Secretary to improve the distribution of SCSEP services. National grantees serving older American Indians need not participate in developing the State Plan, but must collaborate with the Secretary to develop a plan for services to all older American Indians. [SEC. 503]

Current Law–Prior to the OAA Amendments of 2000	Major changes due to the OAA Amendments of 2000
Performance	
No comparable statutory provision. However, the Department requires that grantees meet goals for placement in unsubsidized employment and the number of participants served.	For each grantee, the Secretary is authorized to establish performance measures designed to promote continuous improvement in performance. Performance measures consist of indicators of performance and levels of performance applicable to each indicator. Required performance indicators include: • The number of persons served, particularly those with the greatest economic and social need, poor employment history or prospects; and those over 60 years old; • Community services provided; • The placement and retention of participants in unsubsidized employment (with a minimum placement rate of 20 percent for each grantee); • Customer satisfaction of enrollees, employers, and host agencies that provide community service jobs on their experiences and on the services provided; and • Any other indicators that the Secretary requires. Levels of performance may be adjusted only due to: • high rates of unemployment, poverty, or welfare recipiency in the areas served; • significant downturns in the local or national economy; or • a significant number of a grantee's enrollees having one or more barriers to employment relative to the enrollees of other grantees. Each program year the Department will determine if grantees have met the established level of performance. It will evaluate national grantees on their performance both nationally and in every State in which they operate. [SEC. 513]
Consequences for Poor Performance for State Grantees	
No comparable provision. However, the Department requires grantees to submit a corrective action plan when they do not meet their goals.	The Department will evaluate all grantees within 120 days of the end of the program year. After one year of poor performance by a State grantee the Department will provide technical assistance and require the grantee to prepare a corrective action plan within 160 days of the end of the program year. After a second consecutive program year of poor performance by a State grantee, the Governor must conduct a competition for 25 percent of its grant award. After a third consecutive year of underperformance, the Governor must conduct a competition for the remaining grant award [SEC. 514]

Current Law–Prior to the OAA Amendments of 2000	Major changes due to the OAA Amendments of 2000
Consequences for Poor Performance by National Grantees	
No comparable provision. However, the Department requires grantees to submit a corrective action plan when they do not meet their goals.	After one year of poor performance by a national grantee the Department will provide technical assistance and require the grantee to prepare a corrective action plan within 160 days of the end of the program year. After a second consecutive program year of poor performance, the Department must conduct a competition for 25 percent of the grantee's funds. After a third consecutive year of underperformance by national grantees, the Department will conduct a national competition to award the entire grant to a new entity, which will provide services in the areas formerly served by the original grantee. [SEC. 514]
No comparable provision.	**Performance of National Grantees in a State.** In addition to evaluating overall national grantee performance, the Department will evaluate national grantee performance in each State in which they operate. The Secretary must take corrective action if national grantees attain levels of performance in a State that is 20 percent or more below the grantee's national performance measures and below the performance measures for the State grantee in that State. These measures can be adjusted if there are factors, such as small project size, that justify lower performance by the grantee. If the national grantee does not meet performance measures in a State for one program year, the Secretary must require a corrective action plan, and may require the transfer of responsibility for the project to other grantees, provide technical assistance, and take other appropriate actions. After two consecutive years of underperformance by a national grantee in a State the Secretary may transfer responsibility for part or all of the project to other grantees or conduct a competition for part or all of the funds of that grantee. After three consecutive years of underperformance by a national grantee in a State the Secretary must conduct a competition for the funds to carry out the project. Governors may request that the Department review the performance of any national grantees in the State. If the Department finds that the grantee's performance does not meet expectations, it must take action as described above in this section. [SEC. 514]

Current Law–Prior to the OAA Amendments of 2000	Major changes due to the OAA Amendments of 2000
JTPA/Workforce Investment Act Provisions	
SCSEP participants are automatically eligible for all Job Training Partnership Act (JTPA) services for adults.	Local Workforce Investment Boards may deem enrollees eligible for WIA-funded intensive services and training. [SEC. 510]
The Workforce Investment Act of 1998 requires grantees to be partners in the local One-Stop systems and to enter into a Memorandum of Understanding with the Local Workforce Investment Board.	Incorporates parallel requirements in SCSEP by requiring SCSEP grantees to be partners in their local One-Stop and must sign a Memorandum of Understanding with the Local Workforce Investment Board on how services will be provided. [SEC. 512]
No comparable provision.	Multiple SCSEP grantees in a workforce investment area must coordinate their one-stop activities. [SEC. 512]
	Service strategies/participant assessments of skills, interests, and circumstances provided under WIA should be accepted by SCSEP programs (and vice versa). [SEC. 502]
Administrative Provisions	
Grantees may pay for their share of a project, which must be a minimum of 10%, in cash or in kind.	Retains past provisions; establishes uniform definitions of program and administrative costs. [SEC. 502]
No comparable statutory provision. However, Departmental regulations require that grantees meet responsibility tests in order to be selected for a grant award.	Incorporates regulatory provisions in the statute. The Secretary must determine the initial eligibility of grant applicants through 14 responsibility tests. Applicants may not be selected for grant awards if they fail two specified tests, or if failure to meet any of the other tests is substantial or persists for 2 or more years in a row. The two specified tests are: • An inability to recover debts that are established by final agency action, or failure by the organization to comply with an approved repayment plan; or • Established fraud or criminal activity of a significant nature within the organization. [SEC. 514]
No comparable provision.	Grantees must make sufficient administrative funds available to subgrantees to cover the subgrantees' administrative costs. [SEC. 502]
No comparable statutory provision. However, Departmental regulations require that grantees spend at least 75 percent of Federal funds on wages and fringe benefits for program participants.	Grantees must spend at least 75 percent of Federal funds on wages and fringe benefits for program participants. [SEC. 502]
Departmental regulations require grantees to comply with uniform cost principles, circulars and rules issued by the Office of Management and Budget and to keep records and submit reports.	All grantees must comply with uniform cost principles and circulars issued by the Office of Management and Budget, and keep records and submit reports to DOL. [SEC. 503]
Administrative costs to grantees are capped at 13.5% in a fiscal year, but the Secretary may increase that amount to 15% if the grantee demonstrates the additional funds are necessary to carry out the award.	

Current Law–Prior to the OAA Amendments of 2000	Major changes due to the OAA Amendments of 2000
Funding	
Authorizes appropriations to support at least 70,000 part-time SCSEP employment positions.	Continues the authorization for at least 70,000 part-time employment positions.
Specifies how the Department shall allot SCSEP funding to States through a hold harmless provision based on their level of activity in 1978. Any funding remaining after the hold harmless is to be distributed to each State on the basis of its relative population aged 55 and over, and by the State's relative per capita income. The total of these two sums is the State total, which is divided between the State and national grantees operating in the State. In appropriations act the funds were allotted 78 percent to national grantees and 22 percent to the States.	Allots funding to States through a hold harmless provision based on their level of activity in FY 2000. Level of Activity is defined as the number of authorized positions multiplied by the cost per authorized position. Any remaining funding is distributed to States based on their relative population aged 55 and over, and by the State's relative per capita income. The first $35 million appropriated above the amount necessary to maintain the current level of activities must be allocated so that State grantees receive 75 percent of the funds and national grantees receive 25 percent. Any funds appropriated above the $35 million increase are to be split 50/50 between State and national grantees.
Authorizes the Secretary to reallot funds between States from projects that will not use them to projects where funds are most needed.	Authorizes the Secretary to recapture unexpended funds at the end of a program year and reobligate them within the 2 succeeding program years for incentive grants, technical assistance, or additional SCSEP grants. [SEC. 515]

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Federal Register

Monday,
March 19, 2001

Part VI

Office of Personnel Management

5 CFR Parts 831, 839, 841, and 846

Corrections of Retirement Coverage Errors Under the Federal Erroneous Retirement Coverage Corrections Act; Interim Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PARTS 831, 839, 841, and 846

RIN 3206–AJ38

Corrections of Retirement Coverage Errors Under the Federal Erroneous Retirement Coverage Corrections Act

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is amending its regulations to include new rules for correcting certain retirement coverage errors. We are amending the regulations to implement the provisions of the Federal Erroneous Retirement Coverage Corrections Act (the FERCCA), title II of Public Law 106–265. The regulations will allow agencies and OPM to correct affected retirement coverage errors.

DATES: This interim rule is effective March 19, 2001. We must receive your comments by April 18, 2001.

ADDRESSES: Send comments on this interim rule to Mary Ellen Wilson, Director, Retirement Policy Center, Office of Personnel Management, Washington, DC 20415–3200. You may also submit comments by sending electronic mail (E-mail) to: *commbox@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Cynthia Reinhold, 202–606–0299.

SUPPLEMENTARY INFORMATION:

Introduction

The Office of Personnel Management (OPM) is amending parts 831, 841, and 846 of title 5, Code of Federal Regulations, and adding a new part 839, to implement the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), title II of Public Law 106–265, which was enacted on September 19, 2000. The law provides a set of remedies to correct substantive retirement coverage errors. The law requires OPM to issue implementing regulations.

Background

Participation in the Civil Service Retirement System (CSRS), the Civil Service Retirement System Offset (CSRS Offset) plan, the Federal Employees' Retirement System (FERS), and the Thrift Savings Plan (TSP) is governed by title 5 of the United States Code. Social Security coverage for benefit purposes is governed by section 210 of the Social Security Act. Sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 govern the collection and payment of Social Security taxes. Coverage under these Federal retirement plans and Social Security is mandatory for employees who meet the statutory requirements. Prior to passage of this legislation, neither OPM, the Treasury Department, nor the Federal Retirement Thrift Investment Board had the statutory authority to waive the rules for retirement plan or Social Security participation. When errors in retirement coverage occurred, correction was mandatory. The employee was ''forced,'' retroactively, into a different retirement plan. The mandatory retroactive correction of a retirement coverage error can place an employee in a difficult financial situation with regard to retirement planning.

Retirement coverage errors that prevent an employee from saving for retirement are usually the most damaging because it is extremely difficult to make up the lost opportunity to save. These are primarily errors that cause an employee to believe that he or she is covered by CSRS rather than FERS. The FERS basic benefit is a little over half that of the CSRS benefit. To obtain retirement income under FERS that is similar to CSRS, the employee needs to save for retirement in the TSP or elsewhere. Because of the error, the employee may not have contributed to the TSP, believing that CSRS benefits were enough to meet retirement needs. If the error is undiscovered for a long period, the employee is forced to begin saving during the years after the error is corrected. In the absence of the error, the employee could have saved for retirement over his or her entire career.

The FERCCA's Provisions

The retirement coverage error must have lasted for at least 3 years of service after December 1986. January 1, 1987, is the date that FERS took effect. From 1984 through 1986, there was no TSP. Accordingly, employees did not become disadvantaged with respect to the TSP until FERS began. The 3-year yardstick parallels the TSP's 3-year vesting rule applicable to most FERS participants.

The FERCCA provides a choice between retirement plans in many situations. Most individuals with a qualifying retirement coverage error have the opportunity to choose their retirement coverage under the FERCCA. The availability of a choice between retirement plans applies to individuals:

- With newly discovered retirement coverage errors,
- With an error that was discovered and corrected in the past,
- Who have retired from Federal service, or
- Who are survivors of an individual with a retirement coverage error.

For an individual who is erroneously put in CSRS and belonged in FERS, the choice is between CSRS Offset or FERS. CSRS Offset coverage is for an employee mandatorily covered by Social Security and CSRS, and provides, through combined CSRS and Social Security benefits, a benefit that is at least equivalent to, if not more than, CSRS. While working, the individual earns retirement credits under the CSRS formula and also adds to any Social Security benefits already earned, increasing career earnings under Social Security and, as a result, the Social Security benefit. At retirement, OPM computes the CSRS Offset benefit under the same rules that apply to other CSRS retirees. At age 62 (when the individual becomes eligible for Social Security benefits), OPM reduces, or offsets, the CSRS retirement benefit. This reduction is based on the value of the Social Security benefit earned during CSRS Offset service. For a person erroneously put in CSRS, CSRS Offset provides the benefit the person could reasonably have expected to receive without requiring a change in retirement saving behavior.

The FERCCA disqualifies certain separated employees from making a choice between retirement plans. Separated employees whose retirement coverage error was previously discovered and corrected to FERS and later took a refund of FERS deductions or a distribution from the TSP, are not eligible to elect between FERS and CSRS Offset. Their coverage will remain FERS for the period of service affected by the retirement coverage error.

Some individuals do not have a choice about their retirement coverage. If an individual should have had Social Security coverage during Federal employment, then he or she must have Social Security coverage in addition to Federal retirement coverage. In these cases, the FERCCA does not provide a choice about Social Security coverage. If an individual was incorrectly placed in CSRS rather than CSRS Offset, then the retirement coverage must be corrected to CSRS Offset. Likewise, if an individual was incorrectly placed in CSRS Offset instead of CSRS, then the retirement coverage must be corrected to CSRS. Although the individual cannot choose to keep Social Security coverage, the Social Security Administration will allow credit for all but the last 3 years before the retirement coverage was corrected.

In addition, an employee who was erroneously excluded from retirement coverage under CSRS, CSRS Offset, or

FERS does not have an option under the FERCCA to remain excluded from retirement coverage.

Errors where the employee is erroneously placed in FERS. In 1993, OPM published interim rules at 5 CFR 846.204(b)(2), for deemed elections of FERS coverage. These rules permit an employee erroneously in FERS during a time when the employee should have had an opportunity to elect FERS, the option of keeping the erroneous FERS coverage. The FERCCA does not affect these regulations. Those who had the opportunity to elect coverage under OPM's existing regulations at § 846.204(b)(2) may not have another election opportunity based on the same retirement coverage error. In addition, OPM's regulation provides a choice between retirement plans regardless of the length of the error. The FERCCA also allows a choice in this situation regardless of the length of the error. However, the new provisions in subparts H and L of the new part 839 apply only if the error lasted for at least 3 years of service after December 31, 1986.

Lost earnings on employee make-up contributions to the TSP. The FERCCA provides lost earnings on make-up employee TSP contributions under certain circumstances. Employees who choose to make-up missed contributions to the TSP continue to be entitled to lost earnings on the make-up agency contributions they receive as a result of an agency error.

Financial relief from costs associated with correcting a retirement coverage error. Under the FERCCA, individuals newly discovered to be in the wrong retirement plan are not responsible for paying any additional employee retirement deductions needed to correct a retirement coverage error. The FERCCA requires that any amount that should have been withheld as Social Security tax but was erroneously withheld as CSRS deductions must be treated as withheld Social Security tax. All the amounts required as Social Security tax, but wrongly treated as CSRS deductions during the error, are kept by the Government to the credit of Social Security.

The Internal Revenue Code's 3-year statute of limitations on retroactive taxes applies to Social Security tax amounts that were not withheld during the period of the error. This means that, for an employee erroneously in CSRS, any Social Security taxes that should have been withheld from pay that was subject to Social Security taxes but not CSRS deductions (such as overtime or awards), must be collected from the employee, but not for periods beyond the 3-year statute. However, OPM has the authority under the FERCCA to reimburse an employee for payments of Social Security taxes that were not withheld because of a retirement coverage error.

Reimbursement for certain expenses related to the error. The FERCCA allows OPM to reimburse certain expenses related to a retirement coverage error. Claimed losses related to forgone contributions and earnings in the TSP (except for lost earnings on employee make-up contributions to the TSP payable under subpart J of the new part 839) or other investment opportunities are not reimbursable under the FERCCA. The payments, if approved, are made from the Civil Service Retirement and Disability Fund.

In addition, OPM may waive repayment of settlements employees received after suing for damages from a coverage error. If an employee has settled a dispute over having been forced retroactively into FERS, the employee generally should not keep the amount received and regain CSRS Offset benefits under the FERCCA. However, if the employee can show that getting CSRS Offset coverage does not fully compensate him or her, the FERCCA authorizes OPM to allow the CSRS Offset election with partial or no repayment of the settlement.

Credit for service that was not subject to retirement deductions. Individuals may have civilian service that was not subject to retirement deductions (nondeduction service), and perhaps military service, performed before the error in retirement coverage. The amount of the deposit for nondeduction and military service depends on the individual's retirement coverage. Under FERS deposit rules, the deposit is 1.3 percent of basic pay for civilian service or 3 percent for military service, plus interest. Under CSRS rules, the deposit for both civilian and military service is 7 percent of basic pay, plus interest. Therefore, a retirement coverage error can cause a significant increase in the deposit an individual expected to pay for nondeduction and military service.

If a retirement coverage error led to a deposit being erroneously computed under FERS rules, when it should have been computed under CSRS rules, the FERCCA allows credit for the service without actual payment of the deposit. The balance of the deposit owed at retirement forms the basis for an actuarial reduction in the retirement or survivor benefit. The deposit is considered paid by a life-time reduction in the benefit. This provision applies to all deposits that are computed under CSRS rules rather than FERS rules because of a retirement coverage error, regardless of the length of the error.

Analysis

Section 831.205 requires that any future placement in CSRS will have to be approved by OPM in situations where a CSRS employee has had a break in CSRS service of more than 1 year.

Sections 831.301 and 831.303 provide a new method for payment of certain deposits for civilian and military service. The FERCCA permits credit for certain types of service that are not subject to retirement deductions without actual payment of a service credit deposit. The deposit requirement may be satisfied instead by an actuarial reduction in the annuity that continues for the life of the retiree or survivor. This alternative is also available to individuals whose errors lasted for less than 3 years of service. It applies to individuals who owed a FERS deposit, and because of a retirement coverage error, learn that the deposit must be computed under CSRS rather than FERS rules.

A new part 839 is established in question-and-answer format.

Section 841.604 is amended to allow OPM to pay interest to individuals who overpaid the amount of a service credit deposit because of a retirement coverage error. Interest is payable only if the error lasted for at least 3 years of service after December 31,1986.

Section 846.204(b)(2) is amended to clarify that this section (concerning deemed elections of FERS coverage) applies only to errors lasting for less than 3 years of service. If the error lasted for at least 3 years of service, then it is corrected in accordance with the newly established part 839.

Waiver of General Notice of Proposed Rulemaking

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making these rules effective in less than 30 days. These regulations will affect the operation of all Federal agencies on and after March 19, 2001. Publication of a general notice of proposed rulemaking would be contrary to the public interest because it would delay the intended relief provided to individuals harmed by a retirement coverage error.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities because the rule only affects Federal employees, agencies, and benefits

payments to retired Federal employees and their survivors.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 839

Administrative practice and procedure, Annuities, Claims, Employment, Employment taxes, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement, Social Security.

5 CFR Part 841

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

5 CFR Part 846

Administrative practice and procedure, Air traffic controllers, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Steven R. Cohen,

Acting Director.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR parts 831, 841, and 846 and adds part 839, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2) and section 7001 of Pub. L. 105–174, 112 Stat. 58; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under section 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.301 also issued under section 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and section 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under section 11004 (c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart B—Coverage

2. Add § 831.205 to subpart B to read as follows:

§ 831.205 CSRS coverage determinations to be approved by OPM.

If an agency determines that an employee is CSRS-covered, the agency must submit its determination to OPM for written approval. This requirement does not apply if the employee has been employed in Federal service with CSRS coverage within the preceding 365 days.

Subpart C—Credit for Service

3. Amend § 831.301 to revise paragraph (a)(3)(ii) and the first sentence of paragraph (b)(3) to read as follows:

§ 831.301 Military service.

(a) * * *

(3) * * *

(ii) For an employee, Member, or survivor who is entitled, or upon application would be entitled, to monthly old-age or survivors benefits under section 202 of the Social Security Act (41 U.S.C. 402) based on the individual's wages or self-employment income, the employee, Member, or survivor has completed a deposit in accordance with subpart U of this part, or the annuity has been reduced under § 831.303(d), for each full period of such military service performed after December 1956. If a deposit has not been completed or the annuity has not been reduced under § 831.303(d), periods of military service performed after December 31, 1956 (other than periods of military service covered by military leave with pay from a civilian position), are excluded from credit from and after the first day of the month in which the individual (or survivor) becomes entitled, or upon proper application would be entitled, to Social Security benefits under section 202. Military service performed prior to January 1957 is included in the computation of the annuity regardless of whether a deposit is made for service after December 31, 1956.

* * * * *

(b) * * *

(3) The employee, Member, or survivor has completed a deposit in an amount equal to 7 percent of his or her basic pay under section 204 of title 37, United States Code, (plus interest, if any) or the annuity has been reduced under § 831.303(d), for each full period of such military service performed after December 1956. * * *

* * * * *

4. Amend § 831.303 to add paragraph (d) to read as follows:

§ 831.303 Civilian service.

* * * * *

(d)(1) *Civilian and military service of an individual affected by an erroneous retirement coverage determination.* An employee or survivor who owed a deposit under section 8411(c)(1)(B) or 8411(f) of title 5, United States Code (FERS rules) for:

(i) Civilian service that was not subject to retirement deductions, or

(ii) Military service performed after December 31, 1956, will receive credit for the service without payment of the deposit if, because of an erroneous retirement coverage determination, the service is subsequently credited under chapter 83 of title 5, United States Code (CSRS rules).

(2)(i) The beginning monthly rate of annuity payable to a retiree whose annuity includes service credited under paragraph (d)(1) of this section and service creditable under CSRS rules that would not be creditable under FERS rules is reduced by an amount equal to the CSRS deposit owed, or unpaid balance thereof, divided by the present value factor for the retiree's age (in full years) at the time of retirement. The result is rounded to the next highest dollar amount, and is the monthly actuarial reduction amount.

(ii)(A) The beginning monthly rate of annuity payable to a survivor whose annuity includes service credited under paragraph (d)(1) of this section is reduced by an amount equal to the CSRS deposit owed, or unpaid balance thereof, divided by the present value factor for the survivor's age (in full years) at the time of death. The result is rounded to the next highest dollar

amount, and is the monthly actuarial reduction amount.

(B) The survivor annuity is not reduced if the employee annuity was reduced under paragraph (d)(2)(i) of this section.

(3) For the purpose of paragraph (d)(2) of this section, the terms ''present value factor'' and ''time of retirement'' have the same meaning as in § 831.2202 of this chapter.

5. Add part 839 to read as follows:

PART 839—CORRECTION OF RETIREMENT COVERAGE ERRORS UNDER THE FEDERAL ERRONEOUS RETIREMENT COVERAGE CORRECTIONS ACT

Subpart A—General Provisions

Sec.

839.101 What is the Federal Erroneous Retirement Coverage Corrections Act?

839.102 Definitions.

Subpart B—Eligibility

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Election Opportunity

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839.212 May I make a retirement coverage election if I received a refund of my retirement deductions after I was corrected to FERS?

839.213 May I make a retirement coverage election if I withdrew all or part of my TSP account after I was corrected to FERS?

839.214 Am I disqualified from making an election of retirement coverage under the FERCCA if I withdrew my TSP account after I retired under FERS?

839.215 May I make a retirement coverage election under the FERCCA if I received a payment as settlement of my claim for losses because of a qualifying retirement coverage error?

Previous Election Opportunity

839.221 If my qualifying retirement coverage error was that I was put into FERS by mistake and then, after the error was discovered, I chose my current retirement coverage, can I now make another election?

Court-Ordered Benefits for Former Spouses

839.231 Can I make an election if my former spouse is entitled to a portion of my retirement benefits by qualifying court order?

839.232 If a deceased employee's survivors include both a current spouse and a former spouse, or spouses who are eligible for survivor annuities, must all of them consent to an election of FERS?

Elections

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Authority: Title II, Pub. L. 106–265, 114 Stat. 770.

Subpart A—General Provisions

839.101 What is the Federal Erroneous Retirement Coverage Corrections Act?

(a) The Federal Erroneous Retirement Coverage Corrections Act (FERCCA) is Title II of Public Law 106–265, enacted September 19, 2000. The FERCCA addresses the problems created when employees are in the wrong retirement plan for an extended period.

(b) Generally, you must be in the wrong retirement plan for at least 3 years of service after December 31, 1986, before the FERCCA applies to you. Depending on the type of error, the FERCCA provides:

(1) A choice between retirement plans,

(2) New rules for crediting civilian and military service that was not subject to retirement deductions,

(3) Payment of lost earnings on employee make-up contributions to the Thrift Savings Plan, and

(4) Payment of certain out-of-pocket expenses that are a direct result of a retirement coverage error.

839.102 Definitions.

Agency means an executive agency as defined in section 105 of title 5, United States Code; a legislative branch agency; a judicial branch agency; and the U.S. Postal Service and Postal Rate Commission.

Agency automatic (1%) contributions means contributions made to a FERS participant's Thrift Savings Plan account by his or her employing agency under 5 U.S.C. 8432(c)(1) or (c)(3).

Agency matching contributions means contributions made to a FERS participant's Thrift Savings Plan account by his or her employing agency under 5 U.S.C. 8432(c)(2).

Annuitant means the same as *Retiree.*

Basic Employee Death Benefit or BEDB means the FERS survivor benefit payable as a lump sum or over 36 months, described in § 843.309 of this chapter.

Board means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

CSRS means the Civil Service Retirement System, as described in subchapter III of chapter 83 of title 5, United States Code.

CSRS component means the part of a FERS retirement benefit that is computed under CSRS provisions (see § 846.304 of this chapter).

CSRS Offset means the Civil Service Retirement System Offset plan, which is for employees whose service is subject to CSRS deductions and Social Security taxes, as described in 5 U.S.C. 8349.

Employee means an employee or Member individual as defined in section 8331(1) and (2) or 8401(11) and (20) of title 5, United States Code. Employee includes an individual who has applied for retirement benefits, but not separated from service.

Employee retirement deductions means the amount that is deducted from basic pay under section 8334(a) of title 5, United States Code, for CSRS employees; or section 8334(k) of title 5, United States Code, for CSRS Offset employees; or the portion of the normal cost of FERS coverage that is deducted from an employee's basic pay under section 8422(a) of title 5, United States Code.

Employer means, with respect to an employee, that individual's employing agency.

Employer retirement contributions means the employer share of retirement contributions that are required payments to the Fund under sections 8334(a) and 8423(a) of title 5, United States Code.

Former spouse means a living person who was married to you for at least 9 months.

FERCCA means the Federal Erroneous Retirement Coverage Corrections Act.

FERS means the Federal Employees' Retirement System, as described in chapter 84 of title 5, United States Code.

Fund means the Civil Service Retirement and Disability Fund described in section 8348 of title 5, United States Code.

Government contributions means agency automatic (1%) contributions and agency matching contributions.

Lost earnings means earnings that you would have received had your make-up contributions to the Thrift Savings Fund been made during the period of the error when they should have otherwise been made.

Make-up contributions means employee contributions to the Thrift Savings Plan that should have been deducted from a participant's basic pay earlier, but were not due to an employing agency error.

MSPB means the Merit Systems Protection Board described in chapter 12 of title 5, United States Code.

OPM means the Office of Personnel Management.

Present value factor has the same meaning as in § 831.2202 or § 842.702 of this chapter, as applicable.

Previously corrected means a retirement coverage error that has been properly corrected before March 19, 2001.

Qualifying court order has the same meaning as in § 846.702 of this chapter, referring to court orders that affect CSRS or FERS payments following a divorce or legal separation.

Qualifying retirement coverage error means an erroneous decision by an employee or agent of the Government as to whether Government service is CSRS covered, CSRS Offset covered, FERS covered, or Social Security-Only covered that remained in effect for at least 3 years of service after December 31, 1986.

Reemployed annuitant means a CSRS or FERS retiree who is reemployed under conditions that do not terminate the CSRS or FERS annuity. (See part 837 of this chapter for additional information on reemployed annuitants.)

Retiree means a former employee or Member who is receiving, or meets the statutory age and service requirements for, an annuity under either CSRS or FERS. This includes individuals who meet the statutory requirements for benefits and chose to postpone the beginning date of the annuity under § 842.204(c) or § 842.212(b)(1)(ii) of this chapter (pertaining to FERS MRA+10 and FERS deferred benefits). Retiree does not include a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity. An individual who has left Federal service after completing 5 years of service but has not reached the age at which annuity payments may begin is considered a ''separated employee'' rather than a retiree.

Retirement coverage means participation in CSRS, CSRS Offset, FERS, or Social Security-Only. Retirement coverage is shown on the Notification of Personnel Action (Standard Form 50) or other similar record of personnel actions.

Retirement plan means the same as *retirement coverage.*

Separated employee means a former employee or Member who has separated from service and who has not met all the requirements for retirement under CSRS or FERS.

Social Security coverage means service as a Federal employee that is employment under section 210 of the Social Security Act (42 U.S.C. 410) and is subject to Social Security taxes.

Social Security-Only means coverage under Social Security without concurrent coverage under CSRS, CSRS Offset, or FERS.

Social Security taxes means the Old Age, Survivors, and Disability Insurance taxes imposed on employees under section 3101(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3101(a)) and on employers under section 3111(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3111(a)).

Survivor means a person entitled to benefits under chapter 83 or 84 of title 5, United States Code, based on the service of a deceased employee, separated employee, or retiree.

Thrift Savings Plan or TSP means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, Pub. L. 99–335, 100 Stat. 514, which has been codified, as amended, primarily at 5 U.S.C. 8351 and 8401–8479.

Subpart B—Eligibility

General Provisions

839.201 Do these rules apply to me?

(a) These rules apply to employees who had a qualifying retirement coverage error. For all purposes, a qualifying retirement coverage error must have lasted for at least 3 years of Federal service after December 31, 1986, as stated in the definitions section (§ 839.102). It does not matter whether you have left Federal service, retired, or have been reemployed as an annuitant, as long as you had a qualifying retirement coverage error. In addition, the survivor of an employee, separated employee, or retiree who had a qualifying retirement coverage error is also covered by these rules.

(b) An error that lasted less than 3 years of Federal service after December 31, 1986, is not qualifying under the rules in this part.

(c) For errors lasting less than 3 years that involve erroneous placement in FERS during a period that the employee was eligible to elect FERS, see § 846.204(b) of this chapter for guidance.

Election Opportunity

§ 839.211 If these rules apply to me because I had a qualifying retirement coverage error, can I choose which retirement plan I want to be in?

The FERCCA does not provide an election opportunity in all situations where there was a qualifying retirement coverage error. Even if your error is one that provides an election opportunity under the FERCCA, certain events may disqualify you from making an election under the FERCCA. If you had a qualifying retirement coverage error, your eligibility to choose your retirement plan may be affected by the situations described in the next seven questions.

§ 839.212 May I make a retirement coverage election if I received a refund of my retirement deductions after I was corrected to FERS?

If your qualifying retirement coverage error was previously corrected to FERS and you then received a refund of your FERS retirement deductions, you are not allowed to elect retirement plan coverage under the FERCCA.

§ 839.213 May I make a retirement coverage election if I withdrew all or part of my TSP account after I was corrected to FERS?

(a) You may not make a retirement coverage election if your qualifying retirement coverage error was previously corrected to FERS, and you later received one of the following TSP withdrawals:

(1) A TSP annuity after separation from service, but before receiving a FERS annuity; or

(2) A single payment or monthly payments after separation from service; or

(3) An age-based in-service withdrawal.

(b) If you received an automatic cashout of your TSP account after you separated (because your account balance was $3,500 or less), or if you received a financial hardship in-service withdrawal, you may make a retirement coverage election.

§ 839.214 Am I disqualified from making an election of retirement coverage under the FERCCA if I withdrew my TSP account after I retired under FERS?

No, you may make an election of retirement coverage under the FERCCA if you made a TSP withdrawal as a retiree.

§ 839.215 May I make a retirement coverage election under the FERCCA if I received a payment as settlement of my claim for losses because of a qualifying retirement coverage error?

You can make a retirement coverage election under the FERCCA if OPM waives repayment of the entire amount under § 839.1202. If OPM does not waive the entire repayment, you must pay back the amount that OPM did not waive.

Previous Election Opportunity

§ 839.221 If my qualifying retirement coverage error was that I was put into FERS by mistake and then, after the error was discovered, I chose my current retirement coverage, can I now make another election?

No, OPM regulations allow certain employees who were put in FERS in error to choose between remaining in FERS or being covered under their automatic retirement coverage. (See § 846.204(b)(2) of this chapter). If you already had this opportunity to choose your retirement coverage; then you may not make an election of retirement coverage based on the same error under these rules.

Court-Ordered Benefits for Former Spouses

§ 839.231 Can I make an election if my former spouse is entitled to a portion of my retirement benefits by qualifying court order?

Yes, but if you want to elect FERS you need your former spouse's consent to the election. If you are subject to a qualifying court order and want to elect FERS, the requirements in § 846.722 of this chapter (Former Spouse's Consent to an Election of FERS Coverage) apply to you.

§ 839.232 If a deceased employee's survivors include both a current spouse and a former spouse, or spouses, who are eligible for survivor annuities, must all of them consent to an election of FERS?

If the employee dies before making an election of retirement coverage under the FERCCA, all eligible potential survivors, that is, both the current and any former spouses, must consent to an election of FERS coverage. If they do not all consent, the election cannot be made.

Elections

§ 839.241 Am I eligible to make an election under the FERCCA if I had a qualifying retirement coverage error and none of the conditions mentioned in § 839.212 through § 839.232 apply to me?

If you were in CSRS or CSRS Offset and should have been in FERS or Social Security-Only, or if you were in FERS and should have been in CSRS, CSRS Offset, or Social Security-Only, then you have an election opportunity. This is summarized in the following chart:

You are or were in:	And you belong in:
CSRS or CSRS Offset.	FERS.
CSRS or CSRS Offset.	Social Security-Only.
FERS	Social Security-Only.
FERS	CSRS.
FERS	CSRS Offset.

§ 839.242 Do these rules apply to me if I had multiple errors?

You must be in the wrong retirement plan for at least 3 years of Federal service after December 31, 1986. You need not be in the same wrong retirement plan during the entire 3-year period. If you had more than one type of erroneous retirement coverage, then you will have a retirement plan election under these rules if one of the errors is of a type that qualifies you for an election.

Subpart C—Employer Responsibility to Notify Employees

§ 839.301 What should I do if I am not sure whether I am or was in the wrong retirement plan?

(a) If you are an employee, your employer has your personnel records and will review them to determine whether an error has been made. Therefore, you should notify your employer's human resources office if you believe an error has been made in your case. Notify your current employer even if you believe the error occurred while you were employed at another agency.

(b) If you are not currently employed by the Federal Government, you should notify OPM at: U.S. Office of Personnel Management, Retirement Operations Center, Post Office Box 45, Boyers, Pennsylvania 16017. You can also contact us by electronic mail at FERCCA@OPM.GOV. Notify OPM regardless of whether you are a retiree, survivor, or separated employee.

(c) You may also get additional information about the FERCCA and whether or not you qualify at: www.opm.gov/benefits/correction.

§ 839.302 Will my employer give me a written explanation?

(a) Your employer must provide you with written notice of the error. The notice must include an explanation of the error, your options regarding the error, and any time limits that apply.

(b) Your employer must inform you if they find that you do not have a retirement coverage error.

§ 839.303 Is my employer required to find employees with a retirement coverage error?

The FERCCA requires your employer to take reasonable and appropriate measures to identify individuals affected by a qualifying retirement coverage error and notify them of their rights under the law.

§ 839.304 What if my employer does not notify me?

(a) If your error has not previously been corrected, the 6-month time limit on making an election of retirement coverage under the FERCCA (see § 839.611(a)) does not begin to run until you are notified of the error.

(b) If your error was previously corrected, the 18-month time limit on making an election of retirement coverage ends on September 19, 2002. Employers and OPM may extend the time limit if you were prevented from making a timely election due to a cause beyond your control (see § 839.612).

Subpart D—Retirement Coverage Elections for Errors That Were Not Previously Corrected

Erroneous CSRS or CSRS Offset

§ 839.401 What can I elect if I was put in CSRS or CSRS Offset by mistake?

If you were placed in CSRS or CSRS Offset due to a qualifying retirement coverage error and you should have been in FERS, you may elect CSRS Offset or FERS. If you were placed in CSRS or CSRS Offset due to a qualifying retirement coverage error and you should have been in Social Security-Only, you may elect CSRS Offset or Social Security-Only. This is summarized in the following chart:

You are in:	And you belong in:	You may elect:
CSRS	FERS	CSRS Offset or FERS.
CSRS Offset	FERS.	
CSRS	Social Security-Only.	CSRS Offset or Social Security-Only.
CSRS Offset	Social Security-Only.	

Erroneous FERS

§ 839.411 What can I elect if I was put in FERS by mistake?

If you were placed in FERS due to a qualifying retirement coverage error and you should have been in CSRS, you may elect FERS or CSRS. If you were placed in FERS due to a qualifying retirement coverage error and you should have been in CSRS Offset, you may elect FERS or CSRS Offset. If you were placed

in FERS due to a qualifying retirement coverage error and you should have been in Social Security-Only, you may elect FERS or Social Security-Only. This is summarized in the following chart:

You are in:	And you belong in:	You may elect:
FERS	CSRS	FERS or CSRS.
FERS	CSRS Offset	FERS or CSRS Offset.
FERS	Social Security-Only.	FERS or Social Security-Only.

Subpart E—Retirement Coverage Elections for Errors That Were Previously Corrected

Moved Out of CSRS or CSRS Offset

§ 839.501 What can I elect if my employer moved me out of CSRS or CSRS Offset?

If you were moved out of CSRS or CSRS Offset due to a qualifying retirement coverage error and were placed in FERS, you may elect CSRS Offset or remain in FERS. If you were moved out of CSRS or CSRS Offset due to a qualifying retirement coverage error and were placed in Social Security-Only, you may elect CSRS Offset or remain in Social Security-Only. This is summarized in the following chart:

You were in:	And your coverage was previously corrected to:	You may elect:
CSRS	FERS	CSRS Offset or FERS.
CSRS Offset	FERS	
CSRS	Social Security-Only.	CSRS Offset or Social Security-Only.
CSRS Offset	Social Security-Only..	

§ 839.511 What can I elect under the FERCCA if my employer put me into FERS by mistake and then I was not allowed to remain in FERS when the error was discovered?

An employee who was erroneously placed in FERS during a time when the employee should have had an opportunity to elect FERS is allowed to keep the erroneous FERS coverage. If the employee was given an opportunity to remain in FERS, then the employee is disqualified from making an election of retirement coverage under the FERCCA (see § 839.221). If you were not allowed to remain in FERS and were placed in CSRS due to a qualifying retirement coverage error, you may elect FERS or remain in CSRS. If you were not allowed to remain in FERS and were placed in CSRS Offset due to a qualifying retirement coverage error, you may elect FERS or remain in CSRS Offset. If you were not allowed to remain in FERS and were placed in Social Security-Only due to a qualifying retirement coverage error, you may elect FERS or remain in Social Security-Only. This is summarized in the following chart:

You were in:	And your coverage was previously corrected to:	You may elect:
FERS	CSRS	CSRS or FERS.
FERS	CSRS Offset	CSRS Offset or FERS.
FERS	Social Security-Only.	Social Security-Only or FERS.

Subpart F—Making an Election

General Provisions

§ 839.601 How do I make an election?

You may make your election using the form issued by OPM. If you are an employee, your employer will provide you with this form. If you are not a current employee, OPM will provide the form.

§ 839.602 What if I don't make an election?

(a) If your qualifying retirement coverage error was not previously corrected and you fail to make an election within the time limit under § 839.611(a), your retirement coverage is summarized in the following chart:

If you are in:	And you belong in:	You are considered to have elected:
CSRS or CSRS Offset.	FERS	CSRS Offset.
FERS	CSRS, CSRS Offset or Social Security-Only.	FERS.
CSRS or CSRS Offset.	Social Security-Only.	CSRS Offset.

(b) If your qualifying retirement covereage error was previously corrected and you fail to make an election within the time limit under § 839.611(b), you are considered to have elected to remain in your current retirement plan.

§ 839.603 Can I later change my election?

Your election is irrevocable once your employer or OPM processes it. If you do not make a timely election, the resulting coverage (see § 839.602) is also irrevocable.

§ 839.604 When is my election effective?

Your election is effective on the date that the retirement coverage error first occurred. This means that your election will be retroactive, or will change your retirement coverage for a period of service in the past.

Time Limits

§ 839.611 What are the time limits for making an election?

(a) If your qualifying retirement coverage error was not previously corrected, you have 6 months from the date you receive notice of the error under § 839.302 to make an election.

(b) If your qualifying retirement coverage error was previously corrected, the time limit for making an election expires on September 19, 2002.

§ 839.612 Can I make a belated election?

(a) If you are an employee, your employer can waive the time limit for making an election if you request such a waiver in writing. The employer would have to determine that you exercised due diligence, but could not make an election within the time limit because of circumstances beyond your control.

(b) Your employer's decision not to waive the time limit under this section must be in writing and include notice of your right to request OPM to reconsider the decision.

(c) OPM can waive the time limit for separated employees, retirees, and survivors who exercised due diligence but could not make an election because of circumstances beyond their control if a request is submitted to OPM, and OPM concludes that a waiver is justified.

FERS Elections

§ 839.621 Can I cancel my FERS election if I was in the wrong retirement plan at the time I elected FERS coverage and I have an election opportunity under the FERCCA?

If you were erroneously in CSRS, CSRS Offset, or Social Security-Only at the time you elected FERS and you have an election opportunity under the FERCCA, you can choose whether you want the FERS election to remain in effect. However, you may not choose whether you want your FERS election to remain in effect if you chose FERS after your employer notified you that you were put in FERS by mistake (see § 839.221).

§ 839.622 Can I cancel my FERS election if my qualifying retirement coverage error was previously corrected and I now have an election opportunity under the FERCCA?

Yes, your FERS coverage election does not disqualify you from making a retirement coverage election under the FERCCA. You can choose whether you want the FERS election to remain in effect. However, you may not choose whether you want your FERS election to remain in effect if you chose FERS after your employer notified you that you were put in FERS by mistake (see § 839.221).

§ 839.623 If I decide to keep the FERS election in effect, may I change the effective date of the FERS election?

No, If you decide to keep FERS, the original FERS election will remain unchanged.

Subpart G—Errors That Don't Permit an Election

§ 839.701 Is it correct that even though I had a qualifying retirement coverage error under the FERCCA, I may not have a choice of retirement coverage?

Under the FERCCA, the types of retirement coverage errors listed in § 839.241 trigger a right to make a retirement coverage election. The following chart summarizes the types of errors that do not trigger an election right:

You are in:	And you belong in:	Your coverage must be corrected to:
CSRS Offset	CSRS	CSRS.
CSRS	CSRS Offset	CSRS Offset.
Social Security-Only.	CSRS	CSRS.
Social Security-Only.	CSRS Offset	CSRS Offset.
Social Security-Only.	FERS	FERS.

§ 839.702 How do these rules apply to me if I don't have an election right under the FERCCA, but I did have a qualifying retirement coverage error?

After your retirement coverage is corrected to the proper plan, your retirement deductions will be adjusted in accordance with subpart H of this part and your Social Security taxes will be adjusted in accordance with subpart I of this part, if applicable. You may also file a claim for losses in accordance with subpart L of this part.

Subpart H—Adjusting Retirement Deductions and Contributions

Employee Retirement Deductions

§ 839.801 Do I owe more money if I had a qualifying retirement coverage error and the employee retirement deductions for the new retirement plan are more than what I already paid?

(a) No, your employer is responsible for paying any additional amount to the Fund. Your employer will not bill you for any additional retirement deductions.

(b) For qualifying retirement coverage errors corrected under this part, the rules at § 831.111(b) of this chapter (pertaining to employee options when the employer fails to withhold CSRS or CSRS Offset retirement deductions) do not apply.

§ 839.802 If I was in CSRS during my qualifying retirement coverage error, paid into the Fund more than I would have paid as a CSRS Offset, Social Security-Only, or FERS employee, and end up retroactively in one of those retirement plans, will I get a refund of the excess I had withheld from my pay?

CSRS Offset and FERS require employees to pay Social Security taxes in addition to retirement deductions. When you are retroactively changed under the FERCCA to CSRS Offset, FERS, or Social Security-Only, the deductions you paid in under CSRS will be used to pay both the amounts required for retirement deductions under CSRS Offset or FERS, as applicable to you, and also the Social Security taxes that you would have paid had you been in CSRS-Offset, FERS, or Social Security-Only.

§ 839.803 If I am like the person in the previous question, but the amount I paid as deductions under CSRS is more than the amount of combined retirement deductions and Social Security taxes due for my new retirement coverage, will I get a refund of the excess?

Yes, either OPM or your employer, as appropriate, will issue the payment in accordance with OPM instructions.

§ 839.804 If my qualifying retirement coverage error occurred while I was a reemployed annuitant, and I am later corrected retroactively to a different retirement plan, will I have to pay any additional amount for retirement deductions?

(a) If you (as a reemployed annuitant) were erroneously in CSRS and had retirement deductions withheld from pay, and later are corrected to CSRS Offset or FERS coverage, the amount erroneously withheld under CSRS will be used to pay the retroactive CSRS Offset or FERS retirement deductions and Social Security taxes.

(b) If you (as a reemployed annuitant) were erroneously placed in CSRS and elected not to have retirement deductions withheld from pay, and later are corrected to CSRS Offset or FERS, your share of retroactive Social Security taxes will be treated as an overpayment of salary. If you are corrected to CSRS Offset, you may elect to have retirement deductions withheld from future salary as a reemployed annuitant and may also make a deposit to cover the retirement deductions for past service as a reemployed annuitant in accordance with § 837.503(c) of this chapter. If you are corrected to FERS, your retirement deductions under FERS will be treated as an overpayment of salary.

(c) If you (as a reemployed annuitant) were erroneously in CSRS Offset and had retirement deductions withheld from pay, and later are corrected to CSRS or FERS coverage, the amount erroneously withheld under CSRS Offset will be used to pay the retroactive CSRS or FERS retirement deductions. The employer is responsible for paying to the Fund any additional retirement deductions.

(d) If you (as a reemployed annuitant) were erroneously placed in CSRS Offset and elected not to have retirement deductions withheld from pay, and later are corrected to CSRS, you may elect to have retirement deductions withheld from future salary as a reemployed annuitant and may also make a deposit to cover the retirement deductions for past service as a reemployed annuitant in accordance with § 837.503(c) of this chapter. Your retirement deductions under CSRS will be treated as an overpayment of salary.

(e) If you (as a reemployed annuitant) were erroneously placed in CSRS Offset and elected not to have retirement deductions withheld from pay, and later are corrected to FERS, your retirement deductions under FERS will be treated as an overpayment of salary.

(f) A reemployed annuitant erroneously placed in FERS and later corrected to CSRS or CSRS Offset is considered to have elected retirement deductions as a reemployed annuitant under the corrected coverage. The employer is responsible for paying to the Fund any additional retirement deductions under the corrected retirement coverage.

(g) If you have a salary overpayment, your employer will inform you of your rights regarding the overpayment.

(h) These rules are summarized in the following chart:

Wrong coverage is:	And retirement deductions were	And you are corrected to	Then
(1) CSRS	Taken	CSRS Offset or FERS.	• The erroneous CSRS deductions are used to pay the retroactive CSRS Offset or FERS deductions and Social Security taxes. • Retirement deductions will continue to be withheld from salary. • Social Security taxes must be withheld from salary.
(2) CSRS	Not taken	CSRS Offset	• Retroactive Social Security taxes are treated as an overpayment of salary. • You may elect to have retirement deductions withheld from future salary. • Social Security taxes must be withheld from salary. • You may pay a deposit to OPM for past retirement deductions.
(3) CSRS	Not taken	FERS	• Retroactive Social Security taxes are treated as an overpayment of salary. • Retirement deductions and Social Security taxes must be withheld from salary. • Your retirement deductions for past service under FERS are treated as an overpayment of salary.
(4) CSRS Offset	Taken	CSRS or FERS	• The erroneous CSRS Offset deductions are used to pay retroactive CSRS or FERS retirement deductions. • Retirement deductions will continue to be withheld from salary. • Social Security taxes must be withheld from salary if correct coverage is FERS. • Employer must pay any additional amount of retirement deductions.
(5) CSRS Offset	Not taken	CSRS	• You may elect to have retirement deductions withheld from future salary. • You may pay a deposit to OPM for past retirement deductions.
(6) CSRS Offset	Not taken	FERS	• Your retirement deductions for past service under FERS will be treated as an overpayment of salary.
(7) FERS	Taken	CSRS or CSRS Offset.	• You are considered to have elected retirement deductions as a reemployed annuitant under the corrected coverage. • Employer must pay any additional retirement deductions due for past service.

Employer Retirement Contributions

§ 839.811 Does my employer owe more money if I had a qualifying retirement coverage error and the employer retirement contributions for my new retirement plan are more than what was already paid?

Yes, your employer must pay any additional retirement contributions to the Fund.

§ 839.812 Will my employer get a refund if I had a qualifying retirement coverage error and the employer retirement contributions for my new retirement plan are less than what was already paid?

No, if you were erroneously in CSRS, CSRS Offset, or Social Security-Only, then a correction of a retirement coverage error will not reduce the employer retirement contribution owed. Also, the FERCCA states that an employer may not remove from the Fund FERS employer contributions when correcting a qualifying retirement coverage error under this part.

Records Correction

§ 839.821 Who is responsible for correcting my records?

(a) Your current employer will correct your records in accordance with OPM instructions. Your employer must not delay correcting your records.

(b) For former employees and retirees, the last employer will correct the records. For survivors, the employee's last employer will correct the records. If an employer no longer exists as an organization, and there is no successor agency, then OPM will correct the records.

§ 839.822 Which employer is responsible for submitting the employee and employer retirement deductions and contributions and correcting my records if I had different employers?

Your current or most recent employer will be responsible for this purpose. Even if that employer was not involved in the retirement coverage error, it must issue corrected records for the entire period of the retirement coverage error.

Subpart I—Social Security Taxes

§ 839.901 When will my employer begin withholding Social Security taxes if I was erroneously in CSRS during my qualifying retirement coverage error and my corrected coverage will now require me to pay Social Security taxes?

(a) If you are in CSRS by mistake and belong in CSRS Offset, FERS, or Social Security-Only, your employer must begin withholding Social Security taxes by changing your retirement coverage to CSRS Offset. Your employer must begin this withholding as soon as possible after the error is discovered.

(b) Your employer will correct your retirement coverage back to the date the error first occurred once you are notified of the error and have an opportunity to make any elections that you are eligible to make.

§ 839.902 Will my CSRS retirement deductions be used to pay the Social Security taxes for the period of the qualifying retirement coverage error if I was erroneously placed in CSRS and did not pay Social Security taxes?

(a) If your qualifying retirement coverage error was not previously corrected, the amount erroneously withheld for CSRS retirement deductions will be:

(1) Used to pay your new retirement deduction amount; and

(2) Applied toward any Social Security taxes you owe for the time you were in the wrong retirement plan.

(b) You will get Social Security credit for all the time you were erroneously covered by CSRS. Your employer will send the Social Security Administration a record of your earnings for all the years you should have had Social Security coverage.

§ 839.903 What happens to the Social Security taxes I erroneously paid when my employer corrects my retirement coverage to CSRS?

(a) Except for the last 3 years, the money you erroneously paid into Social Security will remain to your credit in the Social Security fund. The Social Security Administration will include all but those last 3 years in determining your eligibility for, and the amount of, future benefits.

(b) The amount you paid into Social Security for the last 3 years will be used to help pay your CSRS retirement deductions.

Subpart J—Lost Earnings for Certain Make-up Contributions to the TSP

§ 839.1001 Does the FERCCA allow me to increase my TSP account if I was in CSRS during my qualifying retirement coverage error and my correct coverage will be FERS?

The Board's error correction regulations (5 CFR 1605 of chapter VI) generally allow you to increase your TSP account through a schedule of make-up contributions to replace the missed employee contributions. In addition, the FERCCA allows certain employees who have completed a schedule of make-up contributions, or who plan to schedule make-up contributions, to receive lost earnings on those contributions under certain circumstances. Employees are (and have been) entitled to lost earnings on the make-up agency contributions they receive as a result of the correction of an agency error.

§ 839.1002 Will OPM compute the lost earnings if my qualifying retirement coverage error was previously corrected and I made TSP make-up contributions?

If you made contributions to the TSP after your qualifying retirement coverage error was previously corrected, OPM will compute the lost earnings on your make-up contributions to the TSP under the following circumstances:

You were in:	And were previously corrected to:	And under these rules you elect:
CSRS	FERS	FERS.
CSRS Offset	FERS	
Social Security-Only.	FERS	No election required.
Social Security-Only.	CSRS	
Social Security-Only.	CSRS Offset	

§ 839.1003 How will OPM compute the amount of lost earnings?

(a) Lost earnings will generally be computed in accordance with the Board's lost earnings regulations (5 CFR 1606 of chapter VI). However, the FERCCA states that OPM may compute the lost earnings in an alternative manner if such a computation is not administratively feasible. The alternative manner will yield an amount that is as close as practicable to the amount computed under 5 CFR 1606 of chapter VI.

(b) Your employer is required to submit to OPM all information required to compute the amount of lost earnings.

§ 839.1004 Are lost earnings payable if I separated or if the employee died?

(a) Yes. If the TSP account is not withdrawn, the lost earnings are paid to the account.

(b) If there is no TSP account at the time the lost earnings are payable, you or your survivors will receive the payment directly.

Subpart K—Effect of Election

General Provisions

§ 839.1101 How are my retirement benefits computed if I elect CSRS or CSRS Offset under this part?

Unless otherwise stated in this part, your retirement benefit is computed as if you were properly put in CSRS or CSRS Offset on the effective date of the error. All the eligibility and benefit computation rules for CSRS or CSRS Offset apply to your retirement benefit.

§ 839.1102 How are my retirement benefits computed if I elect FERS under this part?

OPM will compute your retirement benefit as if you were properly put in FERS on the effective date of the error. All the eligibility and benefit computation rules for FERS apply to your retirement benefit.

§ 839.1103 If my qualifying retirement coverage error started when I should have been placed under FERS automatically, but my agency put me in CSRS because I had some past service, will I get a CSRS component in my FERS annuity for the service before the error if I elect FERS?

No, employees who should have been automatically placed in FERS (generally because they did not have 5 years of past service under CSRS rules) do not have a CSRS component in their future FERS benefit. All service must be treated as FERS service in this circumstance.

Retirees and Survivors

§ 839.1111 If I elect to change my retirement coverage under the FERCCA, can I change the election I originally made at retirement for survivor benefits?

(a) Yes, if you elect to change your retirement coverage under the FERCCA, you will have an opportunity to change the election you made for survivor benefits.

(b) If you elect less than the maximum survivor benefit, your spouse's consent is necessary in accordance with § 831.614 or § 842.603(a)(1) of this chapter, as applicable.

§ 839.1112 If I elect to change my retirement coverage under the FERCCA, can I retroactively revoke the waiver of military retired pay I made at retirement?

Yes, you may retroactively change your decision regarding waiver of your military retired pay.

§ 839.1113 If I elect to change my retirement coverage under the FERCCA, can I change my decision about making a deposit or redeposit for civilian or military service?

Yes, you or your survivor will have a new opportunity to decide whether to pay any deposits or redeposits.

§ 839.1114 Will OPM actuarially reduce my benefit if I elect to change my retirement coverage under these rules?

Your annuity may be subject to three possible actuarial reductions under the FERCCA. These reductions may be required for an unpaid deposit (see § 831.303(d) and § 839.1116 of this chapter), for Government contributions in a TSP account (see § 839.1118), or for a previous payment of the Basic Employee Death Benefit (see § 839.1121).

§ 839.1115 What is an actuarial reduction?

An actuarial reduction allows you to receive benefits without having to pay an amount due in a lump sum. OPM reduces your annuity in a way that, on average, allows the Fund to recover the amount of the missing lump sum over your lifetime. The actuarial reduction becomes a permanent reduction in your benefit. The amount of the reduction depends on your age and the amount of the lump sum you would otherwise have to pay at that time. To compute an actuarial reduction, OPM divides the lump sum amount by the present value factor for your age at retirement.

§ 839.1116 If, because of the change in my retirement coverage, I will owe larger deposits for military and civilian service credit, will I have to pay the additional deposit due or will OPM actuarially reduce my annuity?

You can choose to pay the additional deposit amount. If you choose not to pay the deposit, OPM will actuarially reduce your annuity, as explained in 831.303(d) of this chapter.

§ 839.1117 If I elect to change my retirement coverage under the FERCCA, can I get a refund of the service credit deposit I made and receive the actuarial reduction instead?

No, the FERCCA allows OPM to reduce an annuity by an actuarial reduction only for the deposit amount that remains unpaid.

§ 839.1118 Will my annuity be actuarially reduced because I had Government contributions in my TSP account?

Retirees and survivors of deceased employees who received a Government contribution to their TSP account after being corrected to FERS and who later elect CSRS Offset under the FERCCA are allowed to keep the Government contributions, and earnings on the Government contributions in the TSP account. Instead of adjusting the TSP account, the FERCCA requires that the CSRS-Offset annuity be reduced actuarially.

§ 839.1119 How is the actuarial reduction for TSP computed?

(a) The part of your TSP account on the date you retired that is Government contributions and earnings on those Government contributions forms the basis for the actuarial reduction. OPM will divide the Government contributions and earnings by the present value factor for your age (in full years) at the time you retired. OPM will then round the result to the next highest dollar amount, which will be the monthly actuarial reduction amount.

(b) If a survivor annuity is the only benefit that is payable, the present value factor for the survivor's age at the time of death is used. The survivor benefit is not reduced for TSP if the retiree's rate was reduced.

Survivor Benefits

§ 839.1121 What is the Actuarial Reduction for the Basic Employee Death Benefit (BEDB)?

If you received a BEDB under FERS and you elect CSRS Offset under these rules, you do not have to pay back the BEDB. Instead, the FERCCA requires that OPM actuarially reduce your survivor annuity. The reduction will be the amount of the BEDB divided by the present value factor for your age at the time of the employee's death. The result is rounded to the next highest dollar amount and is the monthly actuarial reduction amount. If you elected to receive the BEDB in installments rather than a lump sum, the lump-sum amount is used for the purpose of computing the actuarial reduction.

§ 839.1122 Does receipt of a one-time payment of retirement contributions as a death benefit prevent me from electing CSRS Offset?

You may still elect CSRS Offset if otherwise eligible. OPM will collect the amount of the one-time death benefit from any survivor benefits that are payable.

Subpart L—Discretionary Actions by OPM

§ 839.1201 If I took legal action against my employer because of a qualifying retirement coverage error, can OPM reimburse me for expenses related to my legal actions?

(a) The FERCCA allows OPM, in its sole discretion, to reimburse you for necessary and reasonable expenses you actually incurred while pursuing a legal or administrative remedy of your qualifying retirement coverage error.

(b) Necessary and reasonable expenses include actual amounts paid for attorney fees, court costs, expert witness fees, and other litigation expenses.

(c) You may not receive reimbursement under this section if you received a monetary award that compensated you for your litigation expenses.

(d) You must support your request for reimbursement with evidence that supports your claim.

(e) In determining what is a necessary and reasonable expense, OPM will consider:

(1) The type and amount of the expense;

(2) The circumstances that gave rise to the expense; and

(3) Whether the expense is directly related to litigation concerning a retirement coverage error.

§ 839.1202 Can OPM waive repayment of a monetary award I received as resolution of the harm caused me by a qualifying retirement coverage error?

(a) The FERCCA allows OPM, in its sole discretion, to waive repayment of all or part of a settlement payment or court-ordered payment if you can demonstrate that CSRS Offset coverage does not fully compensate you for your losses.

(b) Your request for waiver must state why you believe waiver of repayment is appropriate and include any evidence that supports your request.

§ 839.1203 Can OPM compensate me for my losses if I did not take any legal action against my employer, but did incur some expenses because of a qualifying retirement coverage error?

(a) The FERCCA allows OPM, in its sole discretion, to compensate you for a monetary loss that is a direct and proximate result of your retirement coverage error.

(b) Monetary losses include payments of additional Social Security taxes, payment of additional retirement deductions, and other out-of-pocket expenses that you incurred because of a retirement coverage error.

(c) You must substantiate your claim for losses with any evidence that supports your request.

(d) OPM cannot pay you for:

(1) Claimed losses related to forgone contributions and earnings under the TSP, other than lost earnings on make-up contributions to the TSP as provided in subpart J of this part; and

(2) Claimed losses related to any other investment opportunities.

§ 839.1204 On what basis will OPM review claims under this subpart?

(a) OPM will base its decision on only the written record, including all of your submissions and other documentation in OPM's possession.

(b) At OPM's discretion, OPM may request your employer to provide an administrative report. The report may include:

(1) A description of the retirement coverage error;

(2) A statement as to whether a settlement or other court-ordered award was made;

(3) The employer's recommendation for resolution of the claim; and

(4) Any other information your employer believes OPM should consider.

(c) The burden of proof that the criteria for approving a reimbursement of expenses is on you.

§ 839.1205 Does the Director of OPM review the claims?

The Associate Director for Retirement and Insurance and his or her delegatees have the authority to perform the Director's actions, as set out in this subpart (see section 2208 of the FERCCA).

§ 839.1206 How do I submit a claim under this subpart?

(a) No specific form is required. Your request must be in writing and contain the following information:

(1) It must describe the basis for the claim and state the dollar amount you seek to receive;

(2) It must include your name, address, and telephone number;

(3) It must include the name, address, and telephone number of your current or last employer;

(4) It must be signed by you; and

(5) It must include any information you believe OPM should consider, such as cancelled checks or other evidence of amounts you paid.

(b) Send your claim to: Office of Personnel Management, Retirement and Insurance Service, ATTN: FC Section, Washington, DC 20415–3200

Subpart M—Appeal Rights

§ 839.1301 What if my employer determines my error is not subject to these rules?

(a) Your employer must provide you with a written decision. The decision must include the reason for the decision, and notice of your right to appeal the decision to the MSPB.

(b) If your employer determines that it cannot waive the time limit for making an election under § 839.612, the decision must inform you of your right to ask OPM to review the decision. OPM will advise you in writing of your appeal rights following its review of your employer's decision.

§ 839.1302 What types of decisions can I appeal?

(a) You can appeal to the MSPB a decision that affects your rights and interests under this part, except an OPM decision under subpart L (see § 839.1303). Some examples of decisions are:

(1) Your employer's determination that your error is not subject to these rules;

(2) Your employer's determination that you are not eligible to elect retirement coverage under these rules; and

(3) OPM's denial of your request for a waiver of the time limit for making an election.

(b) You may not seek review of a decision under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code, and 5 CFR part 771.

§ 839.1303 Are there any types of decisions that I cannot appeal?

Yes, OPM's decisions under subpart L (Discretionary Actions by OPM) are final and conclusive and are not subject to administrative or judicial review.

§ 839.1304 Is there anything else I can do if I am not satisfied with the way my error was corrected?

(a) Except for claims under subpart L (see § 839.1303), and after exhausting your administrative remedies as set out in this subpart, you may bring a claim against the Government under section 1346(b) or chapter 171 of title 28, United States Code.

(b) You may also bring a claim against the Government under any other provision of law if your claim is for amounts not otherwise provided for under these rules.

PART 841—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—GENERAL ADMINISTRATION

6. The authority citation for part 841 is revised to read as follows:

Authority: 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780.

7. Amend § 841.604 to add paragraph (c) to read as follows:

§ 841.604 Interest on service credit deposits.

* * * * *

(c) In the case of a retirement coverage error that was corrected under part 839 (pertaining to errors that lasted for at least 3 years of service after December 31, 1986) in which:

(1) A CSRS service credit deposit was made; and

(2) There is a subsequent retroactive change to FERS, the excess of the amount of the CSRS civilian or military service credit deposit over the FERS civilian or military deposit, together with interest computed under § 842.305 of this chapter, shall be paid to the employee or annuitant. In the case of a deceased employee or annuitant, payment is made to the individual entitled to lump-sum benefits under subpart B of part 843 of this chapter.

PART 846—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—ELECTIONS OF COVERAGE

8. The authority citation for part 846 is revised to read as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g) and Title III of Pub. L. 99–335, 100 Stat. 517; Sec. 846.201(b) also issued under 5 U.S.C. 7701(b)(2) and section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 846.201(d) also issued under section 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 846.201(d) also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 846.202 also issued under section 301(d)(3) of Pub. L. 99–335, 100 Stat. 517; Sec. 846.204(b) also issued under Title II, Pub. L. 106–265, 114 Stat. 778; Sec. 846.726 also issued under 5 U.S.C. 1104; subpart G also issued under section 642 of Pub. L. 105–61, 111 Stat. 1272.

9. Amend § 846.204 to revise paragraph (b)(2)(i) and add paragraph (e) to read as follows:

§ 846.204 Belated elections and correction of administrative errors.

* * * * *

(b) * * *

(2)(i) *Erroneous FERS coverage for a period of less than 3 years of service.* For an employee, separated employee, or retiree whose employing agency erroneously determined that the individual was covered by FERS during the period under § 846.201 when the individual was eligible to elect FERS, and the employing agency should have placed the individual in CSRS, CSRS Offset, or Social Security-Only, under conditions that would have included an opportunity to elect FERS coverage, and the employee, separated employee, or retiree remained in FERS for less than 3 years of service, the employee, separated employee, or retiree is deemed to have elected FERS coverage and the individual will remain covered by FERS, unless the individual declines under paragraph (b)(2)(ii) of this section to be covered by FERS.

* * * * *

(e) *Errors lasting for at least 3 years of service.* For an employee, separated employee, or retiree whose employing agency erroneously determined that the individual was covered by FERS during the period under § 846.201 of this chapter when the individual was eligible to elect FERS and the individual remained in FERS for at least 3 years of service, the error is corrected in accordance with part 839 of this chapter.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 559/P.L. 107–2

To designate the United States courthouse located at 1 Courthouse Way in Boston, Massachusetts, as the ''John Joseph Moakley United States Courthouse''. (Mar. 13, 2001; 115 Stat. 4)

S. 279/P.L. 107–3

Affecting the representation of the majority and minority membership of the Senate Members of the Joint Economic Committee. (Mar. 13, 2001; 115 Stat. 5)

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3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
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20 Parts:			
1–399	(869–042–00056–1)	33.00	Apr. 1, 2000
400–499	(869–042–00057–9)	56.00	Apr. 1, 2000
500–End	(869–042–00058–7)	58.00	Apr. 1, 2000
21 Parts:			
1–99	(869–042–00059–5)	26.00	Apr. 1, 2000
100–169	(869–042–00060–9)	30.00	Apr. 1, 2000
170–199	(869–042–00061–7)	29.00	Apr. 1, 2000
200–299	(869–042–00062–5)	13.00	Apr. 1, 2000
300–499	(869–042–00063–3)	20.00	Apr. 1, 2000
500–599	(869–042–00064–1)	31.00	Apr. 1, 2000
600–799	(869–042–00065–0)	10.00	Apr. 1, 2000
800–1299	(869–042–00066–8)	38.00	Apr. 1, 2000
1300–End	(869–042–00067–6)	15.00	Apr. 1, 2000
22 Parts:			
1–299	(869–042–00068–4)	54.00	Apr. 1, 2000
300–End	(869–042–00069–2)	31.00	Apr. 1, 2000
23	(869–042–00070–6)	29.00	Apr. 1, 2000
24 Parts:			
0–199	(869–042–00071–4)	40.00	Apr. 1, 2000
200–499	(869–042–00072–2)	37.00	Apr. 1, 2000
500–699	(869–042–00073–1)	20.00	Apr. 1, 2000
700–1699	(869–042–00074–9)	46.00	Apr. 1, 2000
1700–End	(869–042–00075–7)	18.00	[5] Apr. 1, 2000
25	(869–042–00076–5)	52.00	Apr. 1, 2000
26 Parts:			
§§ 1.0-1–1.60	(869–042–00077–3)	31.00	Apr. 1, 2000
§§ 1.61–1.169	(869–042–00078–1)	56.00	Apr. 1, 2000
§§ 1.170–1.300	(869–042–00079–0)	38.00	Apr. 1, 2000
§§ 1.301–1.400	(869–042–00080–3)	29.00	Apr. 1, 2000
§§ 1.401–1.440	(869–042–00081–1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-042-00082-0)	36.00	Apr. 1, 2000
§§ 1.501–1.640	(869–042–00083–8)	32.00	Apr. 1, 2000
§§ 1.641–1.850	(869–042–00084–6)	41.00	Apr. 1, 2000
§§ 1.851–1.907	(869–042–00085–4)	43.00	Apr. 1, 2000
§§ 1.908–1.1000	(869–042–00086–2)	41.00	Apr. 1, 2000
§§ 1.1001–1.1400	(869–042–00087–1)	45.00	Apr. 1, 2000
§§ 1.1401–End	(869–042–00088–9)	66.00	Apr. 1, 2000
2–29	(869–042–00089–7)	45.00	Apr. 1, 2000
30–39	(869–042–00090–1)	31.00	Apr. 1, 2000
40–49	(869–042–00091–9)	18.00	Apr. 1, 2000
50–299	(869–042–00092–7)	23.00	Apr. 1, 2000
300–499	(869–042–00093–5)	43.00	Apr. 1, 2000
500–599	(869–042–00094–3)	12.00	Apr. 1, 2000
600–End	(869–042–00095–1)	12.00	Apr. 1, 2000
27 Parts:			
1–199	(869–042–00096–0)	59.00	Apr. 1, 2000

Title	Stock Number	Price	Revision Date
200–End	(869–042–00097–8)	18.00	Apr. 1, 2000
28 Parts:			
0-42	(869–042–00098–6)	43.00	July 1, 2000
43-end	(869-042-00099-4)	36.00	July 1, 2000
29 Parts:			
0–99	(869–042–00100–1)	33.00	July 1, 2000
100–499	(869–042–00101–0)	14.00	July 1, 2000
500–899	(869–042–00102–8)	47.00	July 1, 2000
900–1899	(869–042–00103–6)	24.00	July 1, 2000
1900–1910 (§§ 1900 to 1910.999)	(869–042–00104–4)	46.00	[6]July 1, 2000
1910 (§§ 1910.1000 to end)	(869–042–00105–2)	28.00	[6]July 1, 2000
1911–1925	(869–042–00106–1)	20.00	July 1, 2000
1926	(869–042–00107–9)	30.00	[6]July 1, 2000
1927–End	(869–042–00108–7)	49.00	July 1, 2000
30 Parts:			
1–199	(869–042–00109–5)	38.00	July 1, 2000
200–699	(869–042–00110–9)	33.00	July 1, 2000
700–End	(869–042–00111–7)	39.00	July 1, 2000
31 Parts:			
0–199	(869–042–00112–5)	23.00	July 1, 2000
200–End	(869–042–00113–3)	53.00	July 1, 2000
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–042–00114–1)	51.00	July 1, 2000
191–399	(869–042–00115–0)	62.00	July 1, 2000
400–629	(869–042–00116–8)	35.00	July 1, 2000
630–699	(869–042–00117–6)	25.00	July 1, 2000
700–799	(869–042–00118–4)	31.00	July 1, 2000
800–End	(869–042–00119–2)	32.00	July 1, 2000
33 Parts:			
1–124	(869–042–00120–6)	35.00	July 1, 2000
125–199	(869–042–00121–4)	45.00	July 1, 2000
200–End	(869–042–00122–5)	36.00	July 1, 2000
34 Parts:			
1–299	(869–042–00123–1)	31.00	July 1, 2000
300–399	(869–042–00124–9)	28.00	July 1, 2000
400–End	(869–042–00125–7)	54.00	July 1, 2000
35	(869–042–00126–5)	10.00	July 1, 2000
36 Parts			
1–199	(869–042–00127–3)	24.00	July 1, 2000
200–299	(869–042–00128–1)	24.00	July 1, 2000
300–End	(869–042–00129–0)	43.00	July 1, 2000
37	(869–042–00130–3)	32.00	July 1, 2000
38 Parts:			
0–17	(869–042–00131–1)	40.00	July 1, 2000
18–End	(869–042–00132–0)	47.00	July 1, 2000
39	(869–042–00133–8)	28.00	July 1, 2000
40 Parts:			
1–49	(869–042–00134–6)	37.00	July 1, 2000
50–51	(869–042–00135–4)	28.00	July 1, 2000
52 (52.01–52.1018)	(869–042–00136–2)	36.00	July 1, 2000
52 (52.1019–End)	(869–042–00137–1)	44.00	July 1, 2000
53–59	(869–042–00138–9)	21.00	July 1, 2000
60	(869–042–00139–7)	66.00	July 1, 2000
61–62	(869–042–00140–1)	23.00	July 1, 2000
63 (63.1–63.1119)	(869–042–00141–9)	66.00	July 1, 2000
63 (63.1200–End)	(869–042–00142–7)	49.00	July 1, 2000
64–71	(869–042–00143–5)	12.00	July 1, 2000
72–80	(869–042–00144–3)	47.00	July 1, 2000
81–85	(869–042–00145–1)	36.00	July 1, 2000
86	(869–042–00146–0)	66.00	July 1, 2000
87-135	(869–042–00146–8)	66.00	July 1, 2000
136–149	(869–042–00148–6)	42.00	July 1, 2000
150–189	(869–042–00149–4)	38.00	July 1, 2000
190–259	(869–042–00150–8)	25.00	July 1, 2000
260–265	(869–042–00151–6)	36.00	July 1, 2000
266–299	(869–042–00152–4)	35.00	July 1, 2000
300–399	(869–042–00153–2)	29.00	July 1, 2000
400–424	(869–042–00154–1)	37.00	July 1, 2000
425–699	(869–042–00155–9)	48.00	July 1, 2000
700–789	(869–042–00156–7)	46.00	July 1, 2000
790–End	(869–042–00157–5)	23.00	[6]July 1, 2000
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–042–00158–3)	15.00	July 1, 2000
101	(869–042–00159–1)	37.00	July 1, 2000
102–200	(869–042–00160–5)	21.00	July 1, 2000
201–End	(869–042–00161–3)	16.00	July 1, 2000
42 Parts:			
1–399	(869–042–00162–1)	53.00	Oct. 1, 2000
400–429	(869–042–00163–0)	55.00	Oct. 1, 2000
430–End	(869–042–00164–8)	57.00	Oct. 1, 2000
43 Parts:			
1–999	(869–042–00165–6)	45.00	Oct. 1, 2000
1000–end	(869–042–00166–4)	55.00	Oct. 1, 2000
44	(869–042–00167–2)	45.00	Oct. 1, 2000
45 Parts:			
1–199	(869–042–00168–1)	50.00	Oct. 1, 2000
200–499	(869–042–00169–9)	29.00	Oct. 1, 2000
500–1199	(869–042–00170–2)	45.00	Oct. 1, 2000
1200–End	(869–042–00171–1)	54.00	Oct. 1, 2000
46 Parts:			
1–40	(869–042–00172–9)	42.00	Oct. 1, 2000
41–69	(869–042–00173–7)	34.00	Oct. 1, 2000
70–89	(869–042–00174–5)	13.00	Oct. 1, 2000
90–139	(869–042–00175–3)	41.00	Oct. 1, 2000
140–155	(869–042–00176–1)	23.00	Oct. 1, 2000
156–165	(869–042–00177–0)	31.00	Oct. 1, 2000
166–199	(869–042–00178–8)	42.00	Oct. 1, 2000
200–499	(869–042–00179–6)	36.00	Oct. 1, 2000
500–End	(869–042–00180–0)	23.00	Oct. 1, 2000
47 Parts:			
0–19	(869–042–00181–8)	54.00	Oct. 1, 2000
20–39	(869–042–00182–6)	41.00	Oct. 1, 2000
40–69	(869–042–00183–4)	41.00	Oct. 1, 2000
70–79	(869–042–00184–2)	54.00	Oct. 1, 2000
80–End	(869–042–00185–1)	54.00	Oct. 1, 2000
48 Chapters:			
1 (Parts 1–51)	(869–042–00186–9)	57.00	Oct. 1, 2000
1 (Parts 52–99)	(869–042–00187–7)	45.00	Oct. 1, 2000
2 (Parts 201–299)	(869–042–00188–5)	53.00	Oct. 1, 2000
3–6	(869–042–00189–3)	40.00	Oct. 1, 2000
7–14	(869–042–00190–7)	52.00	Oct. 1, 2000
15–28	(869–042–00191–5)	53.00	Oct. 1, 2000
29–End	(869–042–00192–3)	38.00	Oct. 1, 2000
49 Parts:			
1–99	(869–042–00193–1)	53.00	Oct. 1, 2000
100–185	(869–042–00194–0)	57.00	Oct. 1, 2000
186–199	(869–042–00195–8)	17.00	Oct. 1, 2000
200–399	(869–042–00196–6)	57.00	Oct. 1, 2000
400–999	(869–042–00197–4)	58.00	Oct. 1, 2000
1000–1199	(869–042–00198–2)	25.00	Oct. 1, 2000
1200–End	(869–042–00199–1)	21.00	Oct. 1, 2000
50 Parts:			
1–199	(869–042–00200–8)	55.00	Oct. 1, 2000
200–599	(869–042–00201–6)	35.00	Oct. 1, 2000

Title	Stock Number	Price	Revision Date
600–End	(869–042–00202–4)	55.00	Oct. 1, 2000
CFR Index and Findings Aids	(869–042–00047–1)	53.00	Jan. 1, 2000
Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..